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A Catholic Response to Global Climate Change Migration

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Cover Page Footnote

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A CATHOLIC RESPONSE TO GLOBAL CLIMATE CHANGE MIGRATION

MICHAEL S. TALBOT*

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INTRODUCTION

Few encyclicals have received as much attention at the time of their publication as Pope Francis's *Laudato Si'*. Perhaps because it was contemporaneous to efforts to establish the United Nations Sustainable Development Goals (SDGs) and to garner support for the Paris Climate Agreement, some commentators saw it as the moral argument for a collective response to climate change.¹ Francis himself presented *Laudato Si'* as a moral argument tied to a pressing global issue, calling for collaborative action.² With the initial success of the SDGs and Paris Agreement later that year, Pope Francis demonstrated both his interest in and ability to influence global actors through his ethical rhetoric. *Laudato Si'* is evidence of the Catholic Church's ability to play a leading role on global social issues by (1) articulating and advocating for specific policy proposals informed by Catholic Social Teaching, as well as by (2) providing moral arguments rooted in the same Catholic Social Teaching that resonate beyond the faithful.

Given Francis's moral authority, it is reasonable to ask what other subjects might benefit from his global influence. This Paper examines one possible topic for Francis's attention and about which he has previously indicated a desire to reshape our global understanding: the plight of migrants, refugees, and other displaced people.

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¹ See Emma Green, *The Pope's Moral Case for Taking on Climate Change*, ATLANTIC: GLOBAL (June 18, 2015), <https://www.theatlantic.com/international/archive/2015/06/pope-francis-encyclical-moral-climate-change/396200/>.

² See Pope Francis, *Laudato Si'* [Encyclical Letter On Care For Our Common Home] ¶ 114 (2015), http://w2.vatican.va/content/dam/francesco/pdf/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si_en.pdf [hereinafter *Laudato Si'*] (“All of this shows the urgent need for us to move forward in a bold cultural revolution.”).

Almost as if foreshadowing this subject, *Laudato Si'* briefly mentions migration:

Climate change is a global problem with grave implications: environmental, social, economic, political and for the distribution of goods. It represents one of the principal challenges facing humanity in our day. Its worst impact will probably be felt by developing countries in coming decades. Many of the poor live in areas particularly affected by phenomena related to warming, and their means of subsistence are largely dependent on natural reserves and ecosystemic services such as agriculture, fishing and forestry. They have no other financial activities or resources which can enable them to adapt to climate change or to face natural disasters, and their access to social services and protection is very limited. For example, changes in climate, to which animals and plants cannot adapt, lead them to migrate; this in turn affects the livelihood of the poor, who are then forced to leave their homes, with great uncertainty for their future and that of their children. There has been a tragic rise in the number of migrants seeking to flee from the growing poverty caused by environmental degradation. They are not recognized by international conventions as refugees; they bear the loss of the lives they have left behind, without enjoying any legal protection whatsoever. Sadly, there is widespread indifference to such suffering, which is even now taking place throughout our world. Our lack of response to these tragedies involving our brothers and sisters points to the loss of that sense of responsibility for our fellow men and women upon which all civil society is founded.³

Francis describes migration as deeply connected to the issue of climate change and suggests that the global community bears a moral responsibility to assist those forced to flee environmental degradation.⁴ Their lack of international recognition as refugees or other institutionalized protection is therefore discouraging. Francis bemoans the disregard for this suffering that enables those who could help to turn their backs.⁵ His concern for climate refugees⁶ is apparent. His words and the connection he draws between migration and climate change are so acute that one is left wondering why there is only one mention of migration within the encyclical's 246 paragraphs. Perhaps it is because he is saving the topic for a more comprehensive examination—a potential second encyclical.

³ *Id.* ¶ 25.

⁴ *See id.*

⁵ *See id.*

⁶ Use of this term is not without consideration, as it does not align with the conventional understanding of “refugee.” *See infra* note 39.

This Paper speculates about Francis’s moral argument for the protection of climate refugees and what it might entail in order to elucidate the elements of Catholic Social Teaching that are capable of influencing global action. The Paper begins by identifying the central concepts of *Laudato Si’* that have emerged as themes of Francis’s papacy and which will almost certainly continue as such. Next, it examines the specific legal gap in the international framework for protecting refugees identified by Francis in *Laudato Si’*. This section will focus on the 1951 Convention on the Status of Refugees and its 1967 Protocol, but will also consider a handful of regional approaches and the application of the 1954 Convention Relating to the Status of Stateless Persons. The fourth section presents the case study of the “world’s first climate refugee,” Ioane Teitiota, who fought for protection in the New Zealand courts. Teitiota’s case highlights the connection between climate change and forced migration as well as the shortcomings of the international legal framework identified by Francis. The fifth section returns to Catholic Social Teaching, connecting the themes of *Laudato Si’* to its rich intellectual history and briefly reviewing the key texts related to migration. Finally, the Paper will consider the political challenges facing the efforts to protect climate refugees and how the Catholic Church can play a leading role in addressing them. Francis, of course, faced similar challenges with the issue of climate change and crafted the argument of *Laudato Si’* accordingly. Similar strategies could be incorporated into a moral argument for protecting refugees. In total, this Paper serves as a thought experiment built upon a problem identified in paragraph twenty-five of *Laudato Si’*. By further articulating the issue and speculating about the manner in which Francis might approach it, this Paper seeks to gain insight into the means by which Catholic doctrine can inspire global action.

I. LESSONS FROM LAUDATO SI’

At the core of *Laudato Si’* and its resonance is the notion of “integral ecology.”⁷ Francis draws this concept from over a century of Catholic Social Teaching and the idea of integral human development,⁸ which was most clearly articulated in Pope Paul VI’s 1967 encyclical *Populorum Progressio*.⁹ Both integral ecology and integral human development understand the human person as complex and multifaceted.¹⁰ In order for the human person to

⁷ See *Laudato Si’*, *supra* note 2, ¶¶ 137–162 (“An integral ecology is inseparable from the notion of the common good, a central and unifying principle of social ethics.”).

⁸ See *id.* ¶¶ 3–6 (tracing Catholic Social Teaching on environmental issues over the previous half century).

⁹ See Pope Paul VI, *Populorum Progressio* [Encyclical Letter, On the Development of Peoples] (Mar. 26, 1967), http://w2.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_26031967_populorum.html, [hereinafter *Populorum*] (*Populorum* is typically considered the first articulation of the concept now known as integral human development although it does not include the specific phrase, instead referring to it as authentic development.).

¹⁰ See *id.* ¶ 14 (“The development We speak of here cannot be restricted to economic growth alone. To be authentic, it must be well rounded; it must foster the development of each man and of the whole man. As an eminent specialist on this question has rightly said: ‘We cannot allow economics to be separated from human realities, nor development from the civilization in which it takes place. What

flourish, attention must be paid not just to his economic and material needs but also to his social, cultural, and spiritual ones. Moreover, these aspects of human existence are not separate categories; they are imbricated and their interplay is necessary for full realization.¹¹ Paul was responding to a narrow understanding of development prevalent at the time, which focused predominantly on economic growth.¹² He argued that development efforts must be attuned to the whole human person, addressing social and spiritual needs as well.¹³

Because of the social and communal aspects of the human person, a moral imperative arises to care for your fellow man and to work toward his integral human development.¹⁴ The interconnectivity within the individual becomes the interconnectivity of society and mankind at large. Francis extends this notion to include the environment,¹⁵ making our care for creation into a moral imperative.¹⁶ Just as Paul critiqued an overly material understanding of development, Francis responded to what he calls the “technocratic paradigm” that “exalts the concept of a subject who, using logical and rational procedures, progressively approaches and gains control over an external object.”¹⁷ Modern man has developed his capacities in order to dominate creation rather than care for it.¹⁸

Within the concept of integral ecology there are three key concepts that would support a moral argument for climate refugees: (1) man’s interconnected relationship with the world; (2) the existence of ecological debt; and (3) the need for an ecological conversion capable of supporting a cultural revolution. These themes run throughout Francis’s papacy and will likely reappear in his future teachings.

The interconnectedness of man and the environment is central to *Laudato Si’* and the notion of integral ecology. “When we speak of the ‘environment’, what we really mean is a relationship existing between nature and the society which lives in it. Nature cannot be regarded as something separate from

counts for us is man—each individual man, each human group, and humanity as a whole.” (quoting Louis Joseph Lebret, O.P., *Dynamique concrète du développement* 28 (Paris, Économie et Humanisme, Les Éditions Ouvrières, 1961)).

¹¹ See *id.*

¹² See *id.*

¹³ *Id.* ¶ 13 (“The world situation requires the concerted effort of everyone, a thorough examination of every facet of the problem—social, economic, cultural and spiritual.”).

¹⁴ See *id.* ¶ 17 (“Each man is also a member of society; hence he belongs to the community of man. It is not just certain individuals but all men who are called to further the development of human society as a whole . . . We are the heirs of earlier generations, and we reap benefits from the efforts of our contemporaries; we are under obligation to all men. Therefore we cannot disregard the welfare of those who will come after us to increase the human family. The reality of human solidarity brings us not only benefits but also obligations.”). Therefore, the concern for one’s fellow man was certainly a component of Catholic Social Teaching long before *Populorum*. However, Paul VI provides an argument for development efforts that is neither wholly about altruism nor self-interest.

¹⁵ See *Laudato Si’*, *supra* note 2, ¶ 139 (“When we speak of the ‘environment’, what we really mean is a relationship existing between nature and the society which lives in it. Nature cannot be regarded as something separate from ourselves or as a mere setting in which we live. We are part of nature, included in it and thus in constant interaction with it.”).

¹⁶ See *id.* ¶ 158 (“We need only look around us to see that, today, this option is in fact an ethical imperative essential for effectively attaining the common good.”).

¹⁷ *Id.* ¶ 106.

¹⁸ See *id.*

ourselves or as a mere setting in which we live.”¹⁹ Such a relationship entails more than the ability of man to affect or alter the environment.²⁰ Francis leaves no doubt that climate change was caused by man’s actions.²¹ However, the relationship he describes is about more than simply the ability to alter the environment; it entails a responsibility to do so with care and respect for nature and the consequences felt by others. Ignoring the moral component of the relationship gives way to the technocratic paradigm.²²

Man’s interconnectedness with the environment is bidirectional. As humans assert their power over the natural world, it presses back. Carbon emissions alter the makeup of the atmosphere, which in turn raises temperatures and changes weather patterns resulting in desertification in some areas and flooding in others.²³ Agricultural productivity decreases, and saltwater intrudes on drinking aquifers. Occasionally, political violence or conflict results.²⁴ Consequently, man’s commitment to the technocratic paradigm has grave consequences for both the planet and his fellow man. But more important than the causal nature of this interaction is the moral responsibility that emerges from the relationship.²⁵ Adopting integral ecology requires man to accept that responsibility, which includes caring for those whose livelihoods become unsustainable as a result of climate change.

Francis describes an “ecological debt” that emerges as a result of man’s relationship with nature.²⁶ While some have suffered as a result of mankind’s distorted relationship with nature, others have benefitted. In fact, the technocratic paradigm persists in part because the comfort and power of a portion of the global population relies upon its perpetuation.²⁷ Their prosperity has come at the expense of others, motivating further environmental degradation and discouraging mitigation.

As a result, Francis argues for “differentiated responsibilities,”²⁸ which are more acute than a general responsibility for the effects of climate change shared by all mankind. Instead, Francis points a finger at the most prosperous

¹⁹ *Id.* ¶ 139.

²⁰ *See id.*

²¹ *See id.* ¶¶ 17–52 (“These problems are closely linked to a throwaway culture which affects the excluded just as it quickly reduces things to rubbish.”).

²² *See id.* ¶ 111 (“There needs to be a distinctive way of looking at things, a way of thinking, policies, an educational programme, a lifestyle and a spirituality which together generate resistance to the assault of the technocratic paradigm.”).

²³ *See* JOHN BROOME, CLIMATE MATTERS: ETHICS IN A WARMING WORLD 16–36 (2012).

²⁴ *See e.g.*, Mark Fischetti, *Climate Change Hastened Syria’s Civil War*, SCI. AM. (Mar. 2, 2015), <https://www.scientificamerican.com/article/climate-change-hastened-the-syrian-war/> (demonstrating how “drought in Syria, exacerbated to record levels by global warming, pushed social unrest in that nation across a line into an open uprising in 2011” that then devolved into civil war and motivated a mass refugee crisis).

²⁵ *Laudato Si’*, *supra* note 2, ¶¶ 67–68 (“This responsibility for God’s earth means that human beings, endowed with intelligence, must respect the laws of nature and the delicate equilibria existing between the creatures of this world.”).

²⁶ *Id.* ¶¶ 51–52.

²⁷ *See id.* ¶ 54.

²⁸ *See id.* ¶ 170 (“As the bishops of Bolivia have stated, ‘the countries which have benefited from a high degree of industrialization, at the cost of enormous emissions of greenhouse gases, have a greater responsibility for providing a solution to the problems they have caused.’” (quoting Bolivian Bishops’ Conference, *El universo, don de Dios para la vida* [Pastoral Letter on the Environment and Human Development in Bolivia] ¶ 86 (Mar. 2012))).

nations, arguing that they have a heightened responsibility to protect those suffering from the effects of climate change—precisely because their actions disproportionately contributed to it.²⁹ As Francis sees it, climate change is closely interwoven with issues of inequality and consequently “every ecological approach needs to incorporate a social perspective which takes into account the fundamental rights of the poor and underprivileged.”³⁰ Moreover, the responsibility cannot be shirked or avoided by ceasing actions that contribute to climate change. The debt has already been established and can no longer be avoided.

Within the specific context of climate refugees, an ecological debt with differentiated responsibilities suggests that prosperous nations must concern themselves with those whose livelihoods are at risk. If the vulnerable can be protected from the consequences of climate change, then prosperous nations must take active steps to ensure that protection.³¹ However, when this is not possible and people’s homes become incapable of supporting human flourishing (or even human life), prosperous nations have a responsibility to relocate individuals to places where they can regain their livelihoods.³² Francis suggests that refugee status could be one way for the prosperous nations to repay this debt.³³

Francis recognizes the significant political challenges that discourage action around climate change. Overcoming these challenges requires a “bold cultural revolution” that shifts the global mindset from the technocratic paradigm to one built around integral ecology.³⁴ He is not naïve about the difficulty or likelihood of such a revolution, but he is also not cynical about man’s capacity to accomplish it. Instead, he believes that such a massive shift in our global mindset requires an “ecological conversion,” by which individuals come to see themselves as part of the collective community of mankind and understand its relationship with the natural world.³⁵ Once such a conversion occurs, the technocratic paradigm will recede and concern for the common good can emerge.³⁶

A similar conversion and corresponding cultural revolution is no less necessary if the global community is to reframe its understanding of climate refugees and cultivate the political will to provide adequate protection. The resurgence of nationalism since *Laudato Si’* suggests even greater political

²⁹ *Laudato Si’*, *supra* note 2, ¶ 52 (“The poorest areas and countries are less capable of adopting new models for reducing environmental impact because they lack the wherewithal to develop the necessary processes and to cover their costs. We must continue to be aware that, regarding climate change, there are *differentiated responsibilities*.”).

³⁰ *Id.* ¶ 93.

³¹ *See id.* ¶ 52.

³² *See id.*

³³ *See id.* ¶ 25.

³⁴ *Id.* ¶ 114.

³⁵ *See id.* ¶¶ 216–21 (“So what [some committed and prayerful Christians, with the excuse of realism and pragmatism,] need is an ‘ecological conversion’, whereby the effects of their encounter with Jesus Christ become evident in their relationship with the world around them.”).

³⁶ *See id.* ¶ 220 (“By developing our individual, God-given capacities, an ecological conversion can inspire us to greater creativity and enthusiasm in resolving the world’s problems and in offering ourselves to God ‘as a living sacrifice, holy and acceptable’ (*Rom* 12:1). We do not understand our superiority as a reason for personal glory or irresponsible dominion, but rather as a different capacity which, in its turn, entails a serious responsibility stemming from our faith.”).

challenges may be looming.³⁷ Voters are resistant to the notion of responsibility or concern for the well-being of foreigners, let alone the idea of welcoming them across their borders. At the same time, the increasing number of migrants of all forms amplifies nationalistic concerns and reinforces resistance.³⁸ Politicians and policy makers respond to these concerns and are unlikely to change their approach to climate migrants without a conversion among their constituents. If Francis wishes to make a moral argument in favor of refugees, it may need to be even more compelling than *Laudato Si'*.

II. A GAP IN THE LEGAL FRAMEWORK

This Paper intentionally uses the term “refugee” more broadly than its conventional legal definition. Despite the imprecision and risk of confusion, this decision was made based on Francis’s indication in *Laudato Si'* that he believes those displaced by the effects of climate change should be considered refugees.³⁹ The term evokes the dire circumstances under which the migration occurs and suggests a responsibility on the part of those not directly affected. Francis’s choice seems intentional. However, the international legal definition is much more narrow, and most legal applications would exclude precisely the category of people Francis discusses.

The definitive international understanding of the term comes from the 1951 Convention on the Status of Refugees, the application of which was later expanded by a 1967 Protocol.⁴⁰

[T]he term “refugee” shall apply to any person who . . . owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former

³⁷ See, e.g., Christina Pazzanese, *In Europe, Nationalism Rising*, HARV. GAZETTE (Feb. 27, 2017), <http://news.harvard.edu/gazette/story/2017/02/in-europe-nationalisms-rising/>.

³⁸ See Phillip Connor, *International Migration: Key findings from the U.S., Europe and the world*, PEW RES. CTR. (Dec. 15, 2016), <http://www.pewresearch.org/fact-tank/2016/12/15/international-migration-key-findings-from-the-u-s-europe-and-the-world/>. Notably, there has been an increase in total number of migrants but not when measured as a percentage of a population. Additionally, the perception of increased migration amplifies the reaction to the actual increase.

³⁹ *Laudato Si'*, *supra* note 2, ¶ 25. Similarly, the term “climate refugee” is used throughout this paper rather than “environmental refugee” to distinguish those fleeing the effects of climate change rather than other environmental events that may or may not have been caused by climate change. At times, this Paper may also refer to migrants and displaced persons, both of which are intended to indicate a broader category, inclusive of both climate refugees and others.

⁴⁰ See Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 [hereinafter 1951 Convention]; Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter 1967 Protocol].

habitual residence, . . . is unable or, owing to such fear, is unwilling to return to it.⁴¹

The 1951 Convention, like all international treaties, reflects the time and context of its drafting. The idea for such a convention emerged following the devastation of Europe during World War II.⁴² As part of a larger effort led by the United Nations to promote human rights and guarantee that the war's atrocities would never occur again, the 1951 Convention codified elements of international customary law about the treatment of those fleeing persecution.⁴³ Central to the protection it afforded was a commitment to non-refoulement, the guarantee that those fleeing persecution would not be returned to a country where they risked the likelihood of further persecution.⁴⁴ Recognizing the vulnerability of people living without citizenship in their country of residence, it also provided for the protection of refugees' fundamental rights within the receiving nation.⁴⁵ At the time, "refugees were welcomed noncitizens in many countries . . . not least because . . . they came mainly in manageable numbers from neighboring countries with some ethnic affinities; their intake reinforced strategic objectives during the Cold War; and, as an added plus, they helped to meet labor shortages."⁴⁶ Consequently, the Convention focused less on the determination of status than the treatment of refugees within a country.

Initially, the 1951 Convention's scope was quite narrow. It applied only to those refugees whose flight was motivated by events that occurred in Europe prior to 1951.⁴⁷ The United Nations High Commission on Refugees, tasked with implementing the Convention, quickly recognized that refugee crises occurred frequently in other contexts as well and suggested the removal of the temporal and geographic restrictions.⁴⁸ A 1967 Protocol formally expanded the definition of refugee to give it a universal scope.⁴⁹ Left were the essential requirements that refugees (1) have a well-founded fear of persecution and (2) that the persecution be based on the individual's perceived membership in a particular group.⁵⁰

Whether a refugee's fear is well-founded is a matter of fact, determined based on the individual evidence of his or her case. "[C]redible evidence of an

⁴¹ 1951 Convention, *supra* note 40, art. 1, § A(2); *see also* 1967 Protocol, *supra* note 40, art. 1, § 2 ("For the purpose of the present Protocol, the term 'refugee' shall, except as regards the application of paragraph 3 of this article, mean any person within the definition of article 1 of the Convention as if the words 'As a result of events occurring before 1 January 1951 and . . . ' and the words ' . . . as a result of such events', in article 1 A(2) were omitted.") (extending the 1951 Convention, art. 1, § A(2) to those whose fear is based on events occurring after 1 January 1951).

⁴² *See* Andrew I. Schoenholtz, *The New Refugees and the Old Treaty: Persecutors and Persecuted in the Twenty-First Century*, 16 CHI. J. INT'L L. 81, 85–86 (2015).

⁴³ *See* Erika Feller, *The Evolution of the International Refugee Protection Regime*, 5 WASH. U. J. L. & POL'Y 129, 130–32 (2001).

⁴⁴ *See* 1951 Convention, *supra* note 40, art. 33; *see also* Jill I. Goldenziel, *Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States*, BERKELEY J. INT'L L. 47, 53 (2017).

⁴⁵ *See* 1951 Convention, *supra* note 40, arts. 3–30.

⁴⁶ Feller, *supra* note 43, at 129.

⁴⁷ 1951 Convention, *supra* note 40, art. 1.

⁴⁸ *See* Feller, *supra* note 43, at 132–33.

⁴⁹ *See* 1967 Protocol, *supra* note 40.

⁵⁰ 1951 Convention, *supra* note 40; 1967 Protocol, *supra* note 40.

applicant's actual experience of persecution in her home state will often be an excellent indicator of the fate that may await her upon return to that country."⁵¹ Given the centrality of persecution to one's determination as a refugee, both as the subject of the fear and as evidence that it is well-founded, it is worth investigating what constitutes a persecutory act. The 1951 Convention does not directly address this question,⁵² and United States case law is somewhat opaque on the topic as well. Courts have outlined a general concept of persecution but struggle to put forth a precise definition, holding instead that "actions [constituting persecution] must rise above the level of mere 'harassment'"⁵³ and go "above unpleasantness, harassment and even basic suffering."⁵⁴ Reading such opinions, one is left simply with an understanding of persecution as "an extreme concept, marked by the infliction of suffering or harm . . . in a way regarded as offensive."⁵⁵ Examining case law from multiple foreign jurisdictions, Fischel de Andrade identifies instances of persecution that include "arbitrary deprivation of life . . . torture or cruel, inhuman or degrading punishment or treatment . . . arbitrary detention, torture, beatings, forced sterilization, forced abortion, and female genital mutilation."⁵⁶ The survey suggests that persecution can occur via physical, psychological, or economic means,⁵⁷ supporting the widely-accepted definition proposed by James Hathaway,⁵⁸ who believes that the definition of persecution should incorporate human rights standards and protect individuals from acts that violate fundamental rights or freedoms.⁵⁹ Consequently, Hathaway argues that "persecution is most appropriately defined as the sustained or systemic failure of state protection in relation to one of the core entitlements which have been recognised by the international community;"⁶⁰ and that it "requires there to be 'sustained or systemic violation of basic human rights demonstrative of a failure of State protection.'"⁶¹ Moreover, the State's failure to protect is not excused, even if based on negligence or a substantial and legitimate reason.⁶² In other words, persecution undertaken for the sake of the greater good is still persecution.

Although the State's motivation is not essential, the reason for targeting the specific individual is. To qualify as a refugee under the 1951 Convention, the feared persecution must be based upon "race, religion, nationality, membership of a particular social group or political opinion."⁶³ There must be

⁵¹ JAMES C. HATHAWAY & MICHELLE FOSTER, *THE LAW OF REFUGEE STATUS* 161 (2d ed. 2014).

⁵² See José H. Fischel de Andrade, *On the Development of the Concept of 'Persecution' in International Refugee Law*, 3 ANUÁRIO BRASILEIRO DE DIREITO INTERNACIONAL 114, 115 (2008).

⁵³ See, e.g., *Tamas-Mercea v. Reno*, 222 F.3d 417, 424 (7th Cir. 2000).

⁵⁴ *Nelson v. Immigration and Naturalization Serv.*, 232 F.3d 258, 263 (1st Cir. 2000).

⁵⁵ *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004).

⁵⁶ Fischel, *supra* note 52, at 127.

⁵⁷ See *id.* at 126.

⁵⁸ See HATHAWAY & FOSTER, *supra* note 51, at 112.

⁵⁹ See *id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See Fischel, *supra* note 52, at 127.

⁶³ 1951 Convention, *supra* note 40, at art. 1.

a nexus between the persecutory act and the identity, or at least the perceived identity, of its victim.⁶⁴

The specific list of the categories themselves reflects the concerns of 1951 and the patterns of violence that characterized World War II.⁶⁵ Notably absent to a modern reader are gender, sexual orientation, age, and other classifications at the forefront of the contemporary refugee crises. Receiving states have at times interpreted “particular social group” broadly so as to include these categories and justify refugee status.⁶⁶ However, the UNHCR is adamant that “this category cannot be interpreted as a ‘catch all’ that applies to all persons fearing persecution.”⁶⁷ The UNHCR identifies two rationales by which States have understood and applied the scope of the “particular social group” category: (1) the immutability or protected characteristics approach, in which the characteristic at question is either unchangeable or so central to the person’s identity that he or she should not be required to change it;⁶⁸ and (2) the social perception approach, which asks whether a group has a shared characteristic that distinguishes them from the rest of society.⁶⁹ Each approach has shortcomings. The immutability approach struggles to delineate precisely what makes a characteristic central to human dignity, while the social perception approach is difficult to apply to either isolated instances or very large groups which may be disempowered but are not a minority population.

The UNHCR attempted to synthesize the two approaches to “particular social group” and clarify its application with a set of guidelines in 2002.⁷⁰ It suggests the following standard:

[A] particular social group is a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one’s human rights.⁷¹

UNHCR highlights four important components of this standard. First, the “group cannot be defined exclusively by the persecution that members of the

⁶⁴ Importantly, this does not require that an individual actually be a member of the persecuted category but merely that he or she be perceived as such. Consequently, an individual who is of one ethnic group may be persecuted because of physical characteristics that cause the persecutor to believe he or she is of a different ethnic group. Conversely, an individual, whose physical integrity is violated, is not necessarily persecuted merely because he or she is a religious minority if the persecutor was unaware of his or her status.

⁶⁵ See Jill I. Goldenziel, *The Curse of The Nation-State: Refugees, Migration and Security in International Law*, 48 ARIZ. ST. L.J. 579, 580–81 (2016).

⁶⁶ See United Nations High Commissioner for Refugees (UNHCR), Guidelines on International Protection: “Membership of A Particular Social Group” Within The Context of Article 1A(2) of The 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, ¶¶ 7–9, U.N. DOC. HCR/GIP/02/02 (May 7, 2002) [hereinafter UNHCR].

⁶⁷ *Id.* ¶ 2.

⁶⁸ *See id.* ¶ 6.

⁶⁹ *See id.* ¶ 7.

⁷⁰ *See id.* ¶ 10.

⁷¹ *Id.* ¶ 11.

group suffer.”⁷² There must be some other characteristic that unifies the group, even if that characteristic was not perceived as such until persecution occurs.⁷³ Second, there is no cohesiveness requirement and members of the group need not organize themselves around the shared characteristic or even know one another.⁷⁴ “The relevant inquiry is [simply] whether there is a common element that group members share.”⁷⁵ Third, not all members of the group need to be at risk of persecution; some members may be able to hide the characteristic or the persecutor might target only the most visible members.⁷⁶ Fourth, the size of the group is not a factor and it need not be a minority, but the group merely needs to be disempowered or otherwise vulnerable.⁷⁷

Consequently, in order to fall under the 1951 Convention, climate refugees must establish that the effect of climate change on their livelihoods constitutes a persecutory act that violates a fundamental right or freedom and that they are being targeted because of their membership in a particular social group. Climate refugees must first argue that they belong to particular social group defined by some characteristic other than their vulnerability to the effects of climate change. Smaller sub-groups of climate refugees may be able to do so based on their geographic origin—as citizens of low-lying or coastal communities or as subsistence farmers on land subject to desertification. Francis suggests that the poor might qualify as a particular group, whose marginalization places them at greater risk.⁷⁸ An additional challenge entails the need to demonstrate that the effects of climate change constitute persecution. The destruction of one’s livelihood may be devastating but it may not necessarily violate a fundamental right or freedom. Even if it were to constitute a persecutory act, it must still be connected to the climate refugee’s membership in the particular social group. Recall that the required nexus should focus on the reason the group was targeted even if not a direct causal link. Of course, the carbon emissions that lead to climate change were not

⁷² *Id.* ¶ 14.

⁷³ *See id.* (Providing the example of left-handedness: “[W]hile persecutory conduct cannot define the social group, the actions of the persecutors may serve to identify or even cause the creation of a particular social group in society. Left-handed men are not a particular social group. But, if they were persecuted because they were left-handed, they would no doubt quickly become recognizable in their society as a particular social group. Their persecution for being left-handed would create a public perception that they were a particular social group. But it would be the attribute of being left-handed and not the persecutory acts that would identify them as a particular social group.” (quoting *Applicant A v Minister for Immigration and Ethnic Affairs* (1997) 190 CLR 225, 264 (Austl.) (McHugh, J.)).

⁷⁴ *See* UNHCR, *supra* note 66, ¶ 15.

⁷⁵ *Id.*

⁷⁶ *See id.* ¶ 17.

⁷⁷ *Id.* ¶¶ 18–19 (The social group may even constitute a majority of the population (e.g. women)).

⁷⁸ *See Laudato Si’*, *supra* note 2, ¶ 48 (“[T]he deterioration of the environment and of society affects the most vulnerable people on the planet: ‘Both everyday experience and scientific research show that the gravest effects of all attacks on the environment are suffered by the poorest.’ For example, the depletion of fishing reserves especially hurts small fishing communities without the means to replace those resources; water pollution particularly affects the poor who cannot buy bottled water; and rises in the sea level mainly affect impoverished coastal populations who have nowhere else to go. The impact of present imbalances is also seen in the premature death of many of the poor, in conflicts sparked by the shortage of resources, and in any number of other problems which are insufficiently represented on global agendas.” (quoting Bolivian Bishops’ Conference, *El universo, don de Dios para la vida* [Pastoral Letter on the Environment and Human Development in Bolivia] ¶ 17 (Mar. 2012))).

specifically targeted at these particular groups, and the devastation of their livelihoods was merely an unintended consequence.

Other international conventions on refugees expanded the definition and may prove more useful for climate refugees. The now-disbanded Organization of African Unity's (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa adopted the 1951 Convention's standard and added the following:

The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or *events seriously disturbing public order* in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁷⁹

The OAU's expansion of the standard is significant, particularly its inclusion of the phrase "events seriously disturbing public order." This category eliminates the nexus requirement, separating the individual's particular identity or characteristics⁸⁰ from the reason for his or her persecution. As a result, it enables refugee status based upon disconnected events that may not otherwise qualify. The category is applicable in the case of natural disasters, but may also include the effects of climate change.⁸¹ It is unclear, however, whether it would include climate change induced events that are experienced gradually or only those events that are acute.

In 2009, the Kampala Convention drew inspiration from the OAU's standard to establish a framework for protecting internally displaced persons (IDPs).⁸² As the first treaty on IDPs to apply across Africa,⁸³ the Kampala Convention provides a binding definition for IDPs in the African Union's fifty-five member states.⁸⁴ Crucially, the Kampala Convention explicitly includes climate refugees.⁸⁵ It requires signatories to "take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, *including climate change*."⁸⁶ Similarly, the Cartagena Declaration, a non-binding instrument adopted by ten Latin American countries in 1984, also incorporates the "seriously disturbed public order"

⁷⁹ OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, art. 1 ¶ 2, Sept. 10, 1969, 1001 U.N.T.S. 45 (emphasis added) [hereinafter OAU Convention].

⁸⁰ Their identity, or perceived identity, remains a factor in consideration of their vulnerability to specific events but need not constitute the impetus for a persecutory act.

⁸¹ See Roberta Cohen & Megan Bradley, *Disasters and Displacement: Gaps in Protection*, 1 J. INT'L HUMAN. LEGAL STUD. 95, 106 (2010).

⁸² See *id.* at 127.

⁸³ See International Committee of the Red Cross, *ICRC Welcomes Entry into Force of Kampala Convention for Displaced Persons*, ICRC.ORG (May 12, 2012), <https://www.icrc.org/eng/resources/documents/news-release/2012/12-05-kampala-convention-entry-into-force.htm>.

⁸⁴ See Sanne Boswijk, *Kampala Convention on IDPs Enters into Force, Sets Out the AU's First Legally Binding Rules on Disaster Response*, IFRC.ORG (Dec. 21, 2012), <http://www.ifrc.org/en/what-we-do/idrl/latest-news/disaster-law-newsletter-december-2012/kampala-convention-on-idps-enters-into-force-sets-out-the-aus-first-legally-binding-rules-on-disaster-response-60474/>.

⁸⁵ See African Union Convention for The Protection and Assistance of Internally Displaced Persons in Africa, art. 5 ¶ 4, Oct. 23, 2009, 52 I.L.M. 397.

⁸⁶ *Id.* (emphasis added).

category, creating the possibility of its application to climate refugees.⁸⁷ It does not have the same legal teeth as the OAU Convention did before the OAU disbanded or the explicit inclusion of the Kampala Convention, but it marks an effort to extend the definition of refugee beyond the 1951 Convention.

The African and Latin American efforts to expand the definition are a positive sign for climate refugees. Such efforts indicate a growing recognition that the 1951 Convention's definition is overly narrow and restrictive and should be expanded—first with the inclusion of those fleeing natural disasters and then with those fleeing the effects of climate change. Furthermore, regional efforts are a reminder that not all international protections must be established on the global level. Regional blocks, with their shared interests and concerns, can be as effective, if not more so, in establishing protective frameworks. Additionally, regional efforts have a tendency to be replicated and spread. After all, even the 1951 Convention began as an agreement with a regional focus.⁸⁸

An alternative proposal for protecting climate refugees suggests application of the 1954 Convention Relating to the Status of Stateless Persons.⁸⁹ Because small island nations and other low-lying areas may literally disappear if sea levels continue to rise, the 1954 Convention might apply to those left when their homelands disappear. However, whether the 1954 Convention would apply is unclear and its utility uncertain. Simply put, there is no precedent for a state losing all of its land and not being absorbed into another nation.⁹⁰ There is no definitive list of required characteristics for statehood, but there is a general consensus that, at a minimum, it includes geographic territory and a population base.⁹¹ Consequently, if low-lying nations were overtaken by rising sea levels the status of their citizens would be in limbo. There is a chance that the 1954 Convention would apply; however, it would be tenuous and uncertain—hardly reassuring for those on the frontlines of climate change.

Moreover, the 1954 Convention on Statelessness would only protect a narrow category of climate refugees: those whose nations have literally disappeared. Those living on low-lying island nations are some of the most visible victims of climate change, but they make up only a fraction of people at risk. There are also those living along coastlines, facing desertification, or

⁸⁷ See Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, art. 3 ¶3, Nov. 22, 1984, https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf (“[T]he definition or concept of a refugee to be recommended for use in the region is one which, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, includes among refugees persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”); see also Marina Sharpe, *The 1969 African Refugee Convention: Innovations, Misconceptions, and Omissions*, 58 MCGILL L. J. 97, 103 (2012).

⁸⁸ See 1951 Convention, *supra* note 40, at art. 1.

⁸⁹ See Susin Park (Head of the UNHCR Office for Switzerland and Liechtenstein), *Climate Change and the Risk of Statelessness: The Situation of Low-Lying Island States*, PPLA/2011/04 (May 2011); Convention Relating to The Status of Stateless Persons, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter 1954 Convention].

⁹⁰ Park, *supra* note 89, at 6.

⁹¹ See *id.* at 4–8. There are cases at the periphery, such as the Sovereign Military Order of Malta, but these are not typically treated as fully sovereign.

having to adapt to decreased agricultural production. For those to whom it would apply, the 1954 Convention would likely be triggered too late. Life on low-lying islands will become untenable due to salt-water intrusion, increased population density, and rising storm surges long before the islands fully disappear.⁹² By the time the 1954 Convention applies, there may already be no one left.

III. CASE STUDY

Ioane Teitiota gained notoriety in the early 2010s as the world's "first . . . climate refugee."⁹³ Teitiota is from the small Pacific island nation of Kiribati. The string of atolls that make up Kiribati has begun to experience the effects of climate change and the resulting overpopulation.⁹⁴ Potable groundwater has become scarcer as salt water intrudes and waste contaminates aquifers.⁹⁵ Fish populations in the surrounding waters have declined due to overfishing, warming waters, and declines in coral reefs. Kiribati's median elevation is a mere six meters above sea level, meaning that the anticipated three feet rise in sea level over the next century will swallow up large portions of the country.⁹⁶ The encroaching salt water has already begun to degrade sea walls and erode the nation's copious coastline.⁹⁷ Life on the islands is tenuous and will only become more so in the coming decades.

Teitiota and his wife moved from Kiribati to New Zealand on a work visa in 2007 but remained after it expired in 2010.⁹⁸ In Kiribati, he had struggled to find work and was forced to live with his in-laws.⁹⁹ Increasingly higher tides flooded their home, destroying the sea wall and contaminating drinking water.¹⁰⁰ Life in Kiribati had been a struggle, continually challenged by the impact of environmental changes. In New Zealand, Teitiota found work on a farm and enjoyed a stable, if still difficult, life for himself, his wife, and their three children who were born in New Zealand.¹⁰¹ In 2011, authorities stopped

⁹² *See id.* at 8–9.

⁹³ *See* Tim McDonald, *The Man Who Would Be the First Climate Change Refugee*, BBC NEWS (Nov. 5, 2015), <http://www.bbc.com/news/world-asia-34674374>.

⁹⁴ *See* Kenneth R. Weiss, *The Making of a Climate Refugee: How an Unsuspecting Farmworker from Kiribati Became the Brand Ambassador of Climate Change—Despite Barely Knowing What It Was*, FOREIGN POL'Y (Jan. 28, 2015), <http://foreignpolicy.com/2015/01/28/the-making-of-a-climate-refugee-kiribati-tarawa-teitiota/>.

⁹⁵ *See id.*

⁹⁶ *See id.*

⁹⁷ *See id.*

⁹⁸ Teitiota did not in fact know that he was out of status. *See id.* (“[I]n 2010, . . . Teitiota found a lawyer in New Zealand to renew visas for him and his wife. Teitiota understood that the lawyer would take care of it all, so ‘I left everything to him,’ he said. But it wasn’t so simple. The lawyer had follow-up questions on how to proceed, not to mention concerns about payment; however, Teitiota—who was working long hours in the fields—was difficult to reach. Without the cash to cover legal fees, the lawyer stopped working on the Teitiotas’ case and held onto their passports, visas, and other documents. More significantly, the lawyer didn’t tell Teitiota that important deadlines had passed.”).

⁹⁹ *See id.*

¹⁰⁰ *See id.*

¹⁰¹ *See id.*

him for a burned-out taillight. On account of overstaying his visa, he then faced the threat of deportation.¹⁰² In an effort to remain, Teitiota applied for refugee status under New Zealand's Immigration Act.¹⁰³ He based his application on Kiribati's unique vulnerability to the effects of climate change, arguing that the danger he faced in Kiribati qualified as persecution.¹⁰⁴

A Refugee and Protection Unit officer refused Teitiota's claim, finding his circumstances to be outside of the scope of the 1951 Convention as incorporated into New Zealand's law.¹⁰⁵ The Immigration and Protection Tribunal upheld the decision on appeal, agreeing that the 1951 Convention did not apply.¹⁰⁶ Teitiota appealed the tribunal's decision to the High Court but he was refused review.¹⁰⁷ He then sought review from the Appeals Court, followed by the Supreme Court of New Zealand.¹⁰⁸ All of these motions were rejected, upholding the Immigration and Protection Tribunal's decision and reasoning. Teitiota was deported back to Kiribati in 2015.¹⁰⁹

Teitiota's circumstances are precisely the sort described by Francis in *Laudato Si'*.¹¹⁰ Conditions on Kiribati are increasingly stark with any reversal of the trend line unlikely. Teitiota's actions may easily be seen as reasonable—the simple desire of a man to provide for his family. The courts that reviewed his case even expressed sympathy for the difficulty of his situation.¹¹¹ Yet his petition was denied because of two underlying factors. First, his circumstances did not fit neatly within the framework of the 1951 Convention. This alone is not determinative however, as States can extend, or at least have previously extended, the scope of the Convention through application of the “particular group” category.¹¹² Second, the court sensed the lack of political will to extend protection to climate refugees, fearing that it would create an onslaught of applicants whom the state would be unable to incorporate.¹¹³ The two factors combined motivated the court's decision.

New Zealand's Immigration Act incorporates the 1951 Convention's standard by explicit reference.¹¹⁴ In light of that standard, the tribunal that reviewed Teitiota's case applied a two-part test. First, is there an objectively “real chance of the refugee claimant being persecuted if returned to the country

¹⁰² *See id.*

¹⁰³ *See* Teitiota v. The Chief Executive of Ministry of The Business, Innovation and Employment, [2015] 7 NZSC 107 at [5] (N.Z.).

¹⁰⁴ *See id.*

¹⁰⁵ *See id.* at [6].

¹⁰⁶ *See id.*

¹⁰⁷ *See id.*

¹⁰⁸ *See id.*

¹⁰⁹ *See id.* at [14]; Weiss, *supra* note 94.

¹¹⁰ *See Laudato Si'*, *supra* note 2, ¶ 25.

¹¹¹ *See* Teitiota v. The Chief Executive of Ministry of Business, Innovation and Employment, [2014] 50 NZCA 173 at [21] (N.Z.) (“The short point is that the effects of climate change on Mr. Teitiota, and indeed on the population of Kiribati generally, do not bring him within the Convention. That is the position even if the most sympathetic, ambulatory approach permissible to interpreting the Convention is taken. The Convention is quite simply not the solution to Kiribati's problem.”).

¹¹² So long as it is within a reasonable interpretation of the term.

¹¹³ *See* Teitiota v. The Chief Executive of Ministry of Business, Innovation and Employment, [2013] NZHC 3125 at [51] (N.Z.).

¹¹⁴ *See* Immigration Act 2009, pt. 129(1) (N.Z.) (“A person must be recognised as a refugee in accordance with this Act if he or she is a refugee within the meaning of the [1951] Refugee Convention.”).

of nationality?”¹¹⁵ Second, “is there a Convention reason for that persecution?”¹¹⁶ The Court used the Hathaway definition of persecution, which roots persecution in the sustained or systematic violation of human rights.¹¹⁷ Ultimately, the tribunal was unconvinced that the effects of climate change, even if they are significant enough to render a person’s previous livelihood untenable, violate a core human rights principle.¹¹⁸ Moreover, the tribunal reasoned that Teitiota’s circumstances lacked the element of agency connecting his treatment to his perceived membership in a protected category.¹¹⁹ The Tribunal made clear that it did not deny that climate change was real or manmade; however, it required Teitiota to establish that the specific concerns he faced were objectively likely to occur in the short term and were the direct consequence of human action.¹²⁰ At the same time, the Tribunal argued that rising sea levels place the entire nation of Kiribati at risk, meaning that Teitiota is not being singled out for persecution as a member of a particular social group.¹²¹ It did not comment on the contradiction inherent in requiring an individual to prove an event would occur, while simultaneously claiming that it would affect the entire nation. In total, the Tribunal rejected the 1951 Convention’s application on every front. Teitiota’s fear was not well-founded, likely to occur, based on his perceived identity, or even severe enough to qualify as persecution. In this sense, Teitiota’s case demonstrates the breadth of the legal gap and how ill-suited the existing framework is for handling climate refugees—precisely the gap Francis identified in *Laudato Si’*.

The second, and subtler, factor underlying the Teitiota decision involves a lack of political will, an issue about which Francis has expressed concern. In reviewing the Tribunal’s decision, Justice Priestly of the High Court added two additional arguments. The first suggests that granting refugee status to Teitiota would open the proverbial floodgates to lawsuits by other climate refugees and would overwhelm New Zealand with migrants.¹²² Many around the world express similar concerns to justify immigration restrictions of all sorts. Francis has suggested that he recognizes the validity of the concern about immigration and sovereignty.¹²³ At the same time, some view restriction-based rationales as being indifferent to the suffering of fellow human beings, predicated on the false notion that a group can ignore the integrated nature of mankind. Priestly’s second argument contends that Teitiota’s claim inverts the logic of the 1951 Convention.

¹¹⁵ *Teitiota*, [2014] 50 NZCA at [14].

¹¹⁶ *Id.*

¹¹⁷ *See id.* at [15]; *see also supra* text accompanying notes 51–62.

¹¹⁸ *See Teitiota*, [2014] 50 NZCA at [15].

¹¹⁹ *See id.* at [18].

¹²⁰ *See id.* at [31] (“[T]he Tribunal did consider the contribution of humans in bringing about rising sea levels and climate change generally. Like the previous two, this question is not open for serious argument.”).

¹²¹ *See id.* at [23].

¹²² *Teitiota v. The Chief Executive of Ministry of Business, Innovation and Employment*, [2013] NZHC 3125 at [51] (N.Z.).

¹²³ *See, e.g.,* Antonio Caño & Pablo Ordaz, *Pope Francis: “The Danger Is That in Time of Crisis We Look for a Savior”*, EL PAÍS (Jan. 22, 2017), https://elpais.com/elpais/2017/01/21/inenglish/1485026427_223988.html (“[E]ach country has the right to control its borders, who comes in and who goes out, and those countries at risk—from terrorism or such things—have even more of a right to control them.”).

The appellant raised an argument that the international community itself was tantamount to the “persecutor” for the purposes of the Refugee Convention. This completely reverses the traditional refugee paradigm. Traditionally a refugee is fleeing his own government or a non-state actor from whom the government is unwilling or unable to protect him. Thus the claimant is seeking refuge within the very countries that are allegedly “persecuting” him.¹²⁴

Although the observation is astute, it also highlights a shortcoming of the 1951 Convention. Receiving States offer asylum under the 1951 Convention as a matter of altruism rather than responsibility. Even if viewed as an *erga omnes* obligation, it is markedly different from the ecological debt described by Francis.¹²⁵ Arguing that a State has a greater responsibility to protect those endangered by the actions of others than it does those for whom it shares culpability is counterintuitive. Yet, this is the point that Priestly makes;¹²⁶ he inverts the relationship between indebtedness and responsibility. Such reasoning would be inconsonant with Francis’s expressed view of the moral implications of climate change.

IV. THE CONTEXT OF CATHOLIC SOCIAL TEACHING

Modern Catholic Social Teaching began in 1891 when Pope Leo XIII issued *Rerum Novarum*, a letter to the Catholic Church that outlined and analyzed the appropriate relationship between labor and capital.¹²⁷ Built upon scriptural interpretation and nearly two millennia of Catholic Church tradition, *Rerum Novarum* serves as the foundational text for what has become a rich body of church documents focused on the relationship between man, society, the church, and governments. Underlying this intellectual tradition are seven principles, articulated by the United States Conference of Catholic Bishops as concern for the (1) life and dignity of the human person; (2) call to family, community, and participation; (3) rights and responsibilities; (4) option for the poor and vulnerable; (5) dignity of work and rights of workers; (6) solidarity; and (7) care for God’s creation.¹²⁸ *Laudato Si’* is built upon this tradition. It draws upon all seven principles, but relies most significantly on the rights and responsibilities of those responsible for climate change, options for the poor and those vulnerable to its consequences, solidarity among all mankind, and

¹²⁴ *Teitiota*, [2013] NZHC at [55].

¹²⁵ See *Laudato Si’*, *supra* note 2, ¶ 51.

¹²⁶ See *Teitiota*, [2013] NZHC at [55].

¹²⁷ See Pope Leo XIII, *Rerum Novarum* [Encyclical Letter on Capital and Labor] (1891), http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html.

¹²⁸ *Seven Themes of Catholic Social Teaching*, U.S. CONF. CATH. BISHOPS, <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/seven-themes-of-catholic-social-teaching.cfm> (last visited Nov. 1, 2018).

care for God's creation.¹²⁹ Any analysis of migration and displacement within the framework of Catholic Social Teaching should find its focus within these same core principles.

Francis's specific concern for refugees and the displaced is not new to Catholic Social Teaching. In 1963, Pope John XXIII, speaking of refugees in the more conventional sense, declared:

[I]t is not irrelevant to draw the attention of the world to the fact that these refugees are persons and all their rights as persons must be recognized . . . And among man's personal rights we must include his right to enter a country in which he hopes to be able to provide more fittingly for himself and his dependents. It is therefore the duty of State officials to accept such immigrants and—so far as the good of their own community, rightly understood, permits—to further the aims of those who may wish to become members of a new society.¹³⁰

Two years later, John XXIII's successor, Pope Paul VI, included concern for refugees within his vision for the Catholic Church in the modern world.¹³¹ Emerging from the Second Vatican Council, the pastoral constitution, *Gaudium et Spes*, emphasized the Catholic Church's concern for social justice and global solidarity.¹³² It includes refugees among those to whom "a special obligation binds us to make ourselves the neighbor of every person without exception and of actively helping him when he comes across our path."¹³³ The language indicates concern for those displaced and seeking assistance, rather than the precise use of the term refugee. In doing so, *Gaudium et Spes* points toward the notion of integral human development that Paul VI would articulate in *Populorum Progressio* in 1967¹³⁴ and would ultimately form the intellectual core of Francis's *Laudato Si'*.

¹²⁹ See *Laudato Si'*, *supra* note 2.

¹³⁰ Pope John XXIII, *Pacem in Terris* [Encyclical Letter on Establishing Universal Peace in Truth, Justice, Charity, and Liberty] ¶¶ 105–06 (Apr. 11, 1963), http://w2.vatican.va/content/john-xxiii/en/encyclicals/documents/hf_j-xxiii_enc_11041963_pacem.html.

¹³¹ See Pope Paul VI, *Gaudium et Spes* [Pastoral Constitution on the Church in the Modern World] ¶¶ 27-b (Dec. 7, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19651207_gaudium-et-spes_en.html ("In our times a special obligation binds us to make ourselves the neighbor of every person without exception and of actively helping him when he comes across our path, whether he be an old person abandoned by all, a foreign laborer unjustly looked down upon, a refugee, a child born of an unlawful union and wrongly suffering for a sin he did not commit, or a hungry person who disturbs our conscience by recalling the voice of the Lord, 'As long as you did it for one of these the least of my brethren, you did it for me' (Matt. 25:40)."); see also *id.* ¶ 84-b ("To reach this goal, organizations of the international community, for their part, must make provision for men's different needs, both in the fields of social life—such as food supplies, health, education, labor and also in certain special circumstances which can crop up here and there, e.g., the need to promote the general improvement of developing countries, or to alleviate the distressing conditions in which refugees dispersed throughout the world find themselves, or also to assist migrants and their families.").

¹³² See *id.*

¹³³ *Id.* ¶ 27-b.

¹³⁴ See *Populorum*, *supra* note 9.

Building upon centuries of tradition and scripture, together with five decades of Catholic Social Teaching following John XXIII's words about refugees, Francis has been adamant about the Catholic Church's responsibility to assist the displaced. In fact, he has called those who refer to themselves as Christians but also refuse to help refugees "hypocrite[s]."¹³⁵ Despite the bluntness of his language, Francis does not use the term refugee with precision. His statements frequently blur the distinction made by the 1951 Convention by placing refugees and asylum seekers alongside migrant workers and the displaced. His words echo those of Paul VI that focus on the refugees' search for assistance, rather than the circumstances of their need. Ultimately, refugees are not determined by a well-founded fear of persecution but rather by the vulnerability experienced when forced to flee one's home, regardless of the circumstances. Francis argues that wealthy nations have an imperative moral responsibility to assist these refugees, highlighting the culpability of developed nations for creating the circumstances—whether they be war, unemployment, or climate change—that lead to mass migration.¹³⁶ The root causes of migration parallel the notion of "ecological debt," implicating receiving nations as more than mere bystanders.¹³⁷

V. THE CHURCH'S ROLE

Crucially, Francis sees the responsibility to assist refugees as more than a personal or individual duty; rather, it is the obligation of governments and the international community.¹³⁸ Francis has explicitly called for the creation of legal frameworks to protect migrants and refugees more effectively:

We are speaking about millions of migrant workers, male and female—and among these particularly men and women in irregular situations—of those exiled and seeking asylum, and

¹³⁵ See Catholic News Service, *Pope Francis: You Can't Defend Christianity By Being 'Against Refugees and Other Religions'*, CATH. HERALD (Oct. 13, 2016), <http://www.catholicherald.co.uk/news/2016/10/13/pope-francis-you-cant-defend-christianity-by-being-against-refugees-and-other-religions/>.

¹³⁶ See *The Pope Receives the Participants in the 6th International Forum on Migration and Peace*, VATICAN (Feb. 21, 2017), <http://press.vatican.va/content/salastampa/en/bollettino/pubblico/2017/02/21/170221a.html> [hereinafter *International Forum*].

¹³⁷ See Guillaume Goubert & Sébastien Maillard, *La Pape François à « La Croix » : « Il Faut Intégrer Les Migrants »*, LA CROIX (May 16, 2017), <https://www.la-croix.com/Religion/Pape/Pape-Francois-Il-faut-integrer-migrants-2016-05-16-1200760525> ("Mais la question de fond à se poser est *pourquoi* il y a tant de migrants aujourd'hui. . . . Le problème initial, ce sont les guerres au Moyen-Orient et en Afrique et le sous-développement du continent africain, qui provoque la faim. S'il y a des guerres, c'est parce qu'il y a des fabricants d'armes—ce qui peut se justifier pour la défense—et surtout des trafiquants d'armes. S'il y a autant de chômage, c'est à cause du manque d'investissements pouvant procurer du travail, comme l'Afrique en a tant besoin." [But the basic question is *why* there are so many migrants today. . . . The initial problem is the wars in the Middle East and Africa and the underdevelopment of the African continent, which causes hunger. If there are wars, it is because there are manufacturers of weapons—which can be justified for the defense—and especially for arms traffickers. If there is as much unemployment, it is because of the lack of investments that can provide labor, as Africa so badly needs.] (translation provided by the author)).

¹³⁸ See *International Forum*, *supra* note 136.

of those who are victims of trafficking. Defending their inalienable rights, ensuring their fundamental freedoms and respecting their dignity are duties from which no one can be exempted. Protecting these brothers and sisters is a moral imperative which translates into adopting juridical instruments, both international and national, that must be clear and relevant; implementing just and far reaching political choices; prioritising constructive processes, which perhaps are slower, over immediate results of consensus; implementing timely and humane programmes in the fight against “the trafficking of human flesh” which profits off others’ misfortune; coordinating the efforts of all actors, among which, you may be assured will always be the Church.¹³⁹

In addition to this call, Francis has committed the Church to playing a leading role in efforts to protect migrants and displaced people.¹⁴⁰ Given the notions of integral ecology and integral human development that dominate *Laudato Si’*, this role will almost certainly include advocating for at least three elements: a broader definition of those deserving protection that extends beyond the limits of the 1951 Convention and includes climate refugees among other displaced people; a reiteration of the multifaceted nature of human existence and recognition that the deprivation of one element or component can place human well-being and life at risk, creating the need to migrate; and a moral obligation on the part of all to protect those displaced, which is heightened for wealthy nations sharing culpability for the sources of displacement, including climate change. Integral human development and ecological debt demand these elements and Francis’s Church will likely advocate for them.

The Catechism of the Catholic Church clarifies church teaching. Currently, in reference to migrants it states “[t]he more prosperous nations are obliged, to the extent they are able, to welcome the *foreigner* in search of the security and the means of livelihood which he cannot find in his country of origin.”¹⁴¹ There is no indication that the spirit of hospitality and welcome is restricted to those lawfully present or those who meet the international definition of refugee. The Bishops’s Conferences further refine and clarify the Church’s Social Teaching, translating it into specific policy recommendations and positions. For example, on the issue of refugees, the United States Conference of Catholic Bishops recognizes the interest of governments to control their borders, but at the same time, specifically advocates for the fair and dignified treatment of those seeking asylum.¹⁴² In articulating the Catholic Church’s stance, the Conference recommends changes to processing procedures, filing

¹³⁹ *Id.*

¹⁴⁰ *See id.*

¹⁴¹ *Catechism of the Catholic Church*, VATICAN: RESOURCE LIBRARY ARCHIVE (Nov. 04, 2003), http://www.vatican.va/archive/ccc_css/archive/catechism/p3s2c2a4.htm (emphasis in original) (located at part III, section 2, chapter 2, article 4, cross reference 2241).

¹⁴² *See Catholic Church Teaching on Vulnerable Migrant Populations*, U.S. CONF. CATH. BISHOPS (Jan. 2011), <http://www.usccb.org/issues-and-action/human-life-and-dignity/migrants-refugees-and-travelers/vulnerablemigrantpopulations.cfm>.

deadlines, and the treatment of those awaiting adjudication.¹⁴³ It is through this process that a Pope's, and ultimately the Catholic Church's, stance on social issues is translated into recommendations that are discrete and actionable. In the case of climate refugees, policy stances would likely include a call to broaden the definition of refugees or create a new category with similar protections. This would likely increase the number of displaced persons welcomed by wealthy nations, would protect the rights of the most vulnerable, and ensure the provision of appropriate social services.

While Francis demands a great deal from the international community in response to refugees, he is not naïve about the political will to achieve it. The backlash against refugees in Europe and the rising sense of protectionism around the globe make the likelihood of a voluntary expansion of the 1951 Convention a virtual nullity.¹⁴⁴ Reopening the 1951 Convention or the definition of refugees in the current political climate could conceivably result in its narrowing rather than extension. Even if it were extended, it almost certainly would not be broad enough to include climate refugees. The global application of something akin to the OAU Convention's protection for those fleeing "events seriously disturbing public order" is currently unthinkable. New Zealand is not an outlier—political will is lacking across the globe.

Yet, the same cynicism could be applied to international action on climate change. In spite of this, Francis promulgated *Laudato Si'* at a time when the future of the Sustainable Development Goals and the Paris Climate Agreement were uncertain.¹⁴⁵ In doing so, he demonstrated a second, perhaps even more powerful, leadership role the Catholic Church can play. As he did with *Laudato Si'*, Francis can provide the moral argument for action while leaving the policy proposals and specific strategies to others.¹⁴⁶ That moral argument

¹⁴³ See *id.* ("The U.S. Bishops believe that U.S. immigration policy should prevent the unnecessary detention of asylum-seekers, enhance due process protections, and revise parole criteria. Detention of asylum seekers should be limited to such cases where it is absolutely necessary for public health or safety, and even then, it should be in the least restrictive setting possible. U.S. immigration policy should provide meaningful protection to asylum seekers by eliminating the one-year filing deadline, providing appropriate screening by a qualified adjudicator for all migrants with a possible asylum claim, and eliminating mandatory detention of asylum seekers. The terrorism-related grounds of inadmissibility should target actual terrorism; definitions and interpretations of key terms should be revised and a more effective process of adjudicating exemptions should be implemented. Finally, the U.S. Bishops believe that the conditions for processing and holding children upon apprehension should be appropriate for children—providing at a minimum adequate food and drinking water, medical assistance, clean and dry clothes, toilets and sinks, adequate temperature control and ventilation, supervision to protect them from others, and separation from unrelated detained adults—and the least restrictive conditions possible. In accordance with the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPPRA) of 2008, all unaccompanied alien children apprehended at the border should be screened to determine whether they may be victims of trafficking or fear persecution. Further, unaccompanied alien minors removed from the U.S. should be protected from potential trafficking by ensuring their safe repatriation. U.S. policy should ensure that the best interests of the child are taken into account in all placement and release decisions made by the Office of Refugee Resettlement (ORR). Children should be accommodated within a child welfare context.").

¹⁴⁴ See Pazzanese, *supra* note 37.

¹⁴⁵ See Michael D. Shear, *Trump Will Withdraw U.S. From Paris Climate Agreement*, N.Y. TIMES (June 1, 2017), <https://www.nytimes.com/2017/06/01/climate/trump-paris-climate-agreement.html>. Admittedly, the Paris Agreement's certainty has been placed in doubt by the announcement of the Trump administration that it intends to remove the United States from the agreement.

¹⁴⁶ In 2015, after establishing the moral argument for action against climate change in *Laudato Si'*, Francis symbolically endorsed the Sustainable Development Goals with his speech to the United

could inspire a conversion, similar to the one described in *Laudato Si'*,¹⁴⁷ which refocuses attention on the integral nature of human experience and demands recognition of man's proper relationship with nature and one another. Over time, this conversion could create political will for action. But to be sufficiently impactful, the moral argument must also resonate beyond the Catholic faith. Consequently, *Laudato Si'* is notable in its ecumenical and interreligious tone. Francis cites scholars of the Eastern Church and other faiths as well as secular experts to buttress his notion of integral ecology.¹⁴⁸ His argument is based on an appeal to our common humanity rather than the unique theological idiosyncrasies of the Catholic faith.¹⁴⁹ Francis specifically crafted his argument to inspire the ecological conversion of a large enough community to cultivate political will for change, which by necessity included non-Catholics. Likewise, a moral argument for refugees must address "all people of good will."¹⁵⁰ Within the framework of integral human development, challenges, like climate change and refugees, become opportunities for unification rather than division.

CONCLUSION

Speculating about the content of possible future papal encyclical is more than prognostication. It is a thought experiment that provides insight into the core themes of Francis's papacy, regardless of what actual topic he selects for his next encyclical or whether he decides to write one at all. Thus far, Francis's papacy has closely aligned with themes of Catholic Social Teaching rooted in

Nations General Assembly. *Pope Francis Evaluates 2030 Agenda for Sustainable Development*, TECHNOCRACY NEWS & TRENDS (Oct. 20, 2016), <https://www.technocracy.news/pope-francis-evaluates-2030-agenda-sustainable-development/>. He indicated a path forward, endorsing the plan of action established by others. *Id.* However, there is no clear parallel initiative on migration for Francis to endorse. Although it remains emergent compared to the SDGs in 2015, one possibility is the Platform on Disaster Displacement (PDD). See *The Context*, PLATFORM ON DISASTER DISPLACEMENT, <https://disasterdisplacement.org> (last visited Dec. 14, 2018). The PDD grew out of the framework established through the consultation of the Nansen Initiative and endorsed by 109 nations in 2015. *Our Response*, PLATFORM ON DISASTER DISPLACEMENT, <https://disasterdisplacement.org/the-platform/our-response> (last visited Dec. 14, 2018). It specifically aims to address the legal gap facing those forced across borders by natural and manmade disaster and to establish best practices for receiving nations. It applies the United Nations Office for Disaster Risk Reduction (UNISDR)'s definition for disaster—"serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources." *Key Definitions*, PLATFORM ON DISASTER DISPLACEMENT, <https://disasterdisplacement.org/the-platform/key-definitions> (last visited Dec. 14, 2018). Reminiscent of the OAU convention and inclusive of climate refugees and other displaced persons, the PDD is the sort of action plan for which Francis's moral argument could be leveraged.

¹⁴⁷ See *Laudato Si'*, *supra* note 2, ¶¶ 216–21.

¹⁴⁸ See *id.*

¹⁴⁹ See *id.* ¶ 62 ("I am well aware that in the areas of politics and philosophy there are those who firmly reject the idea of a Creator, or consider it irrelevant, and consequently dismiss as irrational the rich contribution which religions can make towards an integral ecology and the full development of humanity. Others view religions simply as a subculture to be tolerated. Nonetheless, science and religion, with their distinctive approaches to understanding reality, can enter into an intense dialogue fruitful for both.")

¹⁵⁰ See *id.*

documents such as *Gaudium et Spes* and *Populorum Progressio*, which envision a central role for the Catholic Church on the global stage. At the same time, Francis has intentionally avoided a prescriptive approach, recognizing that specific policy proposals are better left to those with technical expertise. Instead, Francis focuses on the Catholic Church's area of expertise—providing moral arguments for global action. *Laudato Si'* leveraged Francis's unique moral authority to resonate beyond Catholics in order to cultivate support for action on climate change. At the same time, the principles of Catholic Social Teaching and the themes already expressed in Francis's writings indicate that a moral argument from the Catholic Church will demand a broadening of the definition of refugee, a recognition of our interconnected and interdependent lives, and the expectation that those responsible for climate change have a special obligation to care for those vulnerable to it.