

University of Tennessee College of Law

Legal Scholarship Repository: A Service of the Joel A. Katz Law Library

Scholarly Works

Faculty Scholarship

2023

Suffering in Search of a Methodological Frame: Interdisciplinarity in the Context of the Gendered Impact of Climate Migration

Becky L. Jacobs

Follow this and additional works at: https://ir.law.utk.edu/utklaw_facpubs



Part of the [Environmental Law Commons](#)

10-2023

Suffering in Search of a Methodological Frame: Interdisciplinarity in the Context of the Gendered Impact of Climate Migration

Becky Jacobs

Follow this and additional works at: <https://scholarship.law.wm.edu/wmelpr>



Part of the [Environmental Law Commons](#), and the [Law and Gender Commons](#)

Repository Citation

Becky Jacobs, *Suffering in Search of a Methodological Frame: Interdisciplinarity in the Context of the Gendered Impact of Climate Migration*, 48 Wm. & Mary Env't. L. & Pol'y Rev. 135 (2023), <https://scholarship.law.wm.edu/wmelpr/vol48/iss1/6>

Copyright c 2023 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmelpr>

SUFFERING IN SEARCH OF A METHODOLOGICAL FRAME: INTERDISCIPLINARITY IN THE CONTEXT OF THE GENDERED IMPACT OF CLIMATE MIGRATION

BECKY JACOBS*

As part of an interdisciplinary collaborative in which I participate, I was tasked with centering my chosen research topic, the gendered impact of climate migration,¹ within the methodological frame of scholars

* Waller Lansden Distinguished Professor of Law, University of Tennessee College of Law. Email: jacobs@utk.edu. Thank you to the members of the Just Environments seminar at the University of Tennessee whose inquiry inspired this Essay and the Board and staff of the *William & Mary Environmental Law and Policy Review* for their excellent work.

¹ In this Essay, I will focus primarily on the vulnerability of women and children who have been displaced by a climate-related event. However, this focus is not intended to exclude, discount, or ignore the way in which climate-related events place other populations marginalized by factors such as geography, poverty, gender, age, Indigenous or minority status, national or social origin, birth or other status and disability in vulnerable situations; an examination thereof is beyond the scope of this brief Essay. See U.N. Secretary-General, *The Impacts of Climate Change on the Human Rights of People in Vulnerable Situations*, ¶ 4, U.N. Doc. A/HRC/50/57 (May 6, 2022), <https://www.ohchr.org/en/documents/thematic-reports/ahrc5057-impacts-climate-change-human-rights-people-vulnerable> [<https://perma.cc/J6C4-HKUK>]. I also will refer to “climate displacement” and “migration” interchangeably as unplanned and predominantly involuntary relocation of humans, both temporary and permanent, due to a climate-related disaster. Some sources distinguish between the two, contrasting “displacement,” which they define as involving a “premeditated decision to migrate because of climate change-related factors (e.g., due to decreased availability of food, water, or economic opportunities),” with “migration.” CARE INT’L, EVICTED BY CLIMATE CHANGE: CONFRONTING THE GENDERED IMPACT OF CLIMATE-INDUCED DISPLACEMENT 7 (2019), <https://careclimatechange.org/wp-content/uploads/2020/07/CARE-Climate-Migration-Report-v0.4.pdf> [<https://perma.cc/Y96C-84MG>]. Scholar Susan Martin also considers migration, displacement, and planned relocation to be distinct phenomena. See Susan Martin, *Environmental Change and Human Mobility: Trends, Law and Policy*, 42 COMPAR. POPULATION STUD. 187, 188 (2017). However, the critical distinction in this context pertains to the definition of “climate refugee,” the legal term of art that accords an individual protection under the U.N. Convention Relating to the Status of Refugees. See Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 189 U.N.T.S. 150. For an excellent analysis of the use of the term “refugee” for climate migrants, see Elizabeth Keyes, *Environmental Refugees? Rethinking What’s in a Name*, 44 N.C. J. INT’L L. 461, 462–63 (2019).

such as geographers Sylvia Wynter² and Doreen Massey,³ historian Achille Mbembe,⁴ philosopher Gilles Deleuze, philosopher and psychoanalyst Félix Guattari,⁵ and anthropologist Tim Ingold.⁶ At first blush, this might appear to be just the type of pointy-headed exercise in which out-of-touch scholars engage endlessly, but I would argue that this approach offers several benefits. First, interdisciplinarity obviously creates a broader perspective from which to consider, in this case, the relationship between climate displacement; marginalized populations, particularly women and girls in developing countries; the lack of access to basic resources and services; and an increased vulnerability to violence and other negative impacts. There is a pragmatic dimension to this approach, too, which, given the absence of laws—or the slow response of existing law—to effectively respond to the suffering of women, children, and other marginalized populations in the wake of increasingly frequent and severe climate-related disasters (such as extreme droughts, hurricanes, cyclones, floods, and storms), leads to improved communications among those working on the issue and, ultimately, to innovative partnerships, projects, or solutions. Any effort that has the potential to mitigate gendered vulnerability to climate events is one worth undertaking.

² See Sylvia Wynter, *Towards the Sociogenic Principle: Fanon, Identity, the Puzzle of Conscious Experience, and What It Is Like to Be “Black,”* in NATIONAL IDENTITIES AND SOCIOLOGICAL CHANGES IN LATIN AMERICA 30–32 (Mercedes F. Durán-Cogan & Antonio Gómez-Moriana eds., 2001). Wynter was a decolonial theorist who developed a framework derived from Frantz Fanon’s notion of “sociogeny,” which characterizes the “human experience” as being influenced by social, cultural, and biological aspects. See *id.*

³ See, e.g., DOREEN MASSEY, *A Global Sense of Place*, in SPACE, PLACE, AND GENDER 146 (1994). Massey was an influential radical geographer and social scientist whose conceptualizations of place and space introduced the complexities of the geometries of power, engaging theoretical traditions such as feminism and Marxism. See *id.* at 5.

⁴ See, e.g., Achille Mbembe, *Necropolitics*, 15 PUB. CULTURE 11, 12 (Libby Meintjes, trans., 2003); Achille Mbembe, *Necropolitics*, in FOUCAULT IN AN AGE OF TERROR: ESSAYS ON BIOPOLITICS AND THE DEFENCE OF SOCIETY 152 (Stephen Morton & Stephen Bygrave eds., 2008). Achille Mbembe is a leading historian and theorist of postcolonial studies.

⁵ See, e.g., GILLES DELEUZE & FÉLIX GUATTARI, *A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA* 382 (Brian Massumi trans., 1987). Scholars often apply the work of Deleuze and Guattari in migration and climate scholarship. See, e.g., Maria Tamboukou, *Mobility Assemblages and Lines of Flight in Women’s Narratives of Forced Displacement*, 27 EUR. J. WOMEN’S STUD. 234, 235 (2020).

⁶ See, e.g., TIM INGOLD, *BEING ALIVE: ESSAYS ON MOVEMENT, KNOWLEDGE AND DESCRIPTION* 148 (2011). Ingold’s “wayfaring” describes the experience of the “perambulatory” movement by which “human beings inhabit the earth” and posits “human existence is not fundamentally place-bound . . . but place-binding. It unfolds not in places but along paths. Proceeding along a path, every inhabitant lays a trail.” *Id.*

* * *

To provide context for the theorizing that follows, let me briefly share some data on gender-specific risks related to climate displacement. Generally, climate change exacerbates existing gender-related inequalities. When climate-related disasters occur, women and children are up to fourteen times more likely than men to be killed.⁷ If they manage to survive the event itself, women are at greater risk in the aftermath as a consequence of socio-cultural norms as well.⁸ Often unable to leave their homes while male household members migrate in search of better economic opportunities, women endure poor health outcomes; increases in paid and unpaid workloads; food, legal, and resource insecurity; and decreases in educational, economic, and other resource opportunities.⁹

Those women and children driven to relocate due to climate events, or from the precarious or hazardous conditions caused thereby, are also disproportionately more vulnerable to negative outcomes than their male counterparts, despite near equal displacement rates. More than fifty percent of the forty-one million internally displaced due to a climate event in 2018 were women.¹⁰ Lacking legal status and access to resources and power and often responsible for the care of others, women are at particular risk during their migration for a variety of perils throughout their journeys, including increased incidence of mental health crises, physical injuries, and water-related diseases; exacerbation of the underlying disease; risk of domestic and community violence, including physical and sexual assault, female genital mutilation and cutting; kidnapping, trafficking, exploitation, forced marriage, and pregnancy.¹¹

⁷ CARE INT'L, *supra* note 1, at 8; B.E. George Dimitrov, *Effects of Climate Change on Women*, 4 RSCH. REV. INT'L J. MULTIDISCIPLINARY 210, 213 (2019). This is because women often cannot swim or because they live in poorly constructed homes. *Id.* Further, the higher rates of climate-related disaster mortality among women appear to be particularly exaggerated in countries where women lack strong legal protections. *See id.*

⁸ U.N. HIGH COMM'R FOR REFUGEES & POTSDAM INST. FOR CLIMATE IMPACT RSCH., GENDER, DISPLACEMENT AND CLIMATE CHANGE 1 (Nov. 2022), <https://www.unhcr.org/us/media/gender-displacement-and-climate-change> [<https://perma.cc/3NUZ-64UT>].

⁹ CARE INT'L, *supra* note 1, at 10.

¹⁰ *Id.* at 4.

¹¹ U.S. DEPT OF STATE & U.S. AGENCY FOR INT'L DEV., UNITED STATES STRATEGY TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE GLOBALLY: 2022 UPDATE 39–40 (2022), <https://www.state.gov/wp-content/uploads/2022/12/GBV-Global-Strategy->

There is somewhat of a legal architecture to respond to climate change on an international level, including the 1992 U.N. Framework Convention on Climate Change (“UNFCCC”),¹² the 1997 Kyoto Protocol,¹³ the 2007 Bali Action Plan,¹⁴ and the 2015 Paris Agreement.¹⁵ For example, the 2015 Paris Agreement contains language pertaining to the need for “gender equality, empowerment of women,” and “gender-responsive” action on climate change adaptation and capacity building.¹⁶ Although none of these agreements directly mandate action on climate-related gender vulnerabilities, the text that was agreed at the Seventh Conference of the Parties in 2002 did include “gender equality.”¹⁷ Further, in 2014, the Parties adopted the Lima Work Programme on Gender, one goal of which was to “promote gender sensitivity in developing and implementing climate policy.”¹⁸ The enhanced December 2019 Lima Work Programme set forth objectives designed to strengthen gender-responsive action and mainstreaming in the implementation of the UNFCCC.¹⁹

Although gender-specific risks are recognized in these international agreements, their language on the issue is hortatory, lacking concrete incentives for action.²⁰ Similarly, while the national Parties to the Framework Convention reportedly have adopted over 100 decisions with gender-related mandates,²¹ a lack of demonstrable improvements

Report_v6-Accessible-1292022.pdf [https://perma.cc/PY8D-EAK5].

¹² U.N. Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107.

¹³ Kyoto Protocol to the U.N. Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

¹⁴ U.N. Framework Convention on Climate Change, *Bali Action Plan*, U.N. Doc. FCCC/CP/2007/6/Add.1, Decision 1/CP.13 (Mar. 14, 2008).

¹⁵ Paris Agreement to the U.N. Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, 3156 U.N.T.S. 79.

¹⁶ *Id.* pmb., art. 7, ¶ 5; *id.* art. 11, ¶ 2.

¹⁷ U.N. Framework Convention on Climate Change, *Rep. of the Conference of the Parties on its Seventh Session*, U.N. Doc. FCCC/CP/2001/13/Add.4, Decision 28/CP.7, annex ¶ 7 (Jan. 21, 2002).

¹⁸ U.N. Framework Convention on Climate Change, *Lima Work Programme on Gender*, U.N. Doc. FCCC/CP/2014/10/Add.3, Decision 18/CP.20 (Feb. 2, 2015).

¹⁹ U.N. Framework Convention on Climate Change, *Enhanced Lima Work Programme on Gender and Its Gender Action Plan*, U.N. Doc. FCCC/CP/2019/13/Add.1, Decision 3/CP.25 (Dec. 12, 2019).

²⁰ See *supra* notes 12–19 and accompanying text.

²¹ Achintha C. Vithanage, *Addressing Correlations Between Gender-Based Violence and Climate Change: An Expanded Role for International Climate Change Law and Education for Sustainable Development*, 38 PACE ENV'T L. REV. 327, 349–50 (2021) (citing *Gender Mandates in Climate Policy*, GENDER CLIMATE TRACKER,

in the lived experiences of the target populations suggest that more needs to be done.

* * *

Before we delve into theory, one disclosure: It does not escape me, nor, I am certain, will it escape any discerning reader, that, by conducting my analysis, I too might be engaging in the particular hubris that can afflict Western scholars who so often ignore the particular horrors that women confront during their migratory journeys in favor of the dominant political or scholarly narrative. This of course includes a failure to acknowledge the academy's theoretical rather than practical contributions and responses to these traumatic stories. It brings to mind an oft-quoted passage from scholar Nancy Hartsock, in which she notes:

Somehow it seems highly suspicious that it is at this moment in history, when so many groups are engaged in “nationalisms” which involve redefinitions of the marginalized Others, that doubt arises . . . about the nature of the “subject,” about the possibilities for a general theory which can describe the world, about historical “progress.”²²

The experience of women climate migrants thus must be considered from perspectives that decenter researchers from dominant cultures. Studies in regions that are vulnerable to climate impacts often are conducted by researchers from the Global North and provide a filtered view of “perceptions” of climate crisis and migration.²³ There have been some calls by researchers to decenter approaches to climate migration to include views from the margins, such as those of stakeholders from origin, transit, and destination countries and those from different spatial contexts.²⁴ However, these appear to have focused on the governance of migration rather than on the experiences of the migrants themselves. Transnational

<https://genderclimatetracker.org/gender-mandates> [<https://perma.cc/YU7H-RRV5>] (lasted visited Nov. 4, 2023)).

²² Nancy Hartsock, *Rethinking Modernism: Minority vs. Majority Theories*, 1987 *CULTURAL CRITIQUE* 187, 196.

²³ See Anna Triandafyllidou, *Decentering the Study of Migration Governance: A Radical View*, 27 *GEOPOL.* 811, 812 (2022).

²⁴ *Id.* at 811–12.

perspectives that decenter this Global Northern norm may—in both the governance and experiential spheres—have the potential to prevent what some have labeled a “methodological nationalism” and to pluralize the discourse surrounding climate migration.²⁵

The climate crisis is both a “defining challenge”²⁶ at this particular moment in history as well as an existential threat. Caused by centuries of excess consumption and extractive exploitation of natural resources, the climate crisis has exacerbated the suffering of the vulnerable among us, particularly women and children and marginalized populations. The failure of basic societal functions that follow disastrous climate events increases the likelihood of violence against these groups.²⁷ In times of such crisis, rather than on-the-ground action or genuine inquiries into the experiences of those suffering the impacts thereof, or an exploration of expanded perspectival or standpoint theories examining these conditions, “the nature of the response to . . . crisis is such as to find, somehow, a way of hanging on to intellectual hegemony” by dominant cultural figures in the government and the academy.²⁸ As alternatives, what existing theories might avoid this hegemony and provide a margin of autochthonic analysis of how best to respond with gendered sensitivity to climate migrants who may lack access to infrastructure and basic services and who may be particularly vulnerable to violence and other public health impacts?

* * *

Sylvia Wynter’s theoretical model does offer a perspective that relativizes the dominant genre of Man, ideologically constructed as a white cis male, vis-à-vis excluded and subjugated genres of the Human Other.²⁹ Wynter’s approach, that of a writer and cultural theorist, is

²⁵ Nina Glick Schiller, *A Global Perspective on Transnational Migration: Theorising Migration Without Methodological Nationalism*, in *DIASPORA AND TRANSNATIONALISM: CONCEPTS, THEORIES, AND METHODS* 109, 110–13 (Rainer Bauböck & Thomas Faist eds., 2010).

²⁶ *Climate Change Poses ‘Defining Challenge’ of Our Time, Ban Says*, U.N. NEWS (Oct. 7, 2008), <https://news.un.org/en/story/2008/10/276912> [<https://perma.cc/6G83-N9E5>].

²⁷ Vithanage, *supra* note 21, at 328.

²⁸ Doreen Massey, *Flexible Sexism*, 9 ENV'T & PLAN. D: SOC'Y & SPACE 31, 33 (1991).

²⁹ See Sylvia Wynter, *On How We Mistook the Map for the Territory, and Re-Imprisoned Ourselves in Our Unbearable Wrongness of Being, of Désêtre: Black Studies Toward the Human Project*, in *NOT ONLY THE MASTER’S TOOLS: AFRICAN-AMERICAN STUDIES IN THEORY AND PRACTICE* 107, 117–19, 128–29 (Lewis R. Gordon & Jane Anna Gordon eds.,

consistent with the Third World Approaches to International Law (“TWAAIL”), “a category that enables fundamental diagnosis and critique of international law and its operation, and that opens up meaningful if imperfect opportunities for shoring up the emancipatory potential of international law.”³⁰ Like Wynters, TWAAIL scholars seek to reconceptualize and disrupt embedded hierarchies of power that structurally disadvantage the marginalized.³¹ Consider, for example, the analogous analyses in which TWAAIL scholars engaged with regard to the racialized language deployed in the case of Libya, non-gender-specific analyses that implicated the systemic international hegemonic actors in the creation and sustaining of that country’s dysfunction and in the profiting therefrom.³² By framing Libya as an Arab, and not an African, state, developed countries and international governance entities minimized the African Union’s influence, enhanced the credibility of the “familiar racialized script of Arab and Muslim violence,” and created a racial border by treating Libya as a transit state for unauthorized sub-Saharan Black African migration.³³

Centering the experiences of migrating women and children could identify the hegemonic structures embedded in global climate migration governance that reproduce the conditions likely to increase the vulnerabilities of these most marginalized populations, similar to a TWAAIL analysis of the Libya situation. That critique, summarized in an oversimplified fashion, revealed a governance regime designed to racialize Others as threats to control and exclude them.³⁴

One gendered example of this phenomenon can be found in the Immigration and Nationality Act (“INA”),³⁵ one provision of which provides a process for special undocumented agricultural workers living in the United States to adjust their legal status if they meet certain residency and employment requirements.³⁶ Pursuant to this provision, an

2006).

³⁰ E. Tendayi Achiume & Asli Bâli, *Race and Empire: Legal Theory Within, Through, and Across National Borders*, 67 UCLA L. REV. 1386, 1388 (2021).

³¹ *See id.* at 1388–90.

³² *Id.* at 1396–97.

³³ *Id.* at 1397–98.

³⁴ *See id.* at 1428–29.

³⁵ *Immigration and Nationality Act*, DEP’T OF HOMELAND SEC., CITIZENSHIP & IMMIGR. SERVS. (codified as amended in scattered sections of 8 U.S.C.), <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act> [<https://perma.cc/LA5T-ZENL>] (last visited Dec. 4, 2023).

³⁶ 8 U.S.C. § 1160.

applicant may establish these requirements with “proof of eligibility” such as “government employment records [and] records supplied by employers or collective bargaining organizations”³⁷ This requirement disadvantages undocumented women who often are only able to find work in the more informal sector and lack this type of “proof,” potentially exposing them to less favorable working conditions than their male counterparts and making them more vulnerable to immigration status fears.³⁸ The INA also contains language evoking negative stereotypes about migrating women in particular, for example, clauses limiting aliens from receiving public welfare assistance and other benefits, yet specifically providing an exclusion from that limitation for “pregnant women.”³⁹ The Trump administration openly advanced a similar agenda when it issued a final rule that denied temporary visitor (B-1 and B-2) visas to women seeking to enter the United States for what it labeled “birth tourism.”⁴⁰ Because it does not apply to applicants from Visa Waiver countries,⁴¹ the rule primarily targets nationals from countries in Asia, Africa, Latin and Central America, and the Middle East who are required to obtain visas in order to visit the United States. This “naming” sexualizes certain foreign women as Other and seeks to control the conditions of their health care or exclude them entirely.⁴² While revelation does not necessarily, or even often, lead to change, it is an important first step.

This is not too far afield from—or rather, may be another form of—necropolitics, an expression of sovereignty that resides in the power and the capacity to subjugate life to the power of death.⁴³ Necropolitical

³⁷ *Id.* § 1160(b)(3).

³⁸ Katharine Schaab, *The Denigration of Women's Bodies and Sexuality in Post-IRCA Border Narratives*, 31 FEMINIST FORMATIONS 47, 49 (2019).

³⁹ 8 U.S.C. § 1255a(h)(1)(A), (3)(B)(i).

⁴⁰ Visas: Temporary Visitors for Business or Pleasure, 85 Fed. Reg. 4219, 4220 (Jan. 24, 2020) (to be codified at 22 C.F.R. pt. 41). In January 2021, Marsha Blackburn, a Republican Senator from Tennessee, introduced the Ban Birth Tourism Act, to codify the Trump administration's January 2020 rule in the U.S. Code. Ban Birth Tourism Act, S. 17, 117th Cong. (2021–2022), <https://www.congress.gov/bill/117th-congress/senate-bill/17/text> [<https://perma.cc/KGP2-YGNE>]. The legislation did not advance, *id.*, but the Trump administration's 2020 final rule remains in place. 22 C.F.R. § 41.31(b)(2).

⁴¹ See 22 C.F.R. § 41.2(k) and 8 C.F.R. § 217.2(a) for details regarding the Visa Waiver Program.

⁴² 8 U.S.C. § 1255a(h).

⁴³ See, for example, two works by Mbembe, both titled “Necropolitics,” *supra* note 4.

theory, first explored by Cameroonian historian Achille Mbembe, accounts for the plight of climate migrants, often unwelcome and unwanted populations who are confined in bounded “repressed topographies of cruelty,” over which sovereigns exercise multiple axes of control.⁴⁴ These conditions are, and the control is, in the parlance of Mbembe, “deployed in the interest of maximum destruction of persons and the creation of *death-worlds*, new and unique forms of social existence in which vast populations are subjugated to conditions of life conferring upon them the status of *living dead*.”⁴⁵ The precarious and dangerous conditions to which women and children climate migrants are consigned in settlements is a kind of death-world, and it is a stark demonstration that they have been deemed disposable within some calculus of sovereign necropolicy.

* * *

Renowned geographer Doreen Massey’s radical concepts of space and its influence on social relations and power dynamics may also have some relevance to the intersection of gender and violence during climate-related migration.⁴⁶ Massey’s concept of “place” explores how the physical and social environment in origin and destination countries shape the experiences of migrants.⁴⁷ As vulnerable migrant populations move through “places” with inadequate resources or protection, Massey’s “power geometry” maps their group and individual interactions.⁴⁸ This is yet another methodological concept that, applied, manifests the complexity of the economic, political, and social factors contributing to the gendered dimension of climate migration. Despite being a theoretical construct, standpoint spatial models that produce geographic and demographic data of patterns of abuse and oppression could still support the efforts of those seeking meaningful legal reform.⁴⁹

Wayfaring, another process that conceptualizes the movement of people through space, conceived by anthropologist Tim Ingold, might

⁴⁴ Mbembe, *Necropolitics*, 15 PUB. CULTURE, *supra* note 4, at 39–40.

⁴⁵ *Id.* at 40.

⁴⁶ See MASSEY, *supra* note 3, at 147–48.

⁴⁷ See *id.* at 146–47.

⁴⁸ *Id.* at 148–49.

⁴⁹ See, e.g., Russell Powell, *Theology in Public Reason and Legal Discourse: A Case for the Preferential Option for the Poor*, 15 WASH. & LEE J. CIV. RTS. & SOC. JUST. 327, 389–90 (2009) (citing MASSEY, *supra* note 3, at 214–18, 238–41).

superficially appear to be a natural thematic vessel for research pertaining to climate migration.⁵⁰ As its adherents describe it, the theory of wayfaring embodies considerations of the movement and experience of human beings as they inhabit the earth, “not fundamentally place-bound . . . but place-binding.”⁵¹ In some elaborations of wayfaring, migration is an experiential process with aspects of corporeality and spatiality and confluences of movement, place, and time, and the “existential uncertainty, precarity, and structural violence” with which migrants are forced to live become their own primacy.⁵² This vision perceives the “struggle of wayfaring . . . [as] constitu[ting a] form of being in the world as well, drawing together considerations of what it means to ‘subsist, let alon[e] prevail, under these conditions [of extremity].”⁵³

Yet wayfaring is not a comfortable fit for climate migrants, particularly women. Wayfaring implies an open and flexible mobility process.⁵⁴ This, fundamentally, is not what most women experience during forced displacements and relocations that occur in the wake of climate-related crises and migrations. Climate displacements often are unplanned and unwelcome, caused by catastrophes and sociopolitical instability, and they often render female migrants submissive to those to whom they are beholden for their freedom of movement and/or for basic living essentials.⁵⁵

* * *

Scholars often apply the work of Gilles Deleuze and Félix Guattari in migration scholarship.⁵⁶ These collaborators, Deleuze, the

⁵⁰ INGOLD, *supra* note 6, at 148.

⁵¹ *Id.*

⁵² Benjamin Maxwell Merrill, *Contouring Care, Containing Crisis: Moral Wayfaring and Humanitarian Governance in an Emergent Migrant Clinic 24* (2020) (M.A. thesis, University of California, San Diego) (California Digital Library, University of California), <https://escholarship.org/uc/item/7tx197n3> [<https://perma.cc/NU5C-8TRN>].

⁵³ *Id.* at 60 (last alteration in original) (quoting JANIS H. JENKINS, *EXTRAORDINARY CONDITIONS: CULTURE AND EXPERIENCE IN MENTAL ILLNESS 2* (2015)).

⁵⁴ *See* INGOLD, *supra* note 6, at 148, 162.

⁵⁵ *See* CARE INT'L, *supra* note 1, at 4.

⁵⁶ *See, e.g.*, Thilo Wiertz, *Biopolitics of Migration: An Assemblage Approach*, ENV'T & PLAN. C: POLS. & SPACE, Nov. 2021, at 1375; Tamboukou, *supra* note 5, at 235. Deleuze and Guattari influenced a generation of prominent scholars across disciplines, including those mentioned herein, geographer Massey (*see* MICHAEL HOYLER, *INTERPRETING IDENTITIES: DOREEN MASSEY ON POLITICS, GENDER, AND SPACE-TIME 63* (1999)) and

philosopher, and Guattari, the psychoanalyst, distinguish between “migrant[s],” those who move from one point to another, and “nomad[s],” those whose stops along a path are temporary.⁵⁷ To use the parlance of their work, migrants are deterritorialized only to be reterritorialized when resettled, whereas nomads are “Deterritorialized par excellence,” their journey a continuous one.⁵⁸ The adoption of Deleuzo-Guattarian concepts of nomadism and nomadology are prevalent in critical theory,⁵⁹ and scholars have applied their framework to analyze a variety of issues, for example, concluding that “the key agent behind environmental destruction [and the onset of the Anthropocene] is the capitalist system as fed by . . . colonization and patriarchy, [and] . . . the power of those . . . depends . . . on the most deterritorialized and deterritorializing force of modernity.”⁶⁰ Deleuzo-Guattarian theory has also been considered in papers pertaining to the “feminist figuration of the nomadic subject.”⁶¹

The work of Deleuze and Guattari is so infused with geographic references such as “plateaus,” “landscapes,” and “mappings” that they invented the term “geophilosophy.”⁶² The application of their rhizomatic approach,⁶³ conceived as a network of becoming or of all multiplicity defying hierarchization, and their theory of nomadology, have injected an aura of agency and stoic heroism to the movement of migrants. The rhizomatic systems of nomadology propounded by Deleuze and Guattari thus may not be an accurate lens through which to consider the violence

Ingold (see, e.g., Tim Ingold, *Bringing Things to Life: Creative Entanglements in a World of Materials 2* (ESRC [Econ. & Soc. Rsch. Council] Nat'l Ctr. for Rsch. Methods, Realities Working Paper No. 15, 2010)).

⁵⁷ DELEUZE & GUATTARI, *supra* note 5, at 380.

⁵⁸ *Id.* at 380–81.

⁵⁹ John K. Noyes, *Nomadism, Nomadology, Postcolonialism: By Way of Introduction*, 6 INTERVENTIONS 159, 163 (2004).

⁶⁰ Arun Saldanha, *A Date with Destiny: Racial Capitalism and the Beginnings of the Anthropocene*, 38 ENV'T & PLAN. D: SOC'Y & SPACE 12, 13 (2020).

⁶¹ Maria Tamboukou, *Feeling the Real: The Non-Nomadic Subject of Feminism*, 38 THEORY, CULTURE & SOC'Y 3, 4 (2021).

⁶² Keith Woodward & John Paul Jones III, *On the Border with Deleuze and Guattari*, in B/ORDERING SPACE 235, 237 (Henk van Houtem, Olivier Kramsch & Wolfgang Zierhofer eds., 2005); Dianne Chisholm, *Rhizome, Ecology, Geophilosophy (A Map to This Issue)*, RHIZOMES: CULTURAL STUD. IN EMERGING KNOWLEDGE, Winter 2007, ¶ 4 (“[G]eophilosophy is neither grounded in place nor ambiguously situated between the local and the global. Deleuze and Guattari map earth forces and flows of ‘absolute deterritorialization’ that social ‘apparatuses of capture’ can territorialize with only relative success and constant realignment.”).

⁶³ See, e.g., DELEUZE & GUATTARI, *supra* note 5.

that women so often encounter due to extreme climate-related conditions, events, and migrations—complex, rhizomatic interactions existing in an “economy of competition, violence, and suffering.”⁶⁴ Forced to compete for survival by climate crisis circumstances, women are more vulnerable to violence than (and from) their male economic rivals. First, women are more likely to experience negative impacts within their home communities following a climate-related disaster attributable to existing inequalities.⁶⁵ They also experience violence and harassment when relocating domestically or across borders following climate catastrophes.⁶⁶ Gender-based violence is often inflicted with impunity along migration routes. An estimated eighty percent of global refugees are women, individuals who are separated from existing support systems and are therefore vulnerable to exploitation while seeking safety from untenable climate-related conditions.⁶⁷ These data are ubiquitous across geographic settings, reflecting deterritorialized threat conditions.

These data disrupt the critical narrative of nomads as mobile activists with a multiplicity of rhizomatic networks. To quote one researcher: “[I]t seems that the nomads of the real world, and their torturing wanderings today, have [irrevocably] challenged the romance of unregulated movement and force us to radically rethink the very concept of nomadism itself.”⁶⁸ Others agree, one noting that there is an enormous “difference . . . between the optimistic mobility, the intellectual liveliness, and “the logic of daring” described by the various theoreticians . . . and the massive dislocations, waste, misery, and horrors endured in our century’s migrations and mutilated lives.”⁶⁹ There no longer is, and may

⁶⁴ Michael Mikulak, *The Rhizomatics of Domination: From Darwin to Biotechnology*, RHIZOMES: CULTURAL STUD. IN EMERGING KNOWLEDGE, Winter 2007, ¶ 12. In a discussion of Darwin’s *Origins of the Species*, author Mikulak opined that Darwin’s language in that text reveals a complex interaction between competition and cooperation consistent with a rhizomatic conception of nature that shifts existing economic models of nature based on “harmony, divine providence, and abundance, to an economy of competition, violence, and suffering.” *Id.*

⁶⁵ See CARE INT’L, *supra* note 1, at 5. These inequalities include a lack of work in the formal sector; increased work caring for family; and limited rights to own personal and real property. See *id.*

⁶⁶ Andrei L. Israel & Carolyn Sachs, *A Climate for Feminist Intervention: Feminist Science Studies and Climate Change Research*, in ACTION AND POLICY: ADDRESSING THE GENDERED IMPACTS OF CLIMATE CHANGE 41 (Margaret Alston & Kerri Whittenbury eds., 2013).

⁶⁷ Dimitrov, *supra* note 7, at 213.

⁶⁸ Tamboukou, *supra* note 61, at 4.

⁶⁹ Noyes, *supra* note 59, at 166.

never have been, any real association between the critically constructed “nomad” and those migrants and individual nomadic groups whose mobilizations, histories, and sufferings were methodologically appropriated.⁷⁰

* * *

These theoretical methodologies offered an interesting perspective on the gendered impact of climate migration. The law, however, is still a critical element of any theoretical discourse related to responding to those vulnerabilities, regardless of which approach one chooses to apply. Consider Massey’s rejection of a bounded, geographically divided space⁷¹ and Ingold’s recognition that it is the sovereign that draws lines and controls and governs a territory.⁷² Both share a sense of the influence on what some might see as “static” law on the discontinuity of spatial flow. As climate migrants travel along their paths, the spaces through which they move fold into law and the law into those spaces: “they are co-emerging, co-constituting and co-evolving.”⁷³ Regardless of one’s opinion on the law’s role in interdisciplinary theoretical engagements or the relationship between the law and spaces generally, and in migratory spaces in particular, there is, in a very practical and material sense, a controversy surrounding what legal regimes or protections govern climate migration. Environmental and migration experts often express strongly contrasting views regarding the appropriate characterization of individuals impacted by climate phenomena.

The legal term of art “refugee” is carefully defined in international and domestic legal schemes.⁷⁴ Article 1 of the Convention Relating to the Status of Refugees defines a refugee as:

[A] person who . . . owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is

⁷⁰ *See id.*

⁷¹ Andreas Philippopoulos-Mihalopoulos, *And for Law: Why Space Cannot Be Understood Without Law*, 17 L., CULTURE & HUMANS. 620, 623 (2021) (citing DOREEN MASSEY, FOR SPACE (2005)).

⁷² *Id.* at 627 (citing TIM INGOLD, LINES: A BRIEF HISTORY 161 (2007)).

⁷³ *Id.* at 630.

⁷⁴ *See, e.g.*, Julian M. Lehmann, *At the Crossroads: The 1951 Geneva Convention Today*, in RESEARCH HANDBOOK ON INTERNATIONAL REFUGEE LAW 2 (Satvinder Singh Juss ed., 2019).

outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁷⁵

Immigration experts fear that its overuse in potentially attenuated climate-related cases might undermine support for those they deem deserving of the label and may encourage a backlash against immigration in general.⁷⁶ Conversely, climate experts emphasize the threat of more intense and more frequent climate-related disasters and warn of imminent mass migration, fearing inaction will exacerbate negative impacts of both the events and migratory flows.⁷⁷ The debate has actual consequences for women suffering climate-related migratory experiences, regardless of the theoretical or legal label.

* * *

As Doreen Massey once noted: “The description, definition and identification of a place is thus always inevitably an intervention not only into geography but also, at least implicitly, into the (re)telling of the historical constitution of the present. It is another move in the continuing struggle over the delineation and characterisation of space-time.”⁷⁸ The historical constitution of our present, of our societal and legal responses to the climate crisis and the human suffering that it has wrought, will inevitably be judged by future generations—should there be future generations left to judge. However, law alone cannot resolve this emergency. Other disciplines are contributing to, and must continue to be enlisted in, finding solutions.

My effort to force specific methodological constructs onto one particular topic clearly has not solved the problem of the gender-based violence and other negative impacts to which women and children are

⁷⁵ Refugee Convention, *supra* note 1, art. 1.

⁷⁶ SUSAN F. MARTIN, *Migration, the Environment, and Climate Change*, in INTERNATIONAL MIGRATION: EVOLVING TRENDS FROM THE EARLY TWENTIETH CENTURY TO THE PRESENT 214, 214 (2014).

⁷⁷ *Id.*

⁷⁸ Doreen Massey, *Places and Their Pasts*, 1995 HIST. WORKSHOP J. 182, 190 (1995).

exposed during climate migration. However, the theories posited by Sylvia Wynter, Achille Mbembe, Gilles Deleuze and Félix Guattari, Doreen Massey, and Tim Ingold offer new insights into the socio-philosophical environments in which “legal” issues are examined and defined and law is made. The law is sometimes a blunt and very inadequate instrument for effecting genuine change when problems are rooted in intersectional systems of oppression and inequality.⁷⁹ Even a well-crafted law may have little impact on embedded cultural influences and social power dynamics. Accordingly, analyses that acknowledge and incorporate relevant holistic and multisectoral theories might improve efforts to identify new, and strengthen existing, legal protections for those suffering in a very real, non-theoretical sense.

⁷⁹ See, e.g., Jenny Phillimore, Sandra Pertek, Selin Akyuz, Hoayda Darkal, Jeanine Hourani, Pip McKnight, Saime Ozcurumez & Sarah Taal, “*We Are Forgotten*”: *Forced Migration, Sexual and Gender-Based Violence, and Coronavirus Disease-2019*, 28 VIOLENCE AGAINST WOMEN 2204, 2205 (2022).