Does Brock’s theory of migration justice adequately account for climate refugees?

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ABSTRACT

In *Justice for People on the Move*, Gillian Brock develops a promising, original account of migration justice. In her view, states have a robust (though conditional) right to self-determination, which includes a reasonably strong right to regulate migration. However, in order for these rights to be justified, three legitimacy requirements must be met. Most obviously, states must respect the human rights of their own citizens and the international state system itself must be legitimate. This latter condition also requires states to do their part in sustaining a justified state system, which includes helping to alleviate ‘legitimacy gaps,’ including significant human rights violations in other states. Brock uses this framework to address several pressing migration-related policy issues, including Muslim bans, the deportation of unauthorized migrants, temporary labour migration, and refugee protection. However, one topic is notably absent from her analysis: climate-related displacement. Some theorists insist that climate change migrants should not be considered refugees because they do not fit the standard definition of a refugee. In particular, climate migrants were displaced by droughts, floods, storms, or sea level rise rather than by war or persecution, and many are able to remain in their homes at present but will be forced to relocate at some point in the future. This paper explores the implications of Brock’s theory of migration justice for climate migration. I suggest that although her approach to refugee protection may initially appear to exclude climate migrants, her understanding of the right to self-determination yields strong obligations to assist them. I take this to be a strength of her framework, which makes an important, albeit indirect, contribution to current debates on climate change migration.

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Introduction

In *Justice for People on the Move*, Gillian Brock defends a distinctive theory of refugee protection, which she calls the development approach. The development model centres on the unique needs of refugees who have been forcibly displaced as a result of persecution, conflict, violence, or human rights violations. It aims to move beyond traditional forms of humanitarian assistance to provide opportunities for economic empowerment for refugees and incubate post-conflict recovery in fragile states. Brock’s empirically-informed, solution-oriented theory of refugee protection is an important contribution to the normative literature on forced migration. However, one topic is notably absent from her analysis: climate-related displacement. This paper explores the implications of Brock’s view for climate migration, focusing on environmentally displaced states. I suggest that although the development approach may initially appear to exclude such climate migrants, its central objectives, in conjunction with the core methodological and normative commitments on which it rests, yield significant obligations to assist them. Specifically, I argue that Brock’s theory implies that members of environmentally displaced states are owed collective resettlement, continued political self-determination, and access to a new territory. I take this to be a strength of her framework and an important, albeit indirect, contribution to philosophical debates on climate displacement. I will begin by identifying some distinguishing features of climate migration. Then, I will explain the key components of Brock’s development approach to refugee protection. Finally, I will discuss how Brock’s theory might address climate refugees.

Who are climate migrants?

A climate migrant is someone who has been forced to leave their home in order to escape the environmental effects of climate change. In some cases, climate migrants have been displaced by sudden-onset events, such as heavy flooding, forest fires, or hurricanes, that have been intensified by global warming. However, climate change also contributes to slow-onset environmental degradation, including desertification, salination, and sea level rise, that can render land uninhabitable over time. As these processes continue to accelerate, large populations will be forced to leave their homes. Some states are at risk of losing their entire territories to climate impacts. This includes small island states, such as Tuvalu, Kiribati, and Maldives, for whom rising sea levels pose an existential threat. The vast majority of people currently fleeing environmental distress migrate temporarily over short distances within their home countries. However, some victims of environmental disasters must cross international borders in order to seek refuge, and members of some small-island states may eventually be forced to resettle permanently in a new state.

What is Brock’s theory of refugee protections?

To assess the implications of Brock’s development approach for climate migration, we need to understand how it answers three key questions central to the philosophical debate on refugee protection: Who is a refugee? What is owed to refugees? And how are
obligations to refugees justified?\(^1\) Answers to these questions tend to take the existing international refugee regime as their starting point. The regime encompasses the principles, rights, and obligations that govern states’ responses to refugees. These understandings were originally set out in the 1951 Geneva Refugee Convention and its 1967 Protocol. According to the Geneva Convention definition, a refugee is a person who has fled their country and is unable to return due to a reasonable fear of persecution on the basis of race, nationality, religion, political opinion, or social group membership. The convention establishes the right of refugees and asylum seekers not to be forcibly returned to a country where they would face serious harm. In addition to this duty of non-refoulement, states are thought to have additional burden-sharing obligations towards refugees in other states, either to provide material support or to resettle some of them in their own territory. However, these obligations are largely discretionary.

Like most cosmopolitan theorists, Brock endorses a broader definition of a refugee than that of the Geneva Convention. In her view, a refugee is someone who is in ‘urgent need of protection . . . from another state because the state in which they usually reside is either unable or unwilling to protect the fundamental human rights or interests of its citizens’ (Brock 2019, 114). This includes anyone whose human rights cannot be safeguarded by their own government. However, Brock focuses on persons fleeing violent conflict because, in her view, they have an especially urgent need of protection.

She also finds fault with the refugee protections established under the international refugee regime. The dominant approach, which was established in the wake of World War II, is based on two assumptions: that newly arrived refugees will be housed temporarily where their safety can be secured and their basic human rights protected; and then, within a reasonable period of time, refugees will be offered one of the three main durable solutions: voluntary repatriation, resettlement in the host country, or resettlement elsewhere. However, as Brock points out, these assumptions do not currently bear out in practice. While many refugees are housed in refugee camps, many choose to live in urban areas instead to avoid the substandard living conditions in overcrowded camps. The vast majority of refugees were displaced by ongoing violent conflicts that make timely repatriation impossible, and most wealthy democratic states ignore their burden-sharing obligations. As a result, the average period for refugee status now exceeds twenty years (Brock 2019, 116).

Given these realities, Brock concludes that standard approaches to refugee protection fail to meet the needs of refugees. At best, refugee camps and other temporary solutions can provide for people’s basic subsistence needs for short periods of time. However, many existing refugee camps fail in this respect. Moreover, she continues, even the most effective emergency facilities cannot satisfy refugees’ needs during long periods of displacement. In such cases, ‘emergency food and shelter are just some of what people need. Other needs are salient as well, such as trying to enjoy some semblance of normal family life, education, autonomy, and community’ (Brock 2019, 116). The ability to find work is particularly important because it is closely connected to the fulfilment of other

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\(^1\)In addition to these questions, philosophers and political theorists typically address a fourth: How can responsibilities to assist refugees be fairly distributed? Although Brock’s account of the fair distribution of duties of resettlement is relevant to my analysis, space constraints prohibit me from discussing it here.
crucial needs, including autonomy. The capacity to earn a living can also be essential to people’s sense of dignity and self-worth.

A better approach to refugee protection, Brock argues, would supplement humanitarian arrangements with development-oriented strategies that provide employment and economic empowerment opportunities to refugees. Specific programmes might involve allowing refugees to work, buy land, or start small businesses in host countries. Institutionally robust programmes could include the establishment of special economic zones in host countries to incentivize international firms to set up operations there, providing employment, education, and training to both refugees and host nationals. Although different arrangements will be best for different contexts, successful development strategies share two features: they emphasize regional solutions that take the short- and long-term needs of displaced populations into account, and they are mutually advantageous for refugees and host populations. The refugee regime must also provide a way out of limbo for long-term refugees. If, after a reasonable period of time, repatriation is deemed unlikely, refugees must be offered a pathway to formal resettlement in the host state or another country. However, Brock insists that the development approach should focus on ‘restoring autonomy, building capacity, and finding local solutions for the vast majority who stay – and want to stay – in the region’ (Brock 2019, 123; italics in original).

Another distinctive feature of Brock’s theory is its justification for the obligation to assist refugees. In her view, this obligation is grounded in the normative presuppositions of the international state system. Specifically, a state may enjoy a robust right to self-determination if and only if three legitimacy conditions are met. First, the state must protect the human rights of its citizens. Second, the state must be part of a legitimate international state system. The state system can be considered legitimate if it could be justified from the perspective of everyone who is subject to it, no matter their position within this system – that is, whether they are members or outsiders of particular states. Impartial agents might find a justification for the current state system compelling if everyone belonged to a state that is committed to protecting their human rights and promoting their interests. However, in practice, states fail to protect the human rights of their citizens all too often. Anyone substantially disadvantaged by such international arrangements has no reason to find a justification for the current state system compelling. Thus, the international state system must put corrective mechanisms in place to deliver on human rights when individual states fail to do so. Refugee protections are one such arrangement. The third legitimacy condition requires states to do their share to sustain cooperative, cross-border institutions and arrangements designed that deliver on human rights and other aspects of justice, including refugee protections.

\footnote{These features are particularly salient to my analysis. Successful development-oriented strategies also: (a) involve cooperative partnerships among state, civil society, and economic actors, and (b) develop the individual and institutional capacities needed to rebuild and reduce post-conflict risks in refugee sending societies.}
What does the development approach imply for climate migrants?

Now that we have an understanding of Brock’s theory of refugee protection, we can see what it implies for climate migration. Despite growing awareness about the humanitarian and global security challenges associated with climate migration, theorists widely agree that climate migrants do not qualify as refugees under existing refugee convention definitions (Lister 2014). As we have seen, the Geneva Convention requires that a refugee must have a reasonable fear of persecution on the basis of her membership in a protected category, and she must be outside her country and unable to return. Yet climate change is not a form of persecution and it does not deliberately target people based on their religion, political views, or social characteristics. Most climate-induced migration is projected to be internal rather than international in nature, and nearly all prospective climate migrants currently remain in their home states, planning for a future move if worsening environmental conditions necessitate it.

However, Brock endorses a broad definition of refugeehood, according to which a refugee is any individual who urgently needs protection by the international community because their human rights cannot be safeguarded by their own government. Because this definition does not require that refugees be deliberately targeted for persecution, and the human rights of climate migrants are clearly at stake, it follows that climate migrants who have already fled their home countries qualify as refugees on Brock’s understanding. But what about future climate migrants who currently remain in their home countries? They would be regarded as prospective refugees if there is high degree of certainty that they will be eventually be displaced. Proper planning for mass displacement is absolutely critical, and although such populations may not be in imminent need of international protection, their need for such assistance will be no less acute when they are eventually forced to flee.

Because climate migrants qualify as refugees on Brock’s understanding, it follows that the international community is obligated to assist them. But what is the nature of this obligation? What, exactly, is owed to climate refugees? To answer these questions, it will be helpful to distinguish between two populations of climate refugees: temporarily displaced climate refugees and permanently displaced climate refugees. The former are individuals who have been forced to flee their home country to escape a sudden-onset climate-related event, such as a flood, fire, or hurricane, but will be able to return once conditions have improved. Rebuilding efforts may require considerable time and investment, but these refugees can reasonably expect to return to their home countries in time. Permanently displaced climate refugees, in contrast, are populations that have

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3 Of course, this does not mean that climate change affects everyone equally. Vulnerable groups are most at risk for suffering severe deprivation, and states’ adaptation efforts may discriminate against disfavoured groups.

4 This commentary focuses on communities that have been or will be displaced by climate change. In doing so, I do not mean to suggest that climate migration is inevitable or that the international community is morally free to passively anticipate it. Indeed, pre-emptive strategies designed to enable environmentally-threatened populations to remain in place are superior to planning for climate migration. Moreover, although I am unable to defend this point here, I believe that Brock’s broader theory of migration justice favours such approaches where possible. I am grateful to an anonymous referee for this point.

5 Additional support for this interpretation of Brock’s definition follows from the fact that she cites Andrew Shacknove’s account approvingly. See Brock (2019, 114, fn. 7). Shacknove famously defines refugees as ‘persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible’ (Shacknove 1985, 277). Individuals need not have crossed an international border to qualify for refugee status on this account.
been (or will be) permanently displaced from their territory, usually due to slow-onset climate-related environmental degradation, such as desertification, land salination, and sea level rise. This includes small island states, such as Tuvalu, Kiribati, and Maldives.

What, then, is owed to climate refugees on Brock’s account? First and foremost, the international community has a collective responsibility to provide emergency, humanitarian assistance to all climate refugees. Refugee camps might be an acceptable strategy for delivering such aid, provided refugees’ basic needs are effectively met and their stay is suitably short. Such humanitarian assistance may be all that temporarily displaced climate refugees need until they can return home safely. However, if they are unable to return to their home country within a reasonable period of time, the development approach entails additional obligations of assistance. Specifically, host societies must provide longer-term (temporarily displaced) refugees with the same types of economic and educational opportunities afforded to refugees who have fled violent conflict. For instance, they could be given temporary work permits or other opportunities to learn skills that could help to rebuild their home communities. If it becomes clear that these climate refugees will be unable to return home within a reasonable period of time, they must be offered resettlement in the host country or in another state, preferably in the region.

So far, the picture is pretty straightforward: temporarily displaced climate refugees are owed the same protections as other categories of refugees. But what about members of environmentally displaced states? They differ from temporarily displaced climate refugees in at least three morally salient respects. First, it is known up front that they will be permanently displaced; returning home will not be possible. Second, partly due to this fact, members of environmentally displaced states stand to suffer unique losses. In addition to the losses typically sustained by temporary climate refugees, such as one’s home, livelihood, and sense of security, members of environmentally displaced states stand to lose their political autonomy, their institutionally-supported ways of life, and their territory. As Kolers puts this point, when an island state is lost to sea level rise, ‘the entire structure of the self-determining life of a political community, including not just its distinctive goals but also its distinctive ways of pursuing universal goals such as justice and economic development, are washed away’ (Kolers 2012, 334). Finally, then, given these unique vulnerabilities, members of environmentally displaced states have distinctive needs. At a bare minimum, they need immediate resettlement. However, they also have a strong interest in resettling together as a self-determining community and continuing, insofar as possible, their shared ways of life on a new territory. Because the development approach does not address these unique needs, we might be tempted to dismiss it as providing little (or perhaps flawed) guidance concerning what is owed to environmentally displaced states. But this would be unfair to Brock. She explicitly proposes the development model with the needs of a specific group of refugees in mind, namely, those fleeing violent conflict, so we should not expect this approach to meet the distinctive needs of members of environmentally displaced states. Instead, we should explore the normative groundwork of the development approach to see what it entails with respect to our duties to these climate refugees. In what follows, I will focus on three central components of Brock’s theory of migration justice – derivative needs, respect for located life plans, and the qualified right to occupy territory – as well as her justification for the obligation to assist refugees.
As we have seen, Brock argues that adequate refugee protection arrangements must take seriously both the short- and long-term needs of displaced populations. This is to be expected given the prominent role of needs in her general theory of justice. Moral agency needs are particularly important. To function as moral agents, people must have a sufficient level of physical and psychological health, security, understanding, autonomy, and decent social relations with at least some other people. These basic needs generate other, derivative needs, which are connected to agency needs in complex ways. Derivative needs fall into three categories: economic, community, and political self-determination. Economic needs include the skills and opportunities a person must have to participate in the economies to which they have access. Community needs include being part of a sufficiently large 'social support system consisting of many relationships of roughly similarly oriented people' (Brock 2019, 23). Whereas the need for decent social relations can be satisfied within a small group of people, individuals must be part of larger group to fulfill their community needs. Finally, the need for political self-determination grows out of the need for autonomy. It is the idea that people should have collective control over the key decisions that shape their lives, including the terms of their common life. In addition to enabling people to fulfill their core agency needs, derivative needs 'are highly salient to many people’s well-being and their felt sense of fulfilment' (Brock 2019, 24).

The idea of located life plans is also central to Brock’s theory. Human beings orient their life plans around satisfying important needs. Location plays an important role in shaping these plans, especially with respect to derivative needs. Both agency and derivative needs are in some sense universal, but the ways in which people go about meeting these needs are determined by location and context. Different opportunities, challenges, and ways of living are available in different places, and these contingencies affect how people orient themselves. Brock refers to the plans people make around ‘particular forms of life in specific places’ as located life plans (Brock 2019, 102). Constructing located life plans involves considerable investments of time, energy, and resources. Thus, she contends, people’s located life plans deserve respect; they should be accommodated where possible, especially when those plans cause no undue hardship to others.  

What does this discussion of needs and located life plans imply for our obligations to environmentally displaced states? Minimally, it suggests that members of such states are owed immediate resettlement in a new state, preferably in the region. Because it is clear that repatriation will be impossible, people should not have to endure a period of limbo before they can get on with the business of rebuilding their life plans. Concern for autonomy and located life plans also suggests that climate refugees should be given the choice to relocate to another state in the region. New Zealand’s Pacific Access Category Visa programme is an example of this type of solution. The programme offers

6In her view, the core features of justice include (a) being enabled to meet our needs, (b) protection of basic liberties, (c) fair terms of cooperation, and (d) institutional arrangements needed to support these features, together with being enabled to meet our needs (Brock 2019), pg. 21.

7To be more precise, agency needs ‘are universal in virtue of the demands of moral agency.’ Derivative needs are universal in the sense that most everyone has them, but they ‘can vary depending on particular contexts and individual personalities’ (Brock 2019, 23).

8The normative significance of located life plans has important implications for immigration policy. For instance, it implies that deporting unauthorized migrants who have established settled ways life is unjust (Brock 2019, Ch. 5).
permanent residency status to several hundred citizens of Kiribati, Tuvalu, Tonga and Fiji annually. Access Category visas are awarded on a lottery basis to applicants who speak English and have a job offer in New Zealand.

Provided they run smoothly, such resettlement programmes would satisfy the basic agency and economic needs of qualifying permanently displaced climate refugees. However, fulfilling the community needs and adequately respecting the located life plans of members of environmentally displaced states would likely require collective solutions that enable them to relocate together as a community. Because located life plans, like derivative needs, are shaped by the environments in which they are constructed, some life plans cannot be continued in a new context. Nevertheless, respect for located plans requires enabling climate refugees to re-establish their existing located life plans in their new home insofar as possible. Although they may not be able to re-establish all their original practices and ways of life to a new context, arrangements should made with this ideal in mind. Surely, members of environmentally displaced states, especially small island states, such as Kiribati and Tuvalu, will have a better chance of re-establishing their existing life plans if they are resettled as a group in another state in the region. Collective resettlement is also the best way to ensure that refugees’ community needs are met, as existing social support systems are more likely to be kept intact.

We might also think that members of environmentally displaced states are owed political self-determination, since it too is a central derivative need. It seems clear that in democratic states, fulfilling the self-determination needs of permanent climate refugees requires extending political rights to individually resettled refugees. More controversially, Brock’s view arguably also implies that collectively resettled members of environmentally displaced states are owed collective self-determination, if not continued statehood. Whether this is true depends partly on Brock’s construal of the right to political self-determination. If Brock understands this right as a collective right, which the state exercises on behalf of some self-determining community, such as a nation or a people, the case for collective self-determination is fairly straightforward. A community retains its right to collective self-determination upon resettlement insofar as it continues to satisfy the conditions for claiming this right in the first place, such as being a nation or a people. Insofar as collectively resettled, environmentally displaced states satisfy this criterion, they are owed collective self-determination. However, it is not clear that Brock is committed to this understanding of the right to political self-determination. She clearly thinks that democratic states have a right to self-determination (after all, the central aim of her book is to specify the conditions under which states may legitimately exercise this right with respect to migration), but she does not specify whether this right is held by the state itself or by some self-determining community that has authorized the state to act on its behalf. Nor does she suggest what the relevant self-determining community would be. Because it is clear that Brock thinks that democratic states have a right to self-determination, we might be tempted to put this question aside and simply apply the same reasoning to states. That is, we might argue that a displaced state retains its right to self-determination upon resettlement because it continues to satisfy the conditions for claiming this right in the first place, namely, it continues to be a state. However, this approach begs the question. Whereas the defining features of a self-determining community, such as people or
nation, are in an important sense independent from, if not prior to, statehood, this is not true of states. The defining feature of a state is its legitimate claim to statehood, along with the rights this entails, and whether this claim persists beyond its possible disappearance is precisely the question at hand.

A more promising approach to establishing that Brock’s view implies that collectively resettled members of environmentally displaced states are owed collective self-determination involves her justification for the obligation to assist refugees. As we have seen, this justification is based on the idea that refugee protections (among other corrective mechanisms) are required by the normative presuppositions of the international state system. A state system can be considered legitimate, according to Brock, if it could be justified from the perspective of everyone who is subject to it, regardless of their position within this system. We have already seen that the current state system, in which some states inevitably fail to protect the human rights of their citizens, would be considered justified only if it included corrective mechanisms, such as refugee protections, to restore human rights protections in such cases. We might also consider whether impartial agents, who do not know whether they will be members of environmentally displaced states or other countries, would find a justification for the current system compelling once the projected effects of climate change were taken into account. Under the current system, members of environmentally displaced states are substantially disadvantaged: they can expect to lose their territory, and thus their state, to the effects of climate change, and at best, they can hope to be selected for individual resettlement. Agents who imagine themselves in this position have no reason to find a justification for this system compelling. Instead, they would likely regard it as patently unjust given the fact that wealthy, industrialized countries bear the lion’s share of responsibility for climate change, and environmentally displaced states have done little to contribute to it. Thus, to be justified from all perspectives, the state system must include more extensive protections for environmentally displaced states, including arrangements that enable their collective self-determination, if not continued statehood.

This exercise also suggests that environmentally displaced states are owed access to a new territory in addition to collective self-determination. Political communities need jurisdiction over some territory in order to exercise self-determination and, as Brock argues, reasonably secure access to territory is essential for developing located practices for meeting needs. Thus, it is difficult to see how a justification for a state system that does not provide environmentally displaced states with access to a new territory would be considered justified from the perspective of everyone. Brock’s account of legitimate territorial occupation lends support to this idea. In her view, settled communities may legitimately continue to occupy a particular territory if ‘their settlement arose without wrongdoing and they do not promote wrongdoing’ (Brock 2019, 25). Of course, these conditions are rarely, if ever, met in practice, so such justified occupancy demands that communities rectify past injustices and engage in practices that promote justice. These conditions initially seem to weigh against the idea that environmentally displaced states are owed access to new territory, given that nearly all the world’s territory is currently occupied by other states. However, Brock stipulates that the right to occupy a specific territory is a qualified right. Specifically, although a community may have a legitimate claim to occupy a particular territory, ‘the size (and other features) of justified occupation can change in response to relevant factors’ (Brock 2019, 26, footnote 33). To
illustrate her point, she invites readers to imagine two islands occupied by populations that have a justified right to occupy their respective island. A volcano destroys one island, leaving it uninhabitable. As a result:

The terms on which occupants may rightfully occupy the remaining island have shifted. In particular, they may not rightfully occupy that territory and exclude the population whose island was destroyed … the size of the territory that continued occupation justifies would need to alter to these new circumstances … such natural disasters can alter how much territory the original group may justly continue to occupy in the face of a population that is now in dire straits (Brock 2019, 26, footnote 33).

Now, of course, providing access to a new territory to environmentally displaced states will involve significant costs. Land is valuable, and uprooting long-settled citizens to make room for new occupants would involve considerable disruption to their located life plans. Thus, we might also expect impartial agents to demand that these costs be minimized and that the associated burdens be distributed fairly among states. More work must be done to identify specific strategies for accomplishing these goals, but it is reasonable to expect that current inhabitants would be allowed to continue to live on transferred territory, if they so choose, and that relocated political communities must protect their rights and accommodate their unique needs. It is also likely that burden sharing would involve material support or compensation for donor states, particularly if they are not historically high carbon emitters. These sorts of provisions would likely be justifiable from the perspective of everyone, regardless of their position within this system. They are also consistent with the primary objectives of Brock’s development approach, namely, to promote mutually beneficial cooperative arrangements that take seriously the needs of both displaced and host populations.

**Conclusion**

In this commentary, I have argued that Brock’s theory of refugee protection yields substantial obligations to climate refugees. Specifically, the international community owes members of environmentally displaced states collective resettlement, continued political self-determination, if not statehood, and access to a new territory. Although my arguments are admittedly speculative at points, I hope they successfully convey the significance of Brock’s book – both as a powerful, new account of migration justice, and as an exciting, albeit indirect, contribution to normative debates on climate displacement. My analysis also highlights two areas in which Brock’s theory could be further developed, particularly as it bears on our obligations to environmentally displaced states. The first concerns her understanding of the right to political self-determination. Identifying the proper holder of this right – the state or some self-determining community – would clarify our reasons for thinking that environmentally displaced states have a right to collective self-determination, as well the nature of this right, including what counts as a sufficient degree of continued self-determination. The second area concerns her view of territorial rights. In particular, a more comprehensive account of the right to initial acquisition would shed light on what it would mean to grant members of environmentally displaced states access to a new territory. However, these suggestions by no means diminish the value of Brock’s book. Rather,
they indicate the depth of the challenges involved in constructing an empirically-informed theory of migration justice capable of articulating the full range of our moral obligations with respect to all types of human movement.

**Disclosure statement**

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