

Empire, Borders, and Refugee Responsibility Sharing

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INTRODUCTION

International lawyers have been preoccupied with refugee responsibility sharing for decades, and with good reason. They have invested energy both in critiquing the existing regime and developing proposals for alternatives. However, the corresponding literature has largely, though not entirely, neglected two related but distinct phenomena: *imperial domination* and *imperial intervention*. I argue that attention to imperial domination and imperial intervention, which I define shortly, should unsettle the very frame of responsibility sharing and even asylum for many who are coerced into migration.

Refugee responsibility-sharing scholars, for the most part, are concerned with persons who, due to serious violations of human rights—including severe forms of deprivation—cross international borders as a survival strategy. The nature of the international system is such that especially when large numbers of persons are forced to or make the decision to cross borders, their treatment and conditions after doing so expose them to further harm because of the acts and

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omissions of the nation-states territorially, ethically, legally, or otherwise implicated in the international displacement of these persons.

In the last decade, the displacement of Syrian refugees is a case in point.¹ A decade of conflict in Syria has driven over 6.6 million people out of the country in search of refuge,² including refugees from other conflicts that had settled in Syria. Most Syrian refugees have remained in countries neighboring Syria, but many, for complex reasons including difficult living conditions, have sought refuge further afield in North Africa, Europe, North America, and elsewhere. Reception of Syrian refugees has varied. Countries in the neighboring region have taken in the greatest numbers but have repeatedly expressed the need for support from the broader international community to protect Syrian refugees. Countries beyond the region, including the wealthiest countries, have with few exceptions³ failed to extend necessary protections to Syrian refugees. This is a typical dynamic. Countries in the Global South that are geographically proximate to the conflict and instability that result in large scale displacement tend to host the vast majority of refugees. This is striking when compared with the regular complicity of countries in the Global North in causing that displacement,⁴ and in the reluctance of these countries to take responsibility for that complicity.

1. Many other groups have been displaced in large numbers as well in the last decade. For example, nearly six million Venezuelans have fled “a combination of violence, insecurity and a lack of food, medicine and other services in Venezuela.” *Data Reveals Plight of Venezuelan Refugees and Migrants Evicted in Pandemic*, UNHCR: UN REFUGEE AGENCY (Oct. 25, 2021), <https://www.unhcr.org/en-us/news/latest/2021/10/61769bea4/data-reveals-plight-venezuelan-refugees-migrants-evicted-pandemic.html> [<https://perma.cc/XH83-6EF7>]; since December 2020, an additional 105,000 refugees from the Central African Republic fled the country, adding to the 623,000 who had already sought asylum in other countries, Alexandra Lamarche, *The Central African Republic in Crisis: Critical Measures to Address Humanitarian and Security Needs*, REFUGEES INT’L (Feb. 4, 2021), <https://www.refugeesinternational.org/reports/2021/2/3/the-central-african-republic-in-crisis-critical-measures-to-address-humanitarian-and-security-needs> [<https://perma.cc/A2JD-9RBA>], and “[t]he total number of South Sudanese refugees has now passed 2 million” *South Sudan Refugee Crisis*, USA FOR UNHCR, <https://www.unrefugees.org/emergencies/south-sudan/> [<https://perma.cc/SAM2-2H67>]. However, these displacements have not garnered the level of international attention as that garnered by Syrian displacement.

2. *Syria Refugee Crisis*, USA FOR UNHCR, <https://www.unrefugees.org/emergencies/syria/> [<https://perma.cc/YL6K-Q53B>].

3. Germany, for example, adopted an “open door policy” that led to the arrival of around 800,000 refugees in 2015, even as other European countries were adopting measures to ensure the exclusion of these refugees. Beken Saatçioğlu, *The EU’s Response to the Syrian Refugee Crisis: A Battleground Among Many Europes*, 22 EUR. POL. & SOC’Y 808, 813 (2021). However, Germany later led the way in promoting European Union-wide measures to deter refugee arrivals, such as the externalization of the European Union’s borders to Turkey. *Id.* at 815–16; *see id.* at 820 n.4.

4. While states in the Global South host the vast majority of displaced refugees, refugee responsibility-sharing discourse rarely grapples with how hegemony in the Global North have actively contributed, both historically and contemporaneously, to the instability, conflict, and conditions of persecution which are the root causes of mass displacement. *See* E. Tendayi Achiume, *The Fact of Xenophobia and the Fiction of State Sovereignty: A Reply to Blocher and Gulati*, 1 COLUM. HUM. RTS. L. REV. ONLINE 1, 16 (2017) (citing B.S. Chimni, *The Geopolitics of Refugee Studies: A View from the South*, 11 J. REFUGEE STUD. 330, 360–63 (1998)).

The so-called Syrian Refugee Crisis⁵ generated a significant body of legal scholarship under the rubric of refugee responsibility sharing.⁶ Indeed, the responsibility-sharing—previously the burden-sharing—frame has been the umbrella under which legal scholars have articulated, theorized, and attempted to address concern for the way that nation-states collectively treat internationally displaced persons, including those who proactively cross borders as a survival strategy.⁷

5. On the legal construction of crisis in relation to international displacement and migration, see Jaya Ramji-Nogales, *Migration Emergencies*, 68 HASTINGS L.J. 609, 622–25 (2017).

6. See, e.g., E. Tendayi Achiume, *Syria, Cost-Sharing, and the Responsibility to Protect Refugees*, 100 MINN. L. REV. 687, 692–95 (2016); see also, e.g., Rawan Arar, *The New Grand Compromise: How Syrian Refugees Changed the Stakes in the Global Refugee Assistance Regime*, 9 MIDDLE E. L. & GOVERNANCE 298, 304 (2017) (arguing that in 2016 Europe’s “burden sharing” strategies were dropped in favor of “burden shifting” strategies that led to the renegotiation of a “grand compromise” whereby European States increased financial incentives to States in the Global South in order to ensure that refugees did not reach Europe); Eleni Karageorgiou, *Solidarity and Sharing in the Common European Asylum System: The Case of Syrian Refugees*, 17 EUR. POL. & SOC’Y 196, 197 (2016) (analyzing “the extent to which the EU lives up to the commitment to a fair distribution of responsibility amongst Member States as well as to the obligation of assisting individuals in need of protection pursuant to the 1951 Refugee Convention relating to the Status of Refugees”); Nicole Ostrand, *The Syrian Refugee Crisis: A Comparison of Responses by Germany, Sweden, the United Kingdom, and the United States*, 3 J. ON MIGRATION & HUM. SEC. 255 (2015) (comparing the burdens and costs accepted by four northern states to the burdens imposed on states in the Global South and offering recommendations for greater responsibility sharing).

7. The refugee responsibility-sharing literature is vast, has addressed the international treatment of various refugee groups, and contains myriad proposals for solutions for more equitable, efficient, and effective responsibility-sharing arrangements. See, e.g., Luke T. Lee, *The Right to Compensation: Refugees and Countries of Asylum*, 80 AM. J. INT’L L. 532, 532 (1986) (articulating “responsibilities of . . . source countries under international law to compensate refugees and countries of asylum”); James C. Hathaway & R. Alexander Neve, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J. 115, 118 (1997) (arguing for “a shift to a solution-oriented temporary protection of refugees, conceived within a framework of common but differentiated responsibility among states”); Peter H. Schuck, *Refugee Burden-Sharing: A Modest Proposal*, 22 YALE J. INT’L L. 243 (1997) (proposing a consensual regional or sub-regional scheme permitting states to receive financial compensation for assuming the protection responsibilities of other states); Astri Suhrke, *Burden-Sharing During Refugee Emergencies: The Logic of Collective Versus National Action*, 11 J. REFUGEE STUD. 396 (1998) (explaining some of the entrenched obstacles to collective refugee protection); Deborah Anker, Joan Fitzpatrick & Andrew Shacknove, *Crisis and Cure: A Reply to Hathaway/Neve and Schuck*, 11 HARV. HUM. RTS. J. 295 (1998) (rejecting the proposals by Hathaway/Neve and Schuck, concluding that neither addresses the root threats to the refugee protection system and they would de-emphasize state responsibility); Peter H. Schuck, *A Response to the Critics*, 12 HARV. HUM. RTS. J. 385 (1999) (responding to the criticisms of Anker et al.); Gregor Noll, *Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field*, 16 J. REFUGEE STUD. 236 (2003) (applying game theory to EU migration and asylum trends); Eiko R. Thielemann, *Between Interests and Norms: Explaining Burden-Sharing in the European Union*, 16 J. REFUGEE STUD. 253 (2003) (articulating two approaches to responsibility sharing (cost-benefit logic and norm-based logic) and examining how these two approaches can explain the European Union’s responsibility-sharing efforts); Tally Kritzman-Amir, *Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law*, 34 BROOK. J. INT’L L. 355 (2009) (reviewing several proposals for responsibility sharing in refugee protection); Martin Gottwald, *Burden Sharing and Refugee Protection*, in THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES 525 (Elena Fiddian-Qasimiyeh, Gil Loescher, Katy Long & Nando Sigona eds., 2014) (tracing intellectual histories relating to burden sharing and refugee protection); Achiume, *supra* note 6, (proposing that the doctrine

Although rarely made explicit in responsibility-sharing literature, much of this literature's analysis is heavily informed—and constrained—by the prevailing doctrine of sovereignty in international law. This is evident in the specific way that the majority of this literature constructs the problem, the corresponding solutions, and the means through which these solutions might be achieved.⁸ International lawyers focus on the consent-based regime of international refugee law—the U.N. Refugee Convention and its Protocol—and recent international human-rights-law-based non-refoulement obligations.⁹ They

of the responsibility to protect be applied to facilitate refugee cost and responsibility sharing); Volker Türk, *Prospects for Responsibility Sharing in the Refugee Context*, 4 J. ON MIGRATION & HUM. SEC. 45, 46 (2016) (focusing on “new or emerging approaches in the areas of responsibility sharing—with regard to protection, assistance, and solutions—that may offer hope for the future, as they can more effectively translate long-standing principles of refugee protection into concrete and meaningful action”); Joseph Blocher & Mitu Gulati, *Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis*, 48 COLUM. HUM. RTS. L. REV. 53 (2016) (proposing an international legal arrangement whereby refugee groups could assert financial claims against countries of origin, thereby funding resettlement in countries of destination); Achiume, *supra* note 4, at 2–6 (noting some shortcomings in Blocher and Gulati’s proposal, including its neglect of the centrality of xenophobia as a noneconomic force that drives state rejection of refugees); Peter Hilpold, *Quotas as an Instrument of Burden-Sharing in International Refugee Law: The Many Facets of an Instrument Still in the Making*, 15 INT’L J. CONST. L. 1188 (2017) (examining how quotas interact with solidarity and burden sharing in the European Union’s refugee protection system); Patrick Wall, *A New Link in the Chain: Could a Framework Convention for Refugee Responsibility Sharing Fulfil the Promise of the 1967 Protocol?*, 29 INT’L J. REFUGEE L. 201, 201 (2017) (arguing for an additional legal instrument to complement the 1951 Refugee Convention and the 1967 Refugee Protocol, which would “distribute more equitably between States the responsibility to provide protection and durable solutions for refugees,” and positing that a framework convention could begin the process of enacting such an instrument); ALEXANDER BETTS, CATHRYN COSTELLO & NATASCHA ZAUN, DELMI, A FAIR SHARE: REFUGEES AND RESPONSIBILITY-SHARING 93 (2017) (“Responsibility-sharing is a necessary condition for the effective functioning of the refugee system, at both global and regional levels. Without it, there will be inadequate assistance, protection, and solutions for refugees. And yet there has remained a longstanding gap in terms of institutional mechanisms to ensure predictable and equitable responsibility-sharing, especially at the global level.”); Chloë M. Gilgan, *Exploring the Link Between R2P and Refugee Protection: Arriving at Resettlement*, 9 GLOB. RESP. TO PROTECT 366 (2017) (analyzing refugee resettlement through the “Responsibility to Protect” doctrine); Rebecca Dowd & Jane McAdam, *International Cooperation and Responsibility Sharing to Combat Climate Change: Lessons for International Refugee Law*, 18 MELB. J. INT’L L. 180 (2017) (applying responsibility-sharing norms developed in international environmental law to the context of international refugee protection); Michelle McEwen, *Refugee Resettlement in Crisis: The Failure of the EU-Turkey Deal and the Case for Burden-Sharing*, 2 SWARTHMORE INT’L RELS. J. 20, 20 (2017) (highlighting the EU-Turkey deal as an instance of “burden-shifting” rather than burden sharing); Claire Inder, *The Origins of ‘Burden Sharing’ in the Contemporary Refugee Protection Regime*, 29 INT’L J. REFUGEE L. 523 (2017) (analyzing the *travaux préparatoires* of the 1951 Refugee Convention to trace the historical origins of burden sharing in the international refugee system); Michael W. Doyle, *Responsibility Sharing: From Principle to Policy*, 30 INT’L J. REFUGEE L. 618 (2018) (discussing current practice of refugee protection responsibility sharing and proposing improvements to the international responsibility-sharing regime); Philipp Lutz, Anna Stünzi & Stefan Manser-Egli, *Responsibility Sharing in Refugee Protection: Lessons from Climate Governance*, 65 INT’L STUD. Q. 476 (2021) (comparing responsibility-sharing challenges in the climate governance regimes and humanitarian protection regimes).

8. See, e.g., sources cited *supra* note 7, listing some illustrative examples that implicitly adopt the approach described herein.

9. The recently adopted Global Compact on Refugees, which aims to make the responsibility-sharing regime more equitable and predictable, has also garnered academic attention. Rep. of the U.N.

mostly agree that this global refugee regime does not include international legal obligations for non-refugee-hosting states to assist refugee-hosting states with the protection of refugees in the latter's territories. The problem then becomes one of how to get non-hosting states, which given the geopolitics of refugee displacement centrally include wealthy Global North countries, to *share* responsibility with hosting states voluntarily. Underlying this problem is, of course, the contemporary doctrine of state sovereignty, according to which international legal obligations derive from the consent of the respective nation-state, which enjoys independence from and equality with all others.

High Comm'r for Refugees, *Global Compact on Refugees*, ¶ 1, U.N. Doc. A/73/12 (Pt. II) (Aug. 2, 2018); see T. Alexander Aleinikoff, *The Unfinished Work of the Global Compact on Refugees*, 30 INT'L J. REFUGEE L. 611, 611 (2018) (explaining that the Global Compact on Refugees does not "address the large flow of refugees arriving in the global North," focusing instead on a "comprehensive, multi-stakeholder approach to refugee situations" and "greater assistance to front-line countries hosting refugees"); *id.* at 612 (describing the Global Compact as a "ratchet" which is "preventing backward slippage and creating opportunities for forward movement"); Sergio Carciotto & Filippo Ferraro, *Building Blocks and Challenges for the Implementation of the Global Compact on Refugees in Africa*, 8 J. ON MIGRATION & HUM. SEC. 83 (2020) (examining the application of the Global Compact on Refugees and its constituent pieces, particularly the Comprehensive Refugee Response Framework (CRRF) in Africa); *id.* at 93 (concluding that "the originality of the structure of the CRRF should reasonably offer hope for a different result" than those feared by critics, as "the implementation of the CRRF can contribute to promoting economic opportunities as well as livelihoods and self-reliance among displaced populations"); Volker Türk, *The Promise and Potential of the Global Compact on Refugees*, 30 INT'L J. REFUGEE L. 575, 580 (2018) ("The new arrangements in the Global Compact on Refugees have the potential to take us much further towards a more predictable response to refugee situations than where we are today. They are robust, practicable, and implementable, and provide a solid basis from which to move forward. They represent the best that can be achieved in a document that aims to articulate, in effect, commitments for everyone, but which is at the same time voluntary and legally non-binding."); Gililan D. Triggs & Patrick C.J. Wall, *The Makings of a Success': The Global Compact on Refugees and the Inaugural Global Refugee Forum*, 32 INT'L J. REFUGEE L. 283 (2020) (offering an optimistic account, from the perspective of the United Nations High Commissioner for Refugees (UNHCR), of the Global Compact and the first Global Refugee Forum); Alexander Betts, *The Global Compact on Refugees: Towards a Theory of Change?*, 30 INT'L J. REFUGEE L. 623, 626 (2018) ("Early in the process, I was critical that UNHCR's approach to the Compact was too conservative and risked missing an opportunity for more profound change. And while I think the jury is still out on whether the Compact itself will make a fundamental difference to practice, there are some positive signs that it can galvanize change. The Refugee Compact has the potential to make a difference."); Thomas Gammeltoft-Hansen, *The Normative Impact of the Global Compact on Refugees*, 30 INT'L J. REFUGEE L. 605, 610 (2018) (explaining the legal status of the Global Compact, concluding that it primarily operates as a political document with a "norm-preserving role"); Meltem Ineli-Ciger, *The Global Compact on Refugee and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?*, 38 REFUGEE SURV. Q. 115 (2019) (considering whether the Compact will be able to address the protection gaps relating to burden sharing and concluding that it is unlikely to fill that gap); James C. Hathaway, *The Global Cop-Out on Refugees*, 30 INT'L J. REFUGEE L. 591 (2018) (noting that while the Compact achieved two of its three goals, it did not create a transnational mechanism to allocate burdens and responsibilities of refugee protection). An especially incisive critique of the Refugee Compact can be found in B.S. Chimni, *Global Compact on Refugees: One Step Forward, Two Steps Back*, 30 INT'L J. REFUGEE L. 630, 630 (2018) (welcoming the promotion of global cooperation engendered by the Global Compact consultations, but arguing the Compact is flawed because, *inter alia*, it "fails to mention the responsibility of third States, in particular Western States, for recent outflows of refugees linked to their acts of intervention").

The ethical arguments for more expansive and equitable responsibility-sharing regimes are typically based on broadly cosmopolitan principles, and advance distributive justice claims often involving the relative capacity among nation-states. They implicitly or explicitly treat all nation-states as having equal ethical obligations to ensure the fundamental human rights of all human beings, irrespective of citizenship. And whereas refugee-protection responsibilities under the status quo are predominantly allocated based on proximity to conflict and displacement, the emphasis in the responsibility-sharing literature has been to argue the case for and means of requiring wealthy but typically remote states to share in the cost and responsibility of refugee protection. The responsibility-sharing literature has rarely, if at all, launched a concerted challenge against the legitimacy of the political and territorial borders that states rely upon to justify their treatment of refugees.

In the discussion that follows, I propose that there are theoretical as well as pragmatic benefits to be derived from a different approach to the refugee responsibility-sharing problem. This alternative approach challenges the validity of contemporary borders and the operation of sovereignty doctrine in international relations. I advocate greater attention to the operation of empire for identifying the respective duties and duty bearers where refugee responsibility is concerned.¹⁰ Specifically, I call attention to *imperial domination*, which I define as conditions of transnational political and economic interconnection that bind nation-states on unequal terms and are characterized by dominant hegemons that informally constrain the sovereignty of the subordinate nation-states bound to them. As I have argued elsewhere, nation-states interconnected in this way should be understood as cohesive, transnational political communities that give national borders a different meaning from that assigned to them under existing international law.¹¹

I also highlight a distinct though related dimension of empire: *imperial intervention*. This includes a range of interventions—military, political, and economic—that may not themselves forge bonds of ongoing imperial domination and duties that domination entails, but nonetheless generate duties to protect refugees that bear on what has traditionally been framed as a responsibility-sharing problem.

This empire-centric approach ultimately reframes refugee responsibility sharing—which is typically treated as a distributive justice problem—as a failure to fulfill sovereign obligations, as well as a failure of corrective justice. The approach also challenges the parameters of the institution of asylum, particularly

10. In *Migration as Decolonization*, I argued that persisting forms of imperial connection vitiate the right of First World nation-states (former colonial powers) to exclude citizens of Third World nation-states (formerly colonized nations). E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509 (2019). In this Article, I explore the implications of some of the core insights of *Migration as Decolonization* for refugee responsibility sharing.

11. See *id.* at 1547–66.

the individualized persecution standard provided by the U.N. Refugee Convention, arguing that it does not exhaust the suite of obligations that imperial hegemony owes to those they displace through domination or intervention. My reframing builds on novel arguments I have made elsewhere regarding borders, sovereignty, and empire.¹² This reframing also highlights arguments that other scholars have made foregrounding imperial intervention in accounts of responsibility sharing for refugee displacement.¹³

Two caveats are necessary. The first is that I do not view empire-centric approaches to asylum and refugee responsibility sharing to be the exclusive approaches or solutions desirable for addressing international displacement. There are other normative ideals, such as commitments to human rights and human dignity, religious values of different kinds, and even distributive justice considerations, that can meaningfully be pursued alongside the approaches I prioritize in my account.¹⁴ Rather than seeking to displace all other approaches, my claim is that empire-centric approaches are necessary even if they are not sufficient to address responsibility for all refugee displacement, and that they offer some advantages over the status quo.

12. In *Migration as Decolonization*, I addressed so-called economic migration between the First and the Third Worlds, with an emphasis on arguments for the co-sovereign status of citizens of former colonies and those of former colonizing powers. *See id.* at 1520. Here, my attention shifts to include contemporary imperial relations that are not necessarily or primarily rooted in prior bilateral relations of formal colonialism. The United States' relationship to Central America and the Caribbean and to parts of the Middle East, for example, which I address in this Article, is one of informal but effective empire even though it was never the formal colonial authority in those territories. *See id.* at 1564 n.221, 1565 n.225.

13. Legal scholarship contains important precursors to my claims that I view as generated by shared sensibilities regarding the injustice of the status quo. For example, Bill Ong Hing, in making the case for U.S. responsibility for Cambodian refugees, credited Leti Volpp with the following unpublished remarks:

If this were considered in the question of removal of refugees, separate from the question of past and potential future suffering, it would suggest a more expansive vision of how we understand the relationship between states. Traditional international law presumes separate sovereigns with separate interests, but we see here . . . an incredible history of U.S. intervention beyond its borders. Refugee and asylum law is constructed upon this idea of separate sovereigns — you are persecuted in country X and admitted into country Y. Now country Y is trying to deport you back to country X because of some bad act. But, if country Y helped to create the conditions in country X, could we not argue that there is something especially perverse about country Y now removing you? We have embedded deeply into our thinking about nation and immigration the idea of host and guest. The guest has a temporary license to be present; it's a privilege [that] can be revoked at any time. The ideology of refugee and asylum law generally is rooted in the idea of a host and the ethic of hospitality for those seeking sanctuary. [In the case of] Cambodian refugees . . . the migrant seeking sanctuary has, in fact, been forced to wander because of the actions of that very host, who should then be acting not out of an ethic of responsibility.

Bill Ong Hing, *Detention to Deportation — Rethinking the Removal of Cambodian Refugees*, 38 U.C. DAVIS L. REV. 891, 955 (2005).

14. *See, e.g.,* Seyla Benhabib, *The Law of Peoples, Distributive Justice, and Migrations*, 72 FORDHAM L. REV. 1761 (2004) (arguing for a human right to membership on cosmopolitan grounds).

My second caveat is that the empire-centric approaches I propose are non-ideal. They attempt to shore up remedies and equality-enhancing responses to the conditions of imperial subordination, without making any claims to undoing directly the fundamental structures of imperial subordination. In other words, at best, my proposals are decolonial in orientation but not necessarily in effect. I cannot characterize them as a blueprint for undoing relations of imperial domination. That said, foregrounding an imperial account of asylum and responsibility sharing may contribute in some way towards generating politics and knowledge production more capable of delivering equitable interconnection across political communities.

This Article proceeds as follows. Part I introduces the concept of imperial domination and illustrates its implications for asylum and responsibility sharing. Part I does so by examining the United States' imperial domination of nations in Central America and the Middle East, arguing that this imperial domination generates powerful claims for admission and inclusion of persons displaced from these regions, claims that are otherwise unaccounted for under the status quo. Part II highlights existing literature that has productively engaged with empire in a different way, namely through arguments for asylum and other immigration measures as reparations for imperial intervention. Part III briefly describes potential processes for pursuing empire-centric approaches to asylum and refugee responsibility sharing. Part III also canvasses the pragmatic value of empire-centric approaches relative to the status quo.

I.

IMPERIAL DOMINATION

International refugee law scholars have insufficiently challenged the theory of borders that contemporary sovereignty doctrine generates, and that sits at the heart of the dysfunction of refugee responsibility sharing.¹⁵ The tacit starting point of much, if not all, of the responsibility-sharing literature is that refugees and other forced migrants in need of international protection are legitimately subject to the sovereign right to exclude by the nations they seek to enter. However, the analysis goes, these nations have customary or treaty-based legal obligations through the refugee and human rights regimes—or *should* have such obligations where climate refugees or migrants, for example, are concerned—that create binding exceptions to their sovereign right to exclude.

I have argued elsewhere that this understanding of borders and the right of nation-states to exclude is ethically flawed within the context of existing imperial formations and that extant legal approaches built on these flaws must be transformed to address underlying injustice.¹⁶ One such imperial formation is

15. International migration scholars more broadly have also fallen short, with important exceptions. See, e.g., Chantal Thomas, *What Does the Emerging International Law of Migration Mean for Sovereignty?*, 14 MELB. J. INT'L L. 392 (2013).

16. See Achiume, *supra* note 12, at 1509.

neocolonial empire, which continues to bind First World nation-states—or former colonial powers—to Third World nation-states—or formerly colonized nations. Building on the work of neocolonial theorists of international law and international relations, I have argued that First and Third World peoples remain bound in relations of co-sovereignty as a *de facto* demos, by their common subjection to First World states, their corporations, and their international institutions.¹⁷ The continued subjection of Third World states to those of the First World, in effect, even if not in law, grants Third World citizens, as imperial subjects of neocolonial empire, ethical rights to First World state admission and inclusion.

Neocolonialism is a form of imperial domination, subjecting formally independent nations to the effective sovereignty of their former colonizers. Imperial domination can also result from informal empire that is not the product of prior formal colonial relations. But whether formal or informal, imperial domination extends the borders of imperial nation-states to encompass nations they dominate. This would mean that refugees fleeing the latter nations, as *de facto* citizens of the former, have claims to inclusion therein. My aim is to show why this imperial projection of borders is relevant for responsibility-sharing debates. I do so through analysis of the current situation at the United States' southern border where significant numbers of Central Americans are currently seeking asylum.

Even under President Biden, the admission of Central American and other refugees and migrants at that border remains notably contentious. According to the traditional responsibility-sharing frame and the theories of asylum that underly the traditional frame, the problem at the border with Mexico—and even further south where the United States has partnered with other countries to prevent migrants and refugees from even reaching its southern border—is that the United States is shirking its responsibilities under the Refugee Convention regime. Furthermore, in light of the United States' wealth, it is also failing to do its fair share to protect refugees and migrants relative to other, less well-off countries in the region.¹⁸ But an imperial domination lens tells a different story than that of the traditional frame.

17. I laid out the details of these claims in *Migration as Decolonization*. See *id.* at 1549. In addition to building upon the work of neocolonial theorists, I drew on the theory of Arash Abizadeh, who notes that democratic self-rule requires that political power be wielded ultimately by those subject to that political power: “The scope-condition of democratic legitimacy is that all those subject to the exercise of political power have a right of democratic say.” Arash Abizadeh, *On the Demos and Its Kin: Nationalism, Democracy, and the Boundary Problem*, 106 AM. POL. SCI. REV. 867, 878. I argued that Third World subjection to First World political power grants the former a right of democratic say in the former and places the former within a shared demos with the latter. For full elaboration of this claim, see Achiume, *supra* note 12, at 1547–50.

18. These responsibilities include individualized assessment of asylum claims of persons making those claims, granting refugee status to those who qualify for it under international law, and non-refoulement obligations, including under international human rights law. See, e.g., REBECCA GENDELMAN, JULIA NEUSNER & KENJI KIZUKA, HUMAN RIGHTS FIRST, HUMANITARIAN DISGRACE:

Historians, sociologists, and others have documented the long and deep relationship of U.S. sovereign domination over Central American countries, domination that has taken myriad forms—economic, political, military—and involved private actors, especially corporations.¹⁹ This domination has fundamentally remade the worlds of the peoples of Central American nations on U.S. terms,²⁰ and ultimately, I argue, materially undermined these peoples’ capacities to self-determine.²¹ To be clear, the history of Central America—as with all regions—is a complex history, and one in which the peoples of this region have played a formative role, including via direct resistance to imperial domination. My account here foregrounds the role of U.S. empire in the region, and I do so not to negate the agency of these peoples, and the complicity of some among them in advancing U.S. empire, but rather to emphasize externally imposed structural constraints on this agency under conditions of empire.

As a case study for my imperial domination claim, consider the United States’ relationship to Nicaragua.²² U.S. intervention in Nicaragua dates back at

U.S. CONTINUES TO ILLEGALLY BLOCK, EXPEL REFUGEES TO DANGER (2020), <https://www.humanrightsfirst.org/sites/default/files/HumanitarianDisgrace.12.16.2020.pdf> [https://perma.cc/R36G-4J3U]; see also Stephanie Nebehay, *U.S. Expulsions of Haitians May Violate International Law – UN Refugee Boss*, REUTERS (Sept. 21, 2021), <https://www.reuters.com/world/americas/un-concerned-us-pushbacks-migrants-who-may-need-asylum-2021-09-21/> [https://perma.cc/FA4L-ZA2E] (noting that the mass expulsion of Haitians from the U.S. is “inconsistent with international norms and may constitute refoulement”).

19. For relevant historical accounts see, for example, LESTER D. LANGLEY, *THE BANANA WARS: AN INNER HISTORY OF AMERICAN EMPIRE, 1900-1934* (2001), and WALTER LAFEBER, *INEVITABLE REVOLUTIONS: THE UNITED STATES IN CENTRAL AMERICA* (1993). Laura Gómez provided an account of the racial nature of U.S. imperial intervention in Central America. LAURA E. GÓMEZ, *INVENTING LATINOS 19–61* (2020). On the interplay of U.S. economic and military interests in Central and South America, see Ginger Williams & Jennifer Disney, *Militarism and Its Discontents: Neoliberalism, Repression, and Resistance in Twenty-First-Century US—Latin American Relations*, 41 SOC. JUST. 1 (2015). Jose Luis Rocha has argued that even remittances by Central American migrants in the United States to their home countries constitute “economic imperialism,” in part because they fuel an unsustainable consumerism and an economic model that subordinates Central Americans (including business elites) to transnational economic interests. Jose Luis Rocha, *Remittances in Central America: Whose Money is it Anyway?*, 17 J. WORLD-SYS. RSCH. 463, 476 (2011). For an account of the role of U.S. “colonial corporations” in Central America, see JASON COLBY, *THE BUSINESS OF EMPIRE: UNITED FRUIT, RACE, AND U.S. EXPANSION IN CENTRAL AMERICA* (2013).

20. Of course, the national borders of Central America are products of prior European colonial conquest, but for the purposes of my abbreviated analysis here, I focus on the more proximate imperial domination of the United States.

21. Walter LaFeber, for example, offered an extended historical analysis of U.S. economic, political, and military domination of Central American nations, describing the relationship between the latter and the former as one of “neodependency.” See LAFEBER, *supra* note 19, at 16.

22. I am grateful to the participants of the Symposium workshop, including Michael Doyle, Seth Davis, and Katerina Linos, for suggesting Nicaragua as a fruitful case study. As I discuss below, I would argue that other Central American nations have similarly been subject to what qualifies as imperial domination as I have distinguished it from imperial intervention, but indeed the case is more easily made for some countries than for others. I have outlined the case for Honduras elsewhere, drawing on the work of Joseph Nevins. E. Tendayi Achiume, *The Postcolonial Case for Rethinking Borders*, DISSENT MAG., Summer 2019, at 27, 27–32. Joseph Nevins provides a more detailed account of the United States’ imperial domination of Honduras, although it leads him to make a corrective justice claim rather than

least to the mid-nineteenth century, and was preceded by Spanish colonialism and British imperial intervention.²³ As the confluence of the Monroe Doctrine and Manifest Destiny rendered Central America critical geography for U.S. westward and southward expansion, the United States developed interests in Nicaragua²⁴ that would significantly determine the country's political and socioeconomic trajectory. William Walker, a notorious American filibuster, with the implicit support of the U.S. government, ruled Nicaragua from 1855 to 1857. During this time, he “strove to ‘Americanize’ the country by replacing the native populace with U.S. colonists and implanting U.S. institutions such as slavery.”²⁵ During the heyday of U.S. filibusters, Nicaragua was the recipient of thousands of these Americans²⁶ who engaged in “fomenting insurrections in Latin America in the mid-19th century.”²⁷ Walker's regime encouraged foreign investment and greater natural resource exploitation, and explicitly sought to establish American empire, waging a brutal war against Nicaraguans.²⁸

It was not until 1911, however, that the U.S. government formally intervened. President Taft sent U.S. troops to Nicaragua to depose its anti-American president, replacing him with a pro-American president who had previously worked for an American mining company.²⁹ Under the new leader's auspices, Nicaragua entered into a treaty with the United States that granted the latter “a naval base, control over the Nicaraguan economy, and an exclusive option to build a canal through Nicaragua.”³⁰ The abysmal economic conditions that followed spurred a rebellion led by Benjamin Zeledón that was crushed by the United States, and by 1926, the United States deployed marines to Nicaragua “under the old pretext of protecting U.S. lives and property.”³¹ According to historians, U.S. intervention and occupation between 1912 and 1933

the democratic and political equality claim I advance on the basis of imperial domination. Joseph Nevins, *Migration as Reparations*, in *OPEN BORDERS: IN DEFENSE OF FREE MOVEMENT* 129 (Reece Jones ed., 2019). I address the relevance of the corrective justice arguments below.

23. Nicaragua's entanglement with the United States has been nothing if not thorough, but I provide only a cursory overview of historical flashpoints that illustrate U.S. imperial domination of that nation. For detailed historical accounts of U.S. empire in Nicaragua, see MICHEL GOBAT, *CONFRONTING THE AMERICAN DREAM: NICARAGUA UNDER U.S. IMPERIAL RULE* (2005) and THOMAS W. WALKER, *NICARAGUA: LIVING IN THE SHADOW OF THE EAGLE* (2003).

24. See GOBAT, *supra* note 23, at 2.

25. *Id.* at 14.

26. *Id.* at 2.

27. *Filibuster*, MERRIAM-WEBSTER (11th ed. 2007), <https://www.merriam-webster.com/dictionary/filibuster> [<https://perma.cc/4GL8-KLFR>].

28. GOBAT, *supra* note 23, at 14.

29. GÓMEZ, *supra* note 19, at 35; WALKER, *supra* note 23, at 16–18.

30. GÓMEZ, *supra* note 19, at 35; see also WALKER, *supra* note 23, at 18–19.

31. WALKER, *supra* note 23, at 19. The United States justified military intervention and occupation in this period as “imperative to maintain a stable pro-U.S. government in Nicaragua, a country that, in addition to being an ideal site for a second transisthmian waterway, was located in the center of the U.S. sphere of influence in Central America.” GOBAT, *supra* note 23, at 3 (quoting HAROLD NORMAN DENNY, *DOLLARS FOR BULLETS: THE STORY OF AMERICAN RULE IN NICARAGUA* 384 (1929)).

“represented the greatest U.S. effort to turn Nicaragua into a ‘little United States.’”³² During this period, the United States relied heavily on “dollar diplomacy,”³³ which eschewed traditionally large military occupation in favor of governing the country through a small number of U.S. bank representatives responsible for the country’s public finances.³⁴ In 1926, the United States resorted to full-scale military intervention to quash an economic-nationalist, anti-U.S., and anti-Wall Street rebellion led by the Nicaraguan anti-imperialist Augusto Sandino.³⁵ The United States subsequently oversaw Nicaraguan elections in 1928 and 1932, ensuring that the United States maintained its vice grip on the Nicaraguan economy. The United States also enabled consolidation of “a U.S.-established military institution—the Guardia Nacional”—as “the most powerful political force in the all-important countryside.”³⁶

Notwithstanding the United States’ formal departure from Nicaragua in 1933, the United States installed General Anastasio Somoza García as the first Nicaraguan commander in chief of the Guardia Nacional.³⁷ With the support of the Guardia Nacional and the United States, Somoza and other members of his family managed to maintain repressive, exploitative, and dictatorial rule over Nicaragua from 1936 to 1979.³⁸ The Somoza regime was immensely profitable for American banking, agricultural, mining, and railway corporations, while the Nicaraguan populace endured conditions of impoverishment.³⁹ This regime was ultimately toppled by the Sandinista Front for National Liberation, a Marxist and nationalist party in 1979,⁴⁰ following a revolutionary war that killed approximately 2 percent of Nicaraguans.⁴¹ After the Second World War, the Cold War and anti-communism “drove American opposition to pro-labor populist governments and support for authoritarian dictators in virtually every Caribbean and Central American nation.”⁴² Nicaragua was no exception. In the

32. GOBAT, *supra* note 23, at 3 (quoting HAROLD NORMAN DENNY, *DOLLARS FOR BULLETS: THE STORY OF AMERICAN RULE IN NICARAGUA* 384 (1929)).

33. *Id.* at 125. As then-U.S. President William Taft claimed, the United States “was seeking to spread its power by ‘substituting dollars for bullets.’” *Id.* (quoting Taft’s exact language).

34. *Id.* Unlike in Puerto Rico, the Philippines, and the Dominican Republic, where U.S. public officials took over government finances, in Nicaragua, the “protectorate was the first based on a loan contract with private U.S. bankers, [and] not a diplomatic treaty with the U.S. government.” *Id.* at 126.

35. *Id.* at 141.

36. *Id.* at 4.

37. Maritza I. Reyes, *The Latino Lawful Permanent Resident Removal Cases: A Case Study of Nicaragua and a Call for Fairness and Responsibility in the Administration of U.S. Immigration Law*, 11 HARV. LATINO L. REV. 279, 288 (2008).

38. *See id.* at 288–89; WALKER, *supra* note 23, at 22 (“[A]n elitist dictatorial system based on a symbiotic relationship between the now corrupted and thoroughly politicized National Guard and the Somoza family [came] into being. This system was to plunder, degrade, and bring agony to the Nicaraguan people for more than four decades.”).

39. GÓMEZ, *supra* note 19, at 36.

40. Thomas W. Walker, *Introduction*, in *REVOLUTION & COUNTERREVOLUTION IN NICARAGUA* 7 (Thomas W. Walker ed., 1991).

41. *Id.* at 9.

42. GÓMEZ, *supra* note 19, at 23.

1980s and 1990s, the United States deployed in Nicaragua—and elsewhere—“low-intensity-warfare conflict,” a post-Vietnam strategic doctrine, which, according to Pentagon manuals, called for “the synergistic application of comprehensive political, social, economic and psychological efforts.”⁴³ Through paramilitary operations (the so-called contra war), economic destabilization, military operations, and propaganda wars, the United States again wreaked devastating havoc.⁴⁴

The death toll between 1980 and 1989, including Nicaraguan military, contra, and civilians, was officially 30,865.⁴⁵ Others estimate that between 1980 and 1990, fifty thousand Nicaraguans died as a result of the intervention.⁴⁶ And “tens of thousands more were wounded, orphaned, or left homeless.”⁴⁷ In economic terms, the destruction of property from CIA-led contra attacks amounted to \$221.6 million, and losses in production amounted to \$984.5 million.⁴⁸ The monetary loss estimated by Nicaraguan economists due to the United States’ trade embargo amounted to \$254 million, and “the loss of development potential from the war at \$2.5 billion.”⁴⁹ In its case against the United States at the International Court of Justice, the Nicaraguan government “requested \$12.8 billion dollars in damages,” but also noted that “the human suffering could never be quantified.”⁵⁰

Even during periods of peak U.S. domination and intervention in Nicaragua, Nicaraguan migrants displaced by the conflict faced an uphill battle in securing asylum in the United States.⁵¹ When Nicaraguans and other Central Americans have made the difficult choice to leave their countries of nationality in search of better lives in the United States, their arrival has invariably been contentious. Media reports respond with accounts of a flooded asylum system, and those Central Americans pursuing asylum claims are cast as so-called economic migrants, underserving of regularized status.⁵² This is the case even

43. Peter Kornbluh, *The U.S. Role in the Counterrevolution*, in *REVOLUTION & COUNTERREVOLUTION IN NICARAGUA* 323, 326 (Thomas W. Walker ed., 1991).

44. *Id.* at 326–30, 344.

45. *Id.* at 349 n.89 (citing January 1990 official statistics “provided by the Nicaraguan Ministry of the Presidency”).

46. Reyes, *supra* note 37, at 293 (citing David Adams, *Lost in America, Families Fear Deportations*, ST. PETERSBURG TIMES, Mar. 23, 1997, at 1A).

47. Kornbluh, *supra* note 43, at 344.

48. *Id.* at 345 (citing Memorial of Republic of Nicaragua (Compensation), Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), at 4–5 (Mar. 29, 1988)).

49. *Id.*

50. *Id.*

51. See Reyes, *supra* note 37, at 293–98.

52. See, e.g., Tom Cohen, *Texas Immigrant Flood Will Worsen, Officials Warn*, CNN (July 10, 2014), www.cnn.com/2014/07/10/politics/obama-texas-immigration/ [<https://perma.cc/TS4X-TU63>]; Azam Ahmed & Kirk Semple, *Mexico Mulls Allowing Migrants to Stay There Pending U.S. Asylum Bids*, N.Y. TIMES (Nov. 24, 2018), <https://www.nytimes.com/2018/11/24/world/americas/mexico-migrant-crisis.html> [<https://perma.cc/3PS3-FKBA>] (“While many are economic migrants, fleeing poverty in their homeland, hundreds — if not more — said they intended to apply for asylum in the United States.”); *Desperate Migrant Families Overwhelm US Border Agencies*, VOA NEWS (Mar. 21,

though, as some scholars have argued, the economic conditions of U.S.-driven neoliberalism in Central America remain central to explaining migration to the United States.⁵³ Although Central American migrants have episodically benefitted from regularization initiatives or Temporary Protected Status (TPS), none of these measures do justice to these migrants in light of the imperial domination that binds their nations to the United States. This imperial domination renders nations such as Nicaragua quasi-sovereign, and the force of this subjection should be understood to coercively draw Nicaraguans and others similarly situated in the region into the demos of the United States, rendering them de facto political equals of de jure U.S. citizens.

Ethically the United States has no right to exclude Nicaraguans from its political and territorial borders. Central Americans should not even need to rely on refugee law or humanitarian protection claims to underwrite their admission because of the imperial bonds that tie them to the United States.

Further compounding this injustice is the material benefit the United States and its citizens derive from the exploitation of undocumented migrants displaced by the conditions created by centuries of imperial domination. Laura Gómez has noted, for example, that U.S. imperial exploitation in the Western Hemisphere has resulted in “the migration of poor people from Mexico, Central America, and the Spanish Caribbean for more than a century as an always available source of cheap labor, often one that has been especially vulnerable because of a prevalence of undocumented or temporary workers.”⁵⁴ Recently, Haitian migrants, who have themselves fled another nation subject to U.S. imperial domination,⁵⁵ faced spectacular exclusionary violence at the U.S. southern border. Images of U.S. border guards on horseback violently apprehending these migrants went viral,⁵⁶ as advocates urged the U.S. government to halt its

2019), <https://www.voanews.com/a/desperate-migrant-families-overwhelm-us-border-agencies/4841734.html> [<https://perma.cc/4W24-V8NV>] (“President Donald Trump’s administration says most adult border crossers are economic migrants who count on being released if they bring a child and seek asylum. Immigration agency officials have called for Congress to change laws that would allow them to detain more adults and children and deport people from Central America quicker.”).

53. See, e.g., Linda Alvarez, *No Safe Space: Neoliberalism and the Production of Violence in the Lives of Central American Migrants*, 5 J. RACE, ETHNICITY & POL. 4, 5 (2020) (“[I]n Central America, U.S. state-sponsored neoliberal policies enacted by elites across different nation-states have led to increases in different forms of violence against the poor in Central America, a lived experience that continues as individuals migrate to Mexico and the United States.”).

54. GÓMEZ, *supra* note 19, at 21.

55. Priya Morley provided a helpful overview of U.S. and other imperial domination and intervention with respect to Haiti, and connected this racialized exploitation of Haiti to contemporary displacement of Haitians. See S. Priya Morley, *Connecting Race and Empire: What Critical Race Theory Offers Outside the U.S. Legal Context*, 69 UCLA L. Rev. Discourse 100 (2022).

56. Bernd Debusmann Jr., *Grim Echoes of History in Images of Haitians at US-Mexico Border*, BBC (Sept. 23, 2021), <https://www.bbc.com/news/world-us-canada-58654351> [<https://perma.cc/J4DY-SAP8>].

expulsion of Haitians.⁵⁷ Even outside of the United States, the undocumented status of Haitian migrants accrues dividends to the United States.⁵⁸

From an imperial domination perspective, the problem is not one of a wealthy third-party nation unwilling to do its fair share to shoulder responsibility for refugees or migrants to whom it owes no unique obligations. Instead, the problem is a deeper relational injustice of a sovereign denying the benefits of full political membership to a group entitled to these benefits on the basis of their encompassing subjection to that sovereign.

Beyond Central America, U.S. imperial domination in the Middle East similarly calls for a reframing of the United States' and other countries' responsibility for the displacement occasioned by this domination. Iraqis exemplify a national group regarding whom the United States has relinquished any ethical claim to exclude territorially and politically from the United States' borders. Several scholars have aptly characterized the 2003 U.S.-led military invasion of Iraq, subsequent occupation, and aftermath, as imperial. Furthermore, scholars have categorized U.S.-Iraqi relations as the latest iteration of First World domination over the Third World, achieved in part through, rather than in violation of, international law.⁵⁹ These scholars have deemed this

57. See Memorandum from Harold Hongju Koh, Senior Legal Adviser, U.S. Dep't of State, Regarding Ending Title 42 Return Flights to Countries of Origin, Particularly Haiti (Oct. 2, 2021), <https://www.politico.com/f/?id=0000017c-4c4a-dddc-a77e-4ddb3ae0000> [https://perma.cc/PY8U-7P8Q].

58. See, e.g., Sandy Tolan & Euclides Cordero Nuel, *The High Human Cost of America's Sugar Habit*, MOTHER JONES (Sept. 17, 2021), <https://www.motherjones.com/politics/2021/09/sugar-central-romana-fanjul-dominican-republic/> [https://perma.cc/492W-J3DR] (tracing how sugar production in the Dominican Republic largely relies upon the exploitation of Haitian migrant workers under extremely degrading conditions, and the sugar produced by this exploitative system is largely consumed in the United States and subsidized by favorable U.S. trade policies).

59. See, e.g., Anthony Anghie, *The War on Terror and Iraq in Historical Perspective*, 43 OSGOODE HALL L.J. 45 (2005) (arguing the imperial continuities across decades of Iraqi intervention); DAVID HARVEY, *THE NEW IMPERIALISM* (2003); Mehiyar Kathem, *New Imperialism in Iraq: How the US Occupation Helped Establish but Then Cannibalised the Sadr City District Council*, 8 PEACEBUILDING 363 (2020); Usha Natarajan, *The Third World Approach to Debating the Legality of the Iraq War*, 9 INT'L COMM. L. REV. 405, 411–12 (2007) (mapping the ways in which the United States allocated and withdrew Iraqi sovereignty "at will," and noting the role of colonialism and Cold War intervention in destabilizing Iraq even prior to the 2003 intervention); OMAR DEWACHI, *UNGOVERNABLE LIFE: MANDATORY MEDICINE AND STATECRAFT IN IRAQ* (2017); TARIQ ALI, *BUSH IN BABYLON: THE RECOLONISATION OF IRAQ* (2004); Frederic F. Clairmont, *Iraq: The Nemesis of Imperialism*, 40 ECON. & POL. WKLY. 3124 (2005); THABIT ABDULLAH, *DICTATORSHIP, IMPERIALISM AND CHAOS: IRAQ SINCE 1989* (2006).

Natarajan noted that for decades prior to the 2003 intervention, the United States and United Kingdom had helped to arm and maintain Saddam Hussein. Natarajan, *supra*, at 418. She further made a point that arguably holds in other contexts of imperial domination, which is that the boundaries of sovereign nation-states subject to imperial domination were in many instances set by colonial powers.

The three Ottoman provinces that were joined up to create the Iraqi state had never constituted a single state in the past, resulting in the wholly new unification of Shia, Sunni and Kurdish affiliations within Iraqi borders. Conflicts and instability in Iraq can be partially attributed to problems stemming from the preservation of colonial frontiers.

intervention to qualify as colonialism in effect, if not in name.⁶⁰ This scholarship not only highlights the political purge that replaced the entire ruling Ba'athist party, but also emphasizes the economic liberalization and promotion of private sector activity that benefitted U.S. corporations as part of the imperial transformation of Iraq by the U.S.-led coalition.⁶¹ On the economic front, Kerry Rittich has described such policies implemented by the United States as “economic ‘regime change.’”⁶² Along with the political transformation occasioned by the intervention, the rewriting of the economic DNA of Iraq qualifies as having fundamentally compromised Iraqi sovereignty on U.S. terms. This imperial domination pulls Iraqis within the bounds of the U.S. demos.

Since 2001, U.S. military operations and wars have displaced an estimated thirty-seven million people worldwide as refugees, asylum seekers, or internally displaced persons (IDPs).⁶³ Iraq has the most displaced persons of any of the countries subject to significant U.S. military intervention, with an estimated 9.2 million, around two million of whom are refugees and asylum seekers.⁶⁴ Yet, even relative to the United States’ historical admission of refugees produced by conflicts the United States has fueled, its policies toward Iraqi refugees have been abysmal. As Hannibal Travis noted, “From April 1975 to April 1978, the United States accepted nearly 175,000 Vietnamese and other Southeast Asian refugees. In the 1990s, the United States admitted over 143,000 Bosnian

Id. For more detail on the history of British colonialism and U.S. intervention in Iraq, see, for example, ZAINAB SALEH, RETURN TO RUIN: IRAQI NARRATIVES OF EXILE AND NOSTALGIA 9–12 (2020).

60. Kerry Rittich, *Occupied Iraq: Imperial Convergences*, 31 LEIDEN J. INT’L L. 479, 487 (2018) (“The occupation of Iraq displays marked continuities with earlier European interventions in the periphery, from outright conquest accompanied by missions of civilization and exploitation to the administration of mandates in the interwar period to the ‘modernization’ and development projects of the post-war era.”). Although his analysis did not characterize the U.S.-led intervention as imperial, Michael Schmitt has noted that following the intervention in Iraq, “[U.S.-led] Coalition forces controlled the entire country and few vestiges of the pre-existing Ba’athist regime remained.” Michael N. Schmitt, *Iraq (2003 Onwards)*, in INTERNATIONAL LAW AND THE CLASSIFICATION OF CONFLICT 356, 363 (Elizabeth Wilmshurst ed., 2012). He further noted that although the international community characterized the Coalition’s presence as belligerent occupation (a temporary suspension of elements of state sovereignty), see *id.* at 364, the factual circumstances resembled a state where Iraqi sovereignty had been defeated and “effectively snuffed out.” *Id.* at 363.

61. See Rittich, *supra* note 60, at 483–84.

62. *Id.* at 493.

63. DAVID VINE, CALA COFFMAN, KATALINA KHOURY, MADISON LOVASZ, HELEN BUSH, RACHAEL LEDUC & JENNIFER WALKUP, COSTS OF WAR PROJECT, BROWN UNIV. WATSON INST. OF INT’L & PUB. AFFS., CREATING REFUGEES: DISPLACEMENT CAUSED BY THE UNITED STATES’ POST-9/11 WARS 2 (2020). The authors explained that these figures are drawn from wars where the United States bears clear responsibility for initiating the war, escalating it, or being a significant participant in fighting through drone strikes and other means of combat support, and that of course, the United States is not *solely* responsible, even if it is a significant contributor to generating the displacement. See *id.* at 4–5.

64. *Id.*

refugees.”⁶⁵ However, by 2008, the United States had extended protection “to only 14,000 out of the 2.5 million refugees that [had] fled Iraq.”⁶⁶

My point is not that imperial considerations do not implicitly influence existing approaches to asylum and refugee responsibility-sharing policy. But typically, the framing, extent, and scope of states’ imperial accounting falls short. Temporary Protected Status in the United States, for example, has been a staple mechanism through which the United States has taken responsibility for those displaced by the fallout of U.S. imperial domination or intervention.⁶⁷ At the time of writing, TPS is available to citizens of El Salvador, Haiti, Honduras, Somalia, Syria, and Venezuela, among others, if these nationals meet certain continuous residence and physical presence requirements.⁶⁸ To be clear, the United States frames TPS as a “humanitarian aid project”⁶⁹ rather than as an accounting for historic injustice or recognition of sovereign obligations to facilitate self-determination on equal terms. But the countries whose citizens are eligible for TPS are also countries that bear the United States’ imperial footprint. Citizens of these countries, in principle, are entitled to more than TPS.

TPS is a precarious non-immigrant status subject to discretionary termination by the executive branch. As a result, TPS holders remain vulnerable to deportation, even as their labor is extracted for the benefit of the U.S. economy.⁷⁰ In 1997, the U.S. Congress passed the Nicaraguan Adjustment and Central American Relief Act, which allowed Nicaraguans and Cubans who had been physically present in the United States for a continuous period on or before December 1, 1995, to adjust their status to that of an alien lawfully admitted for permanent residence. The Act also provided relief from deportation to nationals

65. Hannibal Travis, *After Regime Change: United States Law and Policy Regarding Iraqi Refugees, 2003-2008*, 55 WAYNE L. REV. 1007, 1034 (2009).

66. *Id.* at 1008. The article went on to chronicle how the majority of Iraqi refugees wind up in Syria or Jordan, and how until the National Defense Authorization Act for Fiscal Year 2008, “the U.S. Department of Justice meticulously and systematically laid the groundwork for the exclusion of most Iraqi refugees from the United States.” *Id.* at 1035.

67. See, e.g., Miranda Cady Hallett, *Temporary Protection, Enduring Contradiction: The Contested and Contradictory Meanings of Temporary Immigration Status*, 39 LAW & SOC. INQUIRY 621 (2014).

68. *Temporary Protected Status*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian/temporary-protected-status> [<https://perma.cc/GFB9-FYG7>].

69. TPS is one of a number of “humanitarian programs and protection [the United States provides] to assist individuals in need of shelter or aid from disasters, oppression, emergency medical issues and other urgent circumstances.” *Humanitarian*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/humanitarian> [<https://perma.cc/J3WK-CW62>].

70. Hallett, *supra* note 67, at 622–24.

from Guatemala, El Salvador, and other countries.⁷¹ But even recipients of permanent residence under this law have remained vulnerable to deportation.⁷²

The Special Immigrant Visa for Afghans who were employed by or on behalf of the U.S. government is another example of empire-influenced, but inadequate, response to imperial displacement.⁷³ These visas were limited only to Afghans who worked for the U.S. government, excluding millions of others whose lives have been completely terrorized under the domination of U.S. empire. However, an imperial domination lens would extend U.S. responsibility beyond solely Afghans who worked for the United States during its occupation of and presence in Afghanistan, and instead demand admission of *all* Afghans seeking refuge in the United States. And although imperial domination is a high bar—it entails significant foreign control of the political and economic self-determination of a nation—it is a high bar that the United States has surpassed in many parts of the world.

Among some audiences, this seemingly radical claim raises a host of concerns related to the impracticality of the mass relocation of Afghans or others to the United States, or the harm to Afghanistan that would result from such mass relocation. As I have argued elsewhere, none of these concerns can extinguish or void the ethical entitlements generated by imperial domination.⁷⁴ Rather, these concerns initiate a different but important conversation about what sorts of legal and policy institutionalization of these entitlements are the most ideal—a conversation that would give those subject to imperial domination an equal say in the determination of that ideal.

In sum, the United States has coercively brought Nicaraguans, Iraqis, and Afghans—and others similarly situated—within the bounds of the United States’ demos by imposing itself as the effective sovereign of their nations. Therefore, U.S. borders should not be understood as valid *vis-à-vis* these groups. This result should be viewed as the corollary of imperial domination—the forcible acquisition of an empire results in the incorporation of nations of individuals who can lay claim to the territory of the imperial power and the political rights that attach to territorial membership. Such an understanding would render quotas or other restrictions on Iraqis, and others displaced from within the imperial field, illegitimate.

71. Adjustment of Status for Certain Nationals of Nicaragua and Cuba, 63 Fed. Reg. 27823 (May 21, 1998) (codified at 8 C.F.R. pts. 3, 240, 245, 274a, 299). For analysis of the law’s application, see, for example, Lourdes A. Rodriguez, *Understanding the Nicaraguan Adjustment and Central American Relief Act*, 5 INT’L L. STUDENTS ASS’N J. INT’L & COMPAR. L. 501 (1999).

72. See Reyes, *supra* note 37, at 300–01 (analyzing Nicaraguan permanent residents’ vulnerability to deportation as a result of removal laws targeting noncitizens convicted of even minor crimes).

73. *Special Immigrant Visas for Afghans – Who Were Employed by/on Behalf of the U.S. Government*, U.S. DEP’T OF STATE: BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/immigrate/special-immig-visa-afghans-employed-us-gov.html> [https://perma.cc/4WXR-5YLW].

74. Achiume, *supra* note 12, at 1571 n.240.

To be clear, the formal recognition of Iraqis' and others' rights to U.S. territorial admission and inclusion is *not* a panacea for U.S. imperial domination. The difficult and fundamental counter- or de-imperial work that would be required fully to eliminate U.S. imperial domination is far beyond the realm of migration or refugee policy reform. My narrow point, however, is that bringing imperial domination into view exposes the fiction at the heart of the responsibility-sharing frame. Some nations—including many that do the most to shirk humane responses to international displacement—have no ethical basis for even claiming a right to exclude those people on liberal democratic grounds.

Furthermore, an imperial domination approach privileges structural subordination over individualized persecution-based determinations of asylum. And, typically, this approach will implicate the hegemonic nations that are reliably found delinquent in the responsibility-sharing literature—Global North hegemons that are geographically distant from the most significant patterns of displacement and that have invested heavily in non-entrée regimes designed to repel Global South refugees and migrants. An imperial domination account levels demands for admission and inclusion against these hegemons, and also reframes refugees and migrants as political agents with powerful claims regarding sovereign accountability.⁷⁵

Imperial domination also repositions imperial hegemons as failing to *take* responsibility for conditions of their making rather than failing to *share* responsibility for conditions outside of their control, especially since the factors driving the sort of imperial migration exemplified by Central Americans at the southern border causally implicate the United States. In the same way that the United States' failures to fulfill its sovereign obligations to Puerto Ricans would not be considered a failure of responsibility sharing, a similar analysis should apply to the United States' refusal to admit and include Central Americans and others it imperially dominates.

II.

IMPERIAL INTERVENTION

Not all imperial intervention amounts to imperial domination, in the sense that such external intervention may fall short of obliterating the self-determining capacity of the state subject to the intervention. In this Section, I highlight a body of scholarship that has aptly argued that imperial intervention (rather than imperial *domination*) creates corrective justice obligations with implications for asylum and refugee responsibility sharing.

An important literature that pushes against the grain of mainstream refugee responsibility-sharing literature has implicitly and explicitly called for reform that addresses displacement connected to imperial intervention. There are a

75. On migrants as political agents see, for example, Achiume, *supra* note 12, at 1567–68, and Sherally Munshi, *Unsettling the Border*, 67 UCLA L. REV. 1720, 1760–62 (2021).

number of U.S. immigration scholars, for example, who have linked U.S. intervention in Central America and the Caribbean, Central American migration to the United States as a result of this intervention, and a concomitant responsibility held by the United States to admit and include Central American migrants through a range of immigration categories.⁷⁶ Whereas the imperial domination argument in Part I highlights the coercive reformation of political community as a result of imperial domination, and the expansion of borders that results, arguments made in the scholarship highlighted in this Section take a different approach. Rather than reconceptualize the nature of the imperial border, this scholarship argues for asylum and other immigration remedies as reparations for liability incurred by imperial intervention.

Thus, whereas imperial domination claims are based on the absence of a legitimate border between those seeking admission and the imperial nation, imperial intervention arguments advocate a mandated exception to the enforcement of the border as a form of accountability for the wrong of imperial intervention. Sarah Sherman-Stokes, for example, has persuasively argued that “given the long history by the United States of exploitation, intervention, and abdication of responsibility in Central America, the United States now has an obligation to repair—to make amends by carving out legislative space for the many Central American refugees who have been wronged and are now in need of protection.”⁷⁷ Joseph Nevins has made similar corrective justice arguments that the United States should be required to admit Central Americans.⁷⁸ He uses the specific case of sustained U.S. imperial intervention in Honduras from the late 1800s to the present to “explicate the US role in the production of the dispossession and insecurity experienced by so many in present-day Honduras and the associated migratory ties between the two countries.”⁷⁹ He persuasively conceptualizes the right to migrate as a form of reparations for imperial debt. These and other compelling examples describe displacement situations in which

76. See, e.g., Hallett, *supra* note 67; Malissia Lennox, Note, *Refugees, Racism, and Reparations: A Critique of the United States’ Haitian Immigration Policy*, 45 STAN. L. REV. 687 (1993); GÓMEZ, *supra* note 19; Karen Musalo & Eunice Lee, *Seeking a Rational Approach to a Regional Refugee Crisis: Lessons from the Summer 2014 “Surge” of Central American Women and Children at the U.S.-Mexico Border*, 5 J. ON MIGRATION & HUM. SEC. 137 (2017); Reyes, *supra* note 37.

77. Sarah Sherman-Stokes, *Reparations for Central American Refugees*, 96 DENV. L. REV. 585, 588 (2019).

78. Indeed, his compelling argument, which was much broader, was that “a basic concept of justice demands recognition that migration involving the movement of people from exploited and relatively impoverished parts of the world to countries of relative wealth and privilege is, or at least should be, a right born of debt—an imperial debt. The right to migration, in other words, is a form of reparations.” Nevins, *supra* note 22, at 130. Although Nevins’s argument is one for reparations, he emphasized imperial relations as central determinants of international migration and of just responses to migration. See, e.g., *id.* at 132 (noting that “migration is often a manifestation of a profoundly unequal and exploitative relationship between migrant-sending countries and countries of destination.”) In this regard, his arguments diagnostically overlap with the imperial domination arguments I advance in Part I.

79. *Id.* at 130.

imperial intervenors are complicit in displacement, and as such ought to be held accountable for the international protection of those displaced.

The difference between imperial domination and imperial intervention—phenomena that are intimately intertwined because beyond a certain threshold intervention both becomes and sustains domination—is helpfully illuminated by the work of Catherine Lu.⁸⁰ Imperial intervention accounts seem to underscore something that Lu has described as “interactional injustice,” which “refers to the settling of accounts between agents for wrongful conduct or unjust interactions and for undeserved harms or losses or injuries.”⁸¹ Interactional injustice, when backward-looking, “is a form of corrective and rectificatory justice between agents involved in the wrong.”⁸²

Imperial domination, on the other hand, tracks concerns related to what Lu terms “structural injustice,” which refers to the “institutions, norms, practices and material conditions that played a causal or conditioning role in producing or reproducing objectionable social positions, conduct or outcomes.”⁸³ She notes that rectifying structural injustice entails both backward and forward dimensions. The backward-oriented rectification involves “repudiating the wrongs . . . enabled or generated” by structural injustice. In the forward orientation, structural injustice seeks “to eliminate any continuing unjust effects that [it] may produce or reproduce.”⁸⁴ Pursuit of justice responsive to structural injustices, for Lu, is fundamentally corrective.⁸⁵ But it seeks to address unjust social and political conditions and expands the field of culpable agents responsible for repairing the respective harms.⁸⁶

Although there are differences between the imperial domination and imperial intervention arguments, there are overlaps as well. As I have elaborated elsewhere, when migrants or refugees subject to imperial domination seek admission to imperial nation-states, there is an important sense in which that

80. Lu built on the work of Iris Moon Young to advance a compelling structural account of justice and reconciliation in response to the legacies of colonial injustice. See CATHERINE LU, *JUSTICE AND RECONCILIATION IN WORLD POLITICS* (2017).

81. *Id.* at 19.

82. *Id.*

83. *Id.*

84. *Id.*; see *id.* at 32–39.

85. *Id.* at 35.

86. *Id.* at 36. Other scholars have also made arguments for corrective justice for group-based, colonial harms (rather than for harms perpetrated by one person against another in the tort law sense of individualized corrective justice). See, e.g., Douglas Sanderson, *Redressing the Right Wrong: Argument from Corrective Justice*, 62 U. TORONTO L.J. 93, 106–07 (2012) (arguing for corrective justice for Indigenous nations from Canada, which would entail putting Indigenous nations “in the position they would have been in had the injustice [of colonialism] not occurred[.]” and would mean “thinking about what today might look like had there been a just political union between the settler and Indigenous people.”) Sanderson’s vision of corrective justice was somewhat different from Lu’s and entailed restoring the political equality of colonized peoples, which in effect is what would be required to undo imperial domination. As I mentioned earlier, however, the action I advocate here—admission and inclusion of migrants and refugees by the imperial nation-states to which they are bound—cannot be corrective in this deeper sense.

action is remedial, decolonial, or “de-imperial.”⁸⁷ This action constitutes attempts by individuals to enhance their capacity to self-determine amidst structural subordination under imperial domination. It is also the vindication of democratic entitlements. However, imperial intervention arguments emphasize asylum and immigration remedies as more directly reparative of displacement resulting from intervention.⁸⁸

James Souter’s work on asylum as reparations is a well-developed case in point. Souter has argued that asylum should be viewed as “providing a means by which states can rectify the harm they caused to individuals by turning them into refugees.”⁸⁹ Souter does not claim that asylum can always function reparatively, but offers criteria for when it should.⁹⁰ Writing with Jason Ralph, Souter has applied this theory to the context of Iraq to argue that the United Kingdom and Australia owe special responsibility to protect Iraqi refugees displaced by the threat of ISIS in 2014 on the basis of the principle of reparations.⁹¹ Ralph and Souter cited the roles of the United Kingdom and Australia in the U.S.-led 2003 invasion of Iraq as incurring reparative obligations against displaced Iraqis.⁹²

In sum, reparative justice arguments tied to imperial intervention are an important and welcome corrective to the traditional asylum and refugee responsibility-sharing approaches. These arguments provide an alternative approach and important complement to the imperial domination account for grappling with empire’s implications for international displacement.

87. Achiume, *supra* note 12, at 1509 (“De-imperial migration is any form of migration that is responsive to informal imperial subordination and that offers a means of countering that subordination through individual (rather than structural) means of enhancing political equality.”).

88. In this respect, asylum as reparations arguments is a better fit for the harm they diagnose (displacement by intervention), than migration and asylum-related claims based in imperial domination arguments. I readily concede that even migration that results in citizenship of the imperial hegemon will not cure the imperial domination that generates the entitlement to citizenship. Suffice it to say, I believe there is value to mapping the ethical and legal implications of imperial domination, even if the result is not a recommendation for how to end imperial domination.

89. James Souter, *Towards a Theory of Asylum as Reparation for Past Injustice*, 62 POL. STUD. 326, 326 (2016).

90. The criteria are as follows: “(1) The refugee’s lack of state protection must have been caused by the actions of an external state; (2) that state must bear outcome responsibility for causing this lack of protection; (3) that refugee must either have been unjustly harmed or be at risk of unjust harm, as a result of this lack of protection; (4) the provision of asylum by that state must be a the most fitting form of reparation for that harm available.” *Id.* at 330.

91. Jason Ralph & James Souter, *A Special Responsibility to Protect: The UK, Australia and the Rise of the Islamic State*, 91 INT’L AFFS. 710 (2015). Alise Coen extended these arguments to Syrian refugees. Alise Coen, *Capable and Culpable? The United States, RtoP, and Refugee Responsibility-Sharing*, 31 ETHICS & INT’L AFFS. 71 (2017).

92. Ralph & Souter, *supra* note 91, at 715–22. They argued that “the invasion created a power vacuum which has never been adequately filled, and the failures in attempts to rebuild the state set in motion a cycle of violence that has never been effectively dealt with.” *Id.* at 715. They conceded that the coalition powers may not have been *solely* responsible for displacement from Iraq in the decades that followed the invasion, but that they bear a significant share of the responsibility, *id.* at 719, and a concomitant obligation to resettle Iraqi refugees.

III. A NEW PRAXIS?

Even if the argument for empire-centric approaches to international displacement is compelling in principle, difficult questions remain regarding their implementation. It is not my ambition to resolve these difficulties in this Article. My ambition, instead, is a provocation that seeds an alternative framing to the status quo and generates academic and activist momentum that would explore different means of implementation. That said, in this Section, I suggest the outlines of a process that may be fruitful for resolving practical questions and difficulties associated with implementation.

Assuming that imperial approaches are persuasive in principle, the first difficulty or challenge will likely be identifying an actionable standard to determine the respective thresholds of imperial domination or intervention, for the purposes of generating obligations to admit and include displaced persons. Admittedly, the measure of the extent of informal imperial domination is profoundly complex, not only because of the nature of the facts that constitute evidence of informal imperial domination, but also because of the normative contestation that would accompany the selection and evaluation of such facts. Yet it is an ideal of law and policymaking to have clear, predictable standards and benchmarks of accountability.

I do not endeavor here to provide a detailed rule or standard for differentiating among cases to determine whether the threshold of imperial involvement rises to the level of intervention or domination. Whatever that rule or standard might be, however, I envision its development and application as occurring through political, rather than judicial, processes. This is because the considerations underlying empire-centric approaches to asylum and refugee responsibility sharing—including the coercive formation of informal political and economic bonds as in the case of imperial domination—are better-suited to fora that permit mobilizations of political power capable of contesting imperial hegemony. Courts, both domestic and international, are unlikely candidates for building the necessary mobilizations.

The refugee responsibility-sharing literature has typically been geared towards incentivizing or appealing directly to national governments and their multilateral institutions, such as the United Nations. Yet the source and momentum driving the most promising engines for fundamental change on issues with transnational salience are popular social movements.⁹³

93. The Black Lives Matter movement is a prime example of a transnational phenomenon which has mobilized advocacy for racial justice around the world and catalyzed local, national, and international action. See E. Tendayi Achiume, *Black Lives Matter and the UN Human Rights System: Reflections on the Human Rights Council Urgent Debate*, EUR. J. INT'L L.: TALK! (Dec. 15, 2020), <https://www.ejiltalk.org/black-lives-matter-and-the-un-human-rights-system-reflections-on-the-human-rights-council-urgent-debate/> [https://perma.cc/6VDU-6H4Z]; see also Larry Buchanan, Quoc Trung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*,

Implementation of the obligations associated with imperial accounts of international displacement will ultimately require the imprimatur of the imperial nation-state. However, getting to the point where such states are likely to take action would likely require radical political mobilizations rooted in social movements in those countries. In other words, where the aim is accountability for international displacement connected to imperial intervention or domination, transnational social movements, as well as social movements within the imperial nation-state, will likely be instrumental.

Consider the following example. In 2016, in the lead up to the finalization of the Trans Pacific Partnership (TPP), the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), comprising fifty-six national and international labor unions, published a report that illustrated a possible form of mobilization I have in mind.⁹⁴ Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States signed the TPP, an agreement intended, among other things, to lower barriers to trade among the signatories. The AFL-CIO opposed the TPP on the grounds that the agreement “would increase corporate profits and power while exposing working people to real and predictable harm, including lost jobs and lower wages, [and] destabilize[e] communities, perpetuating low wages and stifling labor rights—all of which are factors driving migration.” The AFL-CIO’s report detailed the ways in which the TPP failed migrant workers and how the agreement was likely to result in further international displacement of migrants who would be subject to precarious work conditions. Importantly, the report called for a different system that would do justice to workers transnationally.

The AFL-CIO labor coalition’s critique of the TPP was effectively an anti-imperial critique and challenge. It highlighted the harm that would result from transnational economic interconnection on terms that exploited and would foreseeably result in the coerced economic migration of certain communities subject to the agreement. Neoliberal economic trade regimes are, after all,

N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> [<https://perma.cc/DC3Q-SZYW>] (discussing international turnout to Black Lives Matter protests and the increase in demonstrators who are new to participating in protests); E. Tendayi Achiume, *Transnational Racial (In)Justice in Liberal Democratic Empire*, 134 HARV. L. REV. F. 378, 382 (2021) (marking the transnational scope of the 2020 racial justice uprisings). Another salient example is the climate justice movement, which has pushed forward on the strength of civil society advocacy despite key state resistance. See, e.g., *The Right to a Clean and Healthy Environment: 6 Things You Need to Know*, UN NEWS (Oct. 15, 2021), <https://news.un.org/en/story/2021/10/1103082> [<https://perma.cc/8G6R-4FL8>] (identifying civil society as a key driver of the U.N. Human Rights Council’s landmark resolution recognizing a universal right to a healthy and sustainable environment).

94. CHARLIE FANNING, AFL-CIO, TRADING AWAY MIGRANT RIGHTS: HOW THE TPP WOULD FUEL DISPLACEMENT AND FAIL MIGRANT WORKERS 3 (2016).

mechanisms of imperial intervention and domination,⁹⁵ and these regimes play a causal role in driving economic migration, including towards imperial nations.⁹⁶

On the one hand, the AFL-CIO failed to defeat the TPP. But on the other hand, the AFL-CIO's advocacy points at least to a potential for transnational anti-imperial advocacy that seeks both to transform unequal economic power structures and to improve conditions for those displaced by those structures. To point to another scenario, what difference might it have made, for example, at least in terms of mobilizing advocacy on behalf of African migrants in Europe under the "Refugees Welcome" banner, if Europe's imperial domination of African nations were more publicly debated?⁹⁷

95. See B.S. Chimni, *Capitalism, Imperialism, and International Law in the Twenty-First Century*, 14 OR. REV. INT'L L. 17, 19–20, 29–36 (2012); James Thuo Gathii, *Neoliberalism, Colonialism and International Governance: Decentering the International Law of Governmental Legitimacy*, 98 MICH. L. REV. 1996, 2024 (2000) (reviewing BRAD R. ROTH, *GOVERNMENTAL ILLEGITIMACY IN INTERNATIONAL LAW* (1999)) ("Although it may be too simplistic to draw analogies between the contemporary fad of collapsed states (which justifies foreign intervention for democracy, human rights, and economic restructuring) and nineteenth-century international law scholarship on ideas such as *terra nullius* and civilization (defined as Western) that justified colonization, there is nonetheless a continuity of ideas here. There is an undeniable genealogy in the sense that the idea of collapsed states replicates nineteenth-century colonial international legal discourse."); Jan Nederveen Pieterse, *Neoliberal Empire*, 21 THEORY, CULTURE & SOC'Y 119, 123 (2004) ("Neoliberal empire is a marriage of convenience with neoliberalism indicated by inconsistent use of neoliberal policies, and an attempt to merge the America whose business is business with the America whose business is war, at a time when business is not doing so well."); John Glenn, *Imperial Governance, Sovereignty and the Management of Chronic Instability in Africa*, 35 THIRD WORLD Q. 1476, 1478, 1489 (2014); Niels S.C. Hahn, *Neoliberal Imperialism and Pan-African Resistance*, 13 J. WORLD-SYS. RSCH. 142, 142 (2009) ("The World Economic Forum at Davos was the locus for promoting the theory, which took form as a policy known as the 'Washington Consensus' . . . a convergence of the policies of the World Bank, the IMF, US Treasury, and subsequently other institutions such as the WTO and the European Central Bank. Neoliberalism cannot be analysed in isolation from the globalisation and imperialism . . . neoliberalism is a part of a hegemonic project, which concentrates power and wealth in local and trans-national elite groups around the world by transferring state owned assets to private people and Trans-National Corporations . . .").

96. See, e.g., Chantal Thomas, *Globalization and the Border: Trade, Labor, Migration, and Agricultural Production in Mexico*, 41 MCGEORGE L. REV. 867, 867 (2010) ("[A] significant part of the surge in illegal labor from Mexico—the source of the majority of undocumented workers in the United States—stems from reforms that Mexico undertook in cooperation with the United States to liberalize trade flows across the Mexico-United States border.").

97. Though there are heterogenous attitudes toward migration and refugees throughout Europe, evaluations have indicated a backsliding of European openness toward refugees since 2015. Despite appeals to solidarity and other moral obligations to protect refugees, government policies and public opinion indicate growing anti-migrant and anti-refugee sentiment, driven in part by the rise of far-right parties. See *Decoding European Attitudes Toward Refugees*, IMMIGR. POL'Y LAB, <https://immigrationlab.org/project/decoding-european-attitudes-toward-refugees/> [<https://perma.cc/KV83-65KH>]; Sandra Bermúdez, *Refugees Welcome? Cross-European Public Opinion on Asylum Following the 2015 Crisis*, ELCANO ROYAL INST. (Oct. 27, 2020), http://www.realinstitutoelcano.org/wps/portal/rielcano_en/contenido?WCM_GLOBAL_CONTEXT=/elcano/elcano_in/zonas_in/demography+population/ari119-2020-bermudez-refugees-welcome-cross-european-public-opinion-on-asylum-seekers-following-2015-crisis [<https://perma.cc/G6D2-3EYY>]. For example, the European response to the mass displacement of Afghans has resulted in little to no commitments to resettle refugees, with EU leaders instead choosing policies designed to keep refugees in countries near Afghanistan and far away from European borders. Jack Parrock, *UN Targets on Afghan*

By putting imperial intervention and imperial domination on the table, national and transnational debates regarding immigration might evolve more thoroughly to canvass the extensive imperial exploitation and subordination of nation-states from which people are displaced. De jure citizens of imperial nation-states such as the United States, for example, or at least those among them troubled by transnational and international U.S. imperial practices, might work more closely with citizens of subordinated nations to push back against those practices or to establish more inclusive admissions policies for those displaced.⁹⁸ An empire-centric framework would also allow for assessment of the material gain derived by imperial nation-states and their peoples from such interventions. Indeed, displacement from both Haiti and Afghanistan has generated some discussion of U.S. imperial intervention and subsequent immigration obligations

Resettlements 'Doable' Says EU, but Without Commitments, DEUTSCHE WELLE (July 10, 2021), <https://www.dw.com/en/un-targets-on-afghan-resettlements-doable-says-eu-but-without-commitments/a-59441330> [<https://perma.cc/EZ8S-KAJH>]; Samuel Petrequin & Mike Corder, *EU Backs Helping Afghanistan's Neighbors Cope with Refugees*, ASSOCIATED PRESS (Aug. 31, 2021), <https://apnews.com/article/europe-afghanistan-migration-34c7e4e2835d6a34c5a8d8676710097a> [<https://perma.cc/692N-7KBV>]. This is not to discount the important and powerful work of migrant and refugee advocacy groups throughout Europe; rather, I would highlight that the European preoccupation with exclusion, particularly of Africans and Asians, is part of a larger public inability to reckon with the legacies of European colonialism and imperialism as salient contemporary forces.

98. A powerful example is the solidarity movement that led the U.S. Black Civil Rights Movement to strongly advocate for protection of Vietnamese, Laotian, Hmong, and Cambodian refugees during the 1970s. A key figure in this advocacy was Bayard Rustin, well-known for his contributions to the March on Washington and other major civil rights initiatives. In his appeal to Black Americans to stand in solidarity with refugees from the region, Rustin wrote:

It would be easy and politically expedient conveniently to forget these beleaguered people [Southeast Asian refugees]. We could, I suppose, soothe our collective conscience by sending a few dollars to the camps. But in seeking a "painless solution" [B]lacks would ignore a basic lesson of the civil rights movement: the [B]lack struggle for freedom is intimately linked with the universal struggle for freedom, whether it be in South Africa, the Soviet Union, or Indochina . . . [T]here is only one way we can help—we must open the doors of America. Black people must recognize these people for what they are: brothers and sisters, not enemies and competitors.

Bayard Rustin, *Do Not Forget Us!*, WORLDVIEW MAG. (1978), https://www.carnegiecouncil.org/publications/100_for_100/010 [<https://perma.cc/5P2K-X3S9>].

This solidarity movement made a difference. One of Rustin's appeals, published in *The New York Times* in 1978, "implore[ed] the U.S. government to do more for people trying to escape war and persecution. The statement was endorsed by over 80 Black community leaders, and led to significant increases in admissions." Melinda Frimpong, Althea Kitchens & Emily Semaker, *Bayard Rustin: Amplifier. Organizer. Humanist.*, INT'L RESCUE COMM. (June 12, 2020), <https://www.rescue.org/article/bayard-rustin-amplifier-organizer-humanist> [<https://perma.cc/8SAA-2YL9>]; see also Trinh Q. Truong, *What Southeast Asian Refugees Owe to Black Lives*, PIVOT (June 3, 2020), <https://www.pivotnetwork.org/news/what-southeast-asian-refugees-owe-to-black-lives>

[<https://perma.cc/U9SE-QMDR>] ("Black civil rights leaders also had a direct hand in advocating for Southeast Asian refugees. Bayard Rustin, a Black and gay civil rights leader who co-organized the March on Washington, was a member of the International Rescue Committee's Citizens Commission on Indochinese Refugees. Rustin visited refugee camps in Thailand in 1978, listening to the struggles of Cambodian, Hmong, Lao, and Vietnamese refugees. In part due to Rustin's advocacy, President Carter supported a policy that rescued Southeast Asian refugees who had been turned away elsewhere.").

in both places.⁹⁹ I envision a scenario where such discussion takes national and international center stage as a dominant frame for mobilizing responses to international displacement.

Such a scenario, of course, is a far cry from the status quo, and to some may seem entirely implausible. However, I would argue that the climate justice context again suggests some cause for optimism. The global debate on climate action has increasingly included demands for accountability of those nations

99. For public discourse regarding U.S. responsibility toward Haitian refugees that acknowledges the imperial history of the relationship between the two countries, see, for example, Brian Concannon, *U.S. Shouldn't Punish Haitians at the Border. This Country Is to Blame for their Misery*, MIAMI HERALD, Sept. 21, 2021, at 11A; Jonathan M. Katz, *Biden Is Continuing the U.S. Pattern of Saying Haiti's Woes Aren't Our Problem*, WASH. POST (Sept. 25, 2021), <https://www.washingtonpost.com/outlook/2021/09/25/haiti-woes-us-migrants/> [<https://perma.cc/JFK4-2Y4X>]; Nicole Narea, *Biden Is Turning Back Haitian Migrants at Sea, Echoing a Shameful Chapter in US History*, VOX (July 29, 2021), <https://www.vox.com/policy-and-politics/2021/7/29/22589316/biden-haiti-migrant-boat-guantanamo> [<https://perma.cc/ES9T-ZJKH>] (interviewing Professor A. Naomi Paik). Notably, Daniel Foote, the U.S. Special Envoy for Haiti who contentiously resigned in response to U.S. policy toward the country, referenced the history of U.S. intervention in Haiti through his resignation letter. Resignation letter from Daniel Foote, U.S. Special Envoy for Haiti, to Antony Blinken, U.S. Sec'y of State, (Sept. 22, 2021), <https://www.washingtonpost.com/context/read-resignation-letter-from-u-s-special-envoy-for-haiti-daniel-foote/3136ae0e-96e5-448e-9d12-0e0cabfb3e0b/> [<https://perma.cc/43EM-5JMJ>] (“But what our Haitian friends really want, and need, is the opportunity to chart their own course, without international puppeteering and favored candidates but with genuine support for that course. I do not believe that Haiti can enjoy stability until her citizens have the dignity of truly choosing their own leaders fairly and acceptably. . . . This cycle of international political interventions in Haiti has consistently produced catastrophic results.”).

The response to the withdrawal of the United States and its allies from Afghanistan and the resulting mass displacement has similarly acknowledged U.S. culpability and responsibility toward Afghan refugees. Among the U.S. public, the broadest consensus seems to be on a moral obligation to resettle those refugees who actively supported the U.S. intervention in the country. See Joel Rose, *Support for Resettling Afghan Refugees in the U.S. Is Broad – But Has Limits*, NPR (Sept. 9, 2021), <https://www.npr.org/2021/09/09/1035240731/support-for-resettling-afghan-refugees-in-the-u-s-is-broad-but-has-limits> [<https://perma.cc/D38H-WJCN>] (“The poll was conducted between Sept. 1 and 2, just days after the end of the U.S. airlift out of Kabul. It found that nearly three in four Americans, including 73% of Republicans, favor resettling Afghans who worked with the U.S. government. Nearly two-thirds of all respondents support resettling Afghans who fear repression or persecution from the Taliban.”). That said, some commentators have made the case for a broader responsibility to all Afghan refugees on the basis of U.S. responsibility for their displacement. See, e.g., *Editorial: America Must Take in Afghan Refugees – Not Just Afghans Who Helped Us*, L.A. TIMES (Aug. 20, 2021), <https://www.latimes.com/opinion/story/2021-08-20/afghanistan-refugees-duty-obligation> [<https://perma.cc/5478-84FU>] (“The best we can do is to clean up after our failures, and that includes taking in not merely those who helped us — again, that’s the easy part — but those in the most immediate danger in those nations where we failed.”); Christian G. Appy, *Abandoning Afghans from the Start*, BOS. REV. (Oct. 4, 2021), <https://bostonreview.net/articles/abandoning-afghans-from-the-start/> [<https://perma.cc/X9PL-VXT2>] (reviewing CRAIG WHITLOCK & THE WASHINGTON POST, *THE AFGHANISTAN PAPERS: A SECRET HISTORY OF THE WAR* (2021)) (“Here is an occasion to reflect on the great number of refugees for which the United States has been responsible. . . . [W]ho will remember the millions of people displaced from their homes during the long years before the end? . . . In Afghanistan American war again led to massive dislocations: some 5 million Afghans became wartime refugees. We abandoned them long before the war was over.”).

most responsible for climate change.¹⁰⁰ Most of these nations and their corporations are the very same imperial hegemony that are shutting their borders to persons displaced by climate change and by other dimensions of imperial intervention and domination.

In sum, there is significant normative value in developing accounts of international displacement that center imperial intervention and imperial domination.¹⁰¹ While the realization of migration and other regimes that do justice to those on the receiving end of imperial domination and intervention remains profoundly complex and challenging, I have argued that what little hope there is lies in the mobilization of a different, more equitable politics that would more likely be driven by social movements than by courts or national governments.

CONCLUSION

As debates around asylum and refugee responsibility sharing rage on, different approaches to international displacement remain urgent. I have argued above that a lens highlighting the role of imperial hegemony in international displacement is one such urgent approach, considering the ethical obligations

100. See, e.g., Olúfẹmi O. Táiwò & Beba Cibralic, *The Case for Climate Reparations*, FOREIGN POL'Y (Oct. 10, 2020), <https://foreignpolicy.com/2020/10/10/case-for-climate-reparations-crisis-migration-refugees-inequality/> [<https://perma.cc/5WFV-7FUL>]; Adam Ramsay, *The Global North Caused the Climate Crisis. Now Is the Time to Pay Its Dues.*, OPENDEMOCRACY (Oct. 16, 2021), <https://www.opendemocracy.net/en/the-global-north-caused-the-climate-crisis-now-is-the-time-to-pay-its-dues/> [<https://perma.cc/94W3-RDUD>]; Andrea Germanos, *In COP26 Speech, Climate Justice Leader Vows Global Movement 'Will Change History'*, COMMON DREAMS (Nov. 10, 2021), <https://www.commondreams.org/news/2021/11/10/cop26-speech-climate-justice-leader-vows-global-movement-will-change-history> [<https://perma.cc/VY7D-HFPB>]; Nadja Popovich & Brad Plumer, *Who Has the Most Historical Responsibility for Climate Change?*, N.Y. TIMES (Nov. 12, 2021), <https://www.nytimes.com/interactive/2021/11/12/climate/cop26-emissions-compensation.html> [<https://perma.cc/9N9Y-63TY>]; UN NEWS, *supra* note 93 (“That’s why it’s such an issue of justice. Wealthy countries and wealthy people need to start to pay for the pollution they’ve created so that we can help these vulnerable communities and these vulnerable peoples to adapt and to rebuild their lives,” [UN Special Rapporteur on Human Rights and Environment] Mr. [David] Boyd said.); see also Danielle Falzon & Pinar Batur, *Lost and Damaged: Environmental Racism, Climate Justice, and Conflict in the Pacific*, in HANDBOOK OF THE SOCIOLOGY OF RACIAL AND ETHNIC RELATIONS 401, 403 (P. Batur & J.R. Feagin eds., 2018) (“Thus, when climate change impacts the world’s poorest and most vulnerable populations first, while predominantly rich, white, industrialized nations, that are most responsible for climate change, it is evidence for the persistence of systemic racism into the 21st century. There are clear ties between historical colonialism and the present vulnerability of nations to ecological crises, which enables the conceptualization of the global climate change within the context of white racial frame.”). See generally Karin Mickelson, *Rhetoric and Rage: Third World Voices in International Legal Discourse*, 16 WISC. INT’L L.J. 353, 386–97 (1998) (articulating a Third World approach to international environmental law).

101. In her book on justice and reconciliation in relation to colonialism, Catherine Lu helpfully articulated a goal that I share, which is “to improve our normative descriptions and diagnoses of interactional and structural injustices associated with colonial [in my case, imperial] rule in modern relations, with a view toward developing more plausible and normatively constructive orientations for understanding, analyzing, and evaluating contemporary international and transnational political efforts to redress and address such injustices.” LU, *supra* note 80, at 8.

generated by this hegemony. Imperial domination invalidates the borders between imperial nations and the nations whose sovereignty they undermine and constrain. And imperial intervention—whether military, political, or economic—generates reparative obligations owed to those displaced by this intervention, as other scholars have argued. The status quo in the asylum and responsibility regimes and literature largely ignores the imperial dimensions of international displacement, and in doing so belies the nature and extent of the injustices of this status quo. Realizing empire-centric approaches to international displacement is admittedly a project of profound complexity. But it is a project towards which greater intellectual, creative, and political energy should be directed.