

Volume 128 | Issue 2

Winter 2024

The Case for Climate Reparations

Scott W. Stern

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlr>

 Part of the [Environmental Law Commons](#), [Legal Writing and Research Commons](#), and the [Natural Resources Law Commons](#)

Recommended Citation

Scott W. Stern, *The Case for Climate Reparations*, 128 DICK. L. REV. 529 (2024).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlr/vol128/iss2/5>

This Book Review is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review (2017-Present) by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Book Reviews

The Case for Climate Reparations

Scott W. Stern*

ABSTRACT

Climate reparations are, to employ an old cliché, an idea whose time has come. Of course, calls for reparations have been emanating from the Global South since long before scholars in the Global North started paying attention. The United States has been in the midst of a public debate over reparations for many years. And reparations have become among the more contentious issues pushed by campaigners and even delegates at international climate summits. Yet, although legal scholars have begun to contend with climate reparations, there is hardly a robust body of literature on the matter. The subject deserves—demands—deep scrutiny.

This Review has two goals. First, it seeks to advance a brief but rigorous case for climate reparations. Second, it aims to broaden

* J.D., Yale Law School, 2020; B.A., M.A., Yale University, 2015. As always, I owe a debt of appreciation to far more people—friends, colleagues, mentors, family—than I can name. I arrived at the political positions I discuss in the following review essay over many years of study, conversation, and legal practice—and I am profoundly grateful to those who joined me for parts of those journeys. Thanks, especially, to the generous and diligent publicists that provided review copies of the titles discussed herein. Thanks, as well, to the excellent staff of the *Dickinson Law Review*. I dedicate this piece to my brand-new nephew—may he grow up and thrive in a just, livable, temperate world.

legal discussions of climate reparations by placing the subject in direct conversation with the histories of land enclosure, seizure, and privatization. It attempts to do this by reading two seemingly disparate books alongside one another: *Reconsidering Reparations* by Olúfémí O. Táíwò (2022) and *The Long Land War: The Global Struggle for Occupancy Rights* by Jo Guldi (2022). Considering these two recent works side by side allows us to see the historical and analytical building-blocks for the sturdiest possible case for reparations, a case that is responsive to the past, clear-eyed about the present, and even hopeful for a radical future. In the end, it is revealing that two such different books ultimately conclude with the same prescription—that a massive reordering of the world order is perhaps the only thing that can save it.

TABLE OF CONTENTS

INTRODUCTION	530
I. HISTORY	538
II. WHAT IS OWED	543
III. WHY CLIMATE CHANGE?	546
IV. REPARATIONS, SPECIFICALLY	548
V. MAKING IT HAPPEN	551

INTRODUCTION

Reparations have been having a moment for the better part of a decade.

Inarguably, the renaissance began in 2014, with the publication of Ta-Nehisi Coates’s article *The Case for Reparations* in *The Atlantic*.¹ Reparations are owed to Black Americans, Coates argued, not just because of the centuries of slavery, but also because of the decades of debt peonage, exclusion, incarceration, and unrelenting violence that followed.² The blockbuster article instantly triggered a flood of reactions.³ Some praised the idea, some mocked it, some dismissed it outright, but its greatest achievement was that “people have stopped

1. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://tinyurl.com/3mbf5kjr> [<https://perma.cc/DC5C-N7BQ>].

2. *Id.*

3. See, e.g., Kevin D. Williamson, *The Case Against Reparations*, NAT’L REV. (May 24, 2014, 6:00 AM), <https://tinyurl.com/ymjvjm33> [<https://perma.cc/ZN35-9ZN6>]; Errin Haines Whack, *The ‘Case for Reparations’ Is Solid, and It’s Long Past Time to Make Them*, GUARDIAN (May 23, 2014, 6:45 PM), <https://tinyurl.com/bdht-kxja> [<https://perma.cc/5GE5-6DZZ>]; Danny Vinik, *The Economics of Reparations: Why Congress Should Meet Ta-Nehisi Coates’s Modest Demand*, NEW REPUBLIC (May 21, 2014), <https://tinyurl.com/yc4v2hat> [<https://perma.cc/2U63-HWSX>].

laughing,” as Coates later told *The New Yorker*.⁴ The #BlackLives-Matter movement, which emerged around the same time, spurred further interest and urgency,⁵ and multiple commissions and coalitions quickly came together.⁶ In 2019, the House of Representatives held highly-publicized hearings on a (deeply flawed)⁷ reparations bill,⁸ prompting local legislative bodies to hold similar hearings across the country. A handful of American cities, including Evanston⁹ and Asheville,¹⁰ even created local reparations programs (though every single one of these remains drastically, terminally underfunded).¹¹ In the summer of 2020, millions of Americans rose up in response to the racist police murders of George Floyd and others.¹² Calls for reparations multiplied still further.¹³

In the midst of this explosion of interest has arrived a flurry of new books on the subject. Of course, books on reparations have

4. *Ta-Nehisi Coates Revisits the Case for Reparations*, NEW YORKER (June 10, 2019), <https://tinyurl.com/24fvwn37> [<https://perma.cc/L4V2-KF49>].

5. See Eric M. Johnson, *Slavery Reparations Sought in First Black Lives Matter Agenda*, REUTERS (Aug. 2, 2016), <https://tinyurl.com/mtsf3p4> [<https://perma.cc/4K96-EWRM>].

6. See, e.g., *About NAARC*, NAT'L AFR.-AM. REPARATIONS COMM'N, <https://tinyurl.com/4fj5szt4> [<https://perma.cc/3JFT-47F5>] (last visited Oct. 7, 2023); Yamiche Alcindor, *Black Lives Matter Coalition Makes Demands as Campaign Heats Up*, N.Y. TIMES (Aug. 1, 2016), <https://tinyurl.com/mr2txsyv> [<https://perma.cc/D529-VM6Y>]; *Final Communiqué, The National/International Reparations Summit*, NAT'L AFR.-AM. REPARATIONS COMM'N (Apr. 22, 2015), <https://tinyurl.com/msw3xyxw> [<https://perma.cc/YQ3B-XNNF>].

7. See WILLIAM A. DARITY JR. & A. KIRSTEN MULLEN, *FROM HERE TO EQUALITY: REPARATIONS FOR BLACK AMERICANS IN THE TWENTY-FIRST CENTURY* ix, xvi–xvii (2d ed. 2022) (arguing that H.R. 40 “is plagued by both substantive and structural flaws”).

8. See Sheryl Gay Stolberg, *At Historic Hearing, House Panel Explores Reparations*, N.Y. TIMES (June 19, 2019), <https://tinyurl.com/mr4bft19> [<https://perma.cc/7K9Z-NRYZ>].

9. See Char Adams, *Evanston Is the First U.S. City to Issue Slavery Reparations. Experts Say It's a Noble Start*, NBC NEWS (Mar. 26, 2021, 2:18 PM), <https://tinyurl.com/tb4ydn7> [<https://perma.cc/UCM9-PP49>].

10. See Neil Vidgor, *North Carolina City Approves Reparations for Black Residents*, N.Y. TIMES (July 16, 2020), <https://tinyurl.com/yzzpnufn> [<https://perma.cc/KC56-TYYC>].

11. DARITY & MULLEN, *supra* note 7, at xv–xvi; see also Emmanuel Felton, *A Chicago Suburb Promised Black Residents Reparations. Few Have Been Paid.*, WASH. POST (Jan. 9, 2023, 6:00 AM), <https://tinyurl.com/yeyr92sx> [<https://perma.cc/Q2G5-5RVN>].

12. See generally JARROD SHANAHAN & ZHANDARKA KURTI, *STATES OF INCARCERATION: REBELLION, REFORM, AND AMERICA'S PUNISHMENT SYSTEM* (2022); Tobi Haslett, *Magic Actions: Looking Back on the George Floyd Rebellion*, N+1 MAG. (2021), <https://tinyurl.com/3778avvn> [<https://perma.cc/NJR7-FG3Z>].

13. Lauren Gambino, *Calls for Reparations Are Growing Louder. How Is the US Responding?*, GUARDIAN (June 20, 2020, 5:00 PM), <https://tinyurl.com/5n7byjcr> [<https://perma.cc/F5UQ-89B9>].

occupied shelves for decades,¹⁴ but the recent spate of publications is of a different order. In the last five years, seemingly one big reparations book after another has burst into the discourse. In 2019, for instance, law professor Katherine Franke wrote a slim but powerful text titled *Repair: Redeeming the Promise of Abolition*,¹⁵ using two case studies—the Sea Islands of South Carolina and Davis Bend, Mississippi—to chart the lost promise of land redistribution to Black people. In 2020, and then in slightly updated form in 2022, the scholars William A. Darity Jr. and A. Kirsten Mullen released *From Here to Equality: Reparations for Black Americans in the Twenty-First Century*,¹⁶ perhaps the most comprehensive argument in favor of reparations for Black Americans ever published. Other recent books have sought to place reparations in an international context, especially *Reparations for Slavery and the Slave Trade: A Transnational and Comparative History*¹⁷ by Ana Lucia Araujo (2017) and *Time for Reparations: A Global Perspective*,¹⁸ edited by Jacqueline Bhabha, Margareta Matache, and Caroline Elkins (2021). There have been spiritually grounded texts, such as *Reparations: A Christian Call for Repentance and Repair*¹⁹ by Duke L. Kwon and Gregory Thompson (2021), and calls for more directed forms of recompense, such as *The Case for Gay Reparations*²⁰ by Omar G. Encarnación (2021). In the short time since this review was completed, two additional titles appeared: *The Stolen Wealth of Slavery: A Case for Reparations*²¹ by David Montero (2024) and *Radical Reparations: Healing the Soul of a Nation*²² by Marcus Anthony Hunter (2024). And all this says nothing of the considerable number of self-published books on the subject.

Yet two new titles have broadened the framework of reparations in a way that merits special attention. Although neither has yet been widely reviewed, both quietly herald a paradigm shift in

14. See, e.g., MARY FRANCES BERRY, *MY FACE IS BLACK IS TRUE: CALLIE HOUSE AND THE STRUGGLE FOR EX-SLAVE REPARATIONS* (2005); CLARENCE J. MUNFORD, *RACE AND REPARATIONS: A BLACK PERSPECTIVE FOR THE 21ST CENTURY* (1996); BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973).

15. KATHERINE FRANKE, *REPAIR: REDEEMING THE PROMISE OF ABOLITION* (2019).

16. DARITY & MULLEN, *supra* note 7.

17. ANA LUCIA ARAUJO, *REPARATIONS FOR SLAVERY AND THE SLAVE TRADE: A TRANSNATIONAL AND COMPARATIVE HISTORY* (2017).

18. *TIME FOR REPARATIONS: A GLOBAL PERSPECTIVE* (Jacqueline Bhabha et al. eds., 2021) [hereinafter “*TIME FOR REPARATIONS*”].

19. DUKE L. KWON & GREGORY THOMPSON, *REPARATIONS: A CHRISTIAN CALL FOR REPENTANCE AND REPAIR* (2021).

20. OMAR G. ENCARNACIÓN, *THE CASE FOR GAY REPARATIONS* (2021).

21. DAVID MONTERO, *THE STOLEN WEALTH OF SLAVERY: A CASE FOR REPARATIONS* (2024).

22. MARCUS ANTHONY HUNTER, *RADICAL REPARATIONS: HEALING THE SOUL OF A NATION* (2024).

the reparations discourse. The first, *Reconsidering Reparations*²³ by Olúfẹ́mi O. Táíwò (2022), is a brief, bold call for reparations to directly reckon with the consequences of climate change. The second, *The Long Land War: The Global Struggle for Occupancy Rights*²⁴ by Jo Guldi (2022), is a *longue durée* account of the fight for land redistribution in the 20th century. Placing these two books in conversation with one another allows us to see the historical and analytical building-blocks for the sturdiest possible case for reparations, a case that is responsive to the past, clear-eyed about the present, and even hopeful for a radical future.

Reconsidering Reparations is a work of breathtaking ambition. Its author, though still in his early thirties, is already a professor of philosophy at Georgetown, the writer of a much-discussed book about the “elite capture” of mainstream identity politics,²⁵ and a genuine Twitter star.²⁶ Reparations, to Táíwò, should be “neither a project of reconciliation nor redemption.”²⁷ Rather, it is a project that must prioritize the “redistribution of global wealth, from the First World (back) to the Third World.”²⁸ Drawing on the work of anticolonial activists, as well as recent scholars of their activism (most notably Adom Getachew),²⁹ he envisages reparations as a “worldmaking project” and counsels that reparations cannot be a discrete, one-time transfer of wealth.³⁰ The point is to “reshape” the entire global order, not merely “manage its consequences.”³¹

A journalist profiling Táíwò in *Grist* called *Reconsidering Reparations* “a theory of everything for the social justice left.”³² Yet at the core of his worldmaking project is climate change. “It is not that every aspect of today’s global racial empire is rooted in the impacts of climate change,” Táíwò writes.³³ “But every aspect of tomorrow’s global

23. OLÚFẸ́MI O. TÁÍWÒ, *RECONSIDERING REPARATIONS* (2022).

24. JO GULDI, *THE LONG LAND WAR: THE GLOBAL STRUGGLE FOR OCCUPANCY RIGHTS* (James C. Scott ed., 2022).

25. OLÚFẸ́MI O. TÁÍWÒ, *ELITE CAPTURE: HOW THE POWERFUL TOOK OVER IDENTITY POLITICS (AND EVERYTHING ELSE)* (2022).

26. At the time of this writing, Táíwò has nearly 70,000 followers on X (the social media platform formerly known as Twitter). Olúfẹ́mi O. Táíwò (@Olufemi-OTaiwo), X, <https://tinyurl.com/5n7nbf7f> [<https://perma.cc/5N53-6UYL>] (last visited Dec. 4, 2023).

27. Táíwò, *supra* note 23, at 72.

28. *Id.* at 5.

29. ADOM GETACHEW, *WORLDMAKING AFTER EMPIRE: THE RISE AND FALL OF SELF-DETERMINATION* (2019).

30. Táíwò, *supra* note 23, at 20, 74.

31. *Id.* at 74.

32. John Thomason, *Olúfẹ́mi O. Táíwò’s Theory of Everything*, *GRIST* (June 21, 2022), <https://tinyurl.com/29kk63e5> [<https://perma.cc/65QT-M9EW>].

33. Táíwò, *supra* note 23, at 171.

racial empire will be. Climate change is set not just to redistribute social advantages, but to do so in a way that compounds and locks in the distributional injustices we've inherited from history."³⁴ This unprecedented crisis therefore demands a total, global makeover.

The Long Land War is the kind of monograph that positively demands the descriptor "magisterial." Its author is a polymath historian at Emory University (who left an enviable professorship at Brown University rather than quit her research on occupancy rights, as she'd been ordered). In her doorstopper of a book, she charts a remarkable, century-long struggle in which poor people sought to protect their homes through tactics as diverse as demonstrating, squatting, marching, mapping, and setting up ambitious new systems and structures of governance. The story of this struggle is the history of occupancy rights, which Guldi defines as "the right not to be evicted."³⁵ Occupancy is not the same as ownership, which legal philosophers dating back to Locke have defined as the right to exclude others. Occupancy is about staying.

The Long Land War is not about reparations or climate change, per se, but its implications for both subjects are direct and profound. Climate change will mean, among much else, an unthinkably immense refugee crisis; climate change will thus be about who controls the right to occupy land. In a world divided by fences and borders, guarded by men with guns, occupancy rights demand redistribution. And climate change is clearly at the heart of Guldi's project. The book opens with the author reflecting on her twelve-year-old self's "aching and often silent worry about our planet" taking hold in a Texas elementary school after she learned about global warming.³⁶ It closes with an epilogue entitled, "Why Land Redistribution Matters in the Age of Climate Change."³⁷ There she contemplates many of the "techniques of occupancy," cobbled together by poor people, separated by centuries and continents.³⁸ Among the oldest of these techniques is reparations. "Reparations of land offer a way to break the cycle of violence associated with legacies of colonization and racial injustice."³⁹

Of course, calls for reparations have been emanating from the Global South since long before scholars in the Global North started paying attention. Landless workers and the descendants of escaped

34. *Id.*

35. GULDI, *supra* note 24, at 2.

36. *Id.* at ix.

37. *Id.* at 383.

38. *Id.* at 398.

39. *Id.* at 399–400.

slaves in Brazil have been demanding the return of land for decades;⁴⁰ the First Pan-African Conference on Reparations was held in 1993, leading to the influential Abuja Proclamation;⁴¹ and multiple Caribbean nations have been officially calling for reparations since the mid-2000s.⁴² More recently, Burundi has made claims against Germany and Belgium;⁴³ Jamaica has sought restitution from Britain;⁴⁴ descendants of enslaved Guadeloupe agricultural laborers have sued France for control of their land;⁴⁵ and residents of Louisiana's coast have demanded reparations from the oil companies that plundered their land.⁴⁶ In late 2021, the German government agreed to pay more than a billion euros to Namibia for a colonial genocide perpetrated a century ago.⁴⁷

And, as the consequences of climate change have become more apparent, the idea of climate reparations has already migrated to the fore of many activist spaces.⁴⁸ Reparations have become among the more contentious issues pushed by campaigners and even delegates at international climate summits, where the preferred euphemism is “loss and damage.”⁴⁹ At the UN Climate Change Conference,

40. See MERLE L. BOWEN, *FOR LAND AND LIBERTY: BLACK STRUGGLES IN RURAL BRAZIL* (2021); ANGUS WRIGHT & WENDY WOLFORD, *TO INHERIT THE EARTH: THE LANDLESS MOVEMENT AND THE STRUGGLE FOR A NEW BRAZIL* (2003).

41. Abuja Proclamation, Apr. 29, 1993, <https://tinyurl.com/4zan7c3d> [<https://perma.cc/4RHG-BDJN>].

42. See *Guyana Calls for Reparations*, BBC CARIBBEAN (Mar. 27, 2007), <https://tinyurl.com/3ssp96tf> [<https://perma.cc/W863-QQCW>]; Jacqueline Charles, *Aristide Pushes for Restitution from France*, MIA. HERALD (Dec. 18, 2003), <https://tinyurl.com/2zaz97xt> [<https://perma.cc/HNE8-JQSY>].

43. Kizzi Asala, *Burundi Demands \$43bn in Reparations from Germany and Belgium*, AFR. NEWS (Aug. 27, 2020), <https://tinyurl.com/2s43d3av> [<https://perma.cc/D5Q3-5UKP>].

44. Kate Chappell, *Jamaica Plans to Seek Reparations from Britain Over Slavery*, REUTERS (July 12, 2021, 10:53 AM), <https://tinyurl.com/53tex4nk> [<https://perma.cc/BJ33-YKV2>].

45. Mireille Fanon Mendes France, *French Justice and the Claims for Reparations by Slave Descendants in Guadeloupe*, in *TIME FOR REPARATIONS*, *supra* note 18, at 83.

46. Courtney Naquin, *Oil Companies Have Plundered Louisiana's Coast. They Owe Us Reparations*, IN THESE TIMES (Dec. 10, 2022), <https://tinyurl.com/2yrjt5bf> [<https://perma.cc/RT77-4CP5>].

47. See Joint Declaration by the Federal Republic of Germany and the Republic of Namibia, May 15, 2021, <https://tinyurl.com/msrvvnx4> [<https://perma.cc/7TJV-FBLQ>].

48. Anita Bhadani, *A Guide to Climate Reparations*, YES! MAG. (Nov. 29, 2021), <https://tinyurl.com/3nbj5smj> [<https://perma.cc/FBG8-ADQ4>].

49. See Noah Gordon, *Climate Reparations Really Aren't That Radical—Or Hard*, NEW REPUBLIC (Oct. 26, 2022), <https://tinyurl.com/4pam4j4j> [<https://perma.cc/V3XZ-FNQ7>]; see also Brad Plumer, Lisa Friedman & Somini Sengupta, *Developing Nations Have a Message at Global Climate Talks: Polluters, Pay Up*, N.Y. TIMES (Nov. 10, 2022), <https://tinyurl.com/yu9pyd2u> [<https://perma.cc/8JYX-NR4J>]; Maxine Burkett, *Reading Between Two Red Lines: Loss and Damage and the Paris Outcome*, 6

held in Glasgow in 2021, the United States and European Union blocked an effort to create “a facility providing financial support to victims of climate disasters.”⁵⁰ At the next conference, in Sharm-el-Sheikh, Egypt, in late 2022, wealthy countries finally acceded to a demand to create “a fund that would help poor, vulnerable countries cope with climate disasters made worse by the pollution spewed by wealthy nations,” though the details of this fund remained undetermined and the agreement specified that nations “cannot be held legally liable for payments.”⁵¹ The most recent conference, in Dubai in 2023, officially “launched” this fund, but so far wealthy countries have committed a tiny fraction of the funds actually needed by vulnerable nations—and have vehemently rejected the suggestion that such a fund creates legally enforceable obligations or amounts to “reparations.”⁵²

Legal scholars have begun to contend with climate reparations, though there is hardly a robust body of literature on the matter. Perhaps most notably, Maxine Burkett has been arguing powerfully for climate reparations for well over a decade.⁵³ Much of the existing work within the legal literature has understandably concerned the needs of those displaced by climate change,⁵⁴ which has dovetailed

CLIMATE L. 118, 122–23 (2016); Maxine Burkett, *Loss and Damage*, 4 CLIMATE L. 119, 128 (2014).

50. Zia Weise & Karl Mathiesen, *EU, US Block Effort for Climate Disaster Funding at COP26*, POLITICO EU (Nov. 13, 2021, 6:39 PM), <https://tinyurl.com/4hvph484> [<https://perma.cc/X47N-WVJR>]; see also Somini Sengupta, *Calls for Climate Reparations Reach Boiling Point in Glasgow Talks*, N.Y. TIMES (Nov. 11, 2021), <https://tinyurl.com/2nkj52b3> [<https://perma.cc/G4W7-72SQ>].

51. Brad Plumer et al., *In a First, Rich Countries Agree to Pay for Climate Damages in Poor Nations*, N.Y. TIMES (Nov. 19, 2022), <https://tinyurl.com/mryd4yr2> [<https://perma.cc/9YUS-K7FX>]; see also David Gelles, *After Decades of Resistance, Rich Countries Offer Direct Climate Aid*, N.Y. TIMES (Nov. 14, 2022), <https://tinyurl.com/3awutfbc> [<https://perma.cc/UN3T-SQX2>]; Emma Marris, *The West Agreed to Pay Climate Reparations. That Was the Easy Part*, ATLANTIC (Mar. 29, 2023), <https://tinyurl.com/3dxrebyr> [<https://perma.cc/YV9M-6HUN>].

52. See Nina Lakhani, *\$700m Pledged to Loss and Damage Fund at COP28 Covers Less Than 0.2% Needed*, GUARDIAN (Dec. 6, 2023), <http://tinyurl.com/4ezcfupa> [<https://perma.cc/56NF-A9HD>]; Ylenia Gostoli, *Reparations Fund “Historic,” But Real Fight Begins Now: Climate Campaigners*, AL JAZEERA (Dec. 2, 2023), <http://tinyurl.com/n3zhhh4m> [<https://perma.cc/EBX7-AKJJ>]; Zoë Schlanger, *Something Big Just Happened at COP*, ATLANTIC (Nov. 30, 2023), <http://tinyurl.com/535a7zap> [<https://perma.cc/KPM9-RWL2>]; Oliver Slow, *US Refuses Climate Reparations for Developing Nations*, BBC NEWS (July 13, 2023), <http://tinyurl.com/mvyn4bdp> [<https://perma.cc/66BX-JJAJ>].

53. See generally Maxine Burkett, *Climate Reparations*, 10 MELB. J. INT’L L. 509 (2009).

54. See, e.g., Susan K. Serrano & Ian Falefuafua Tapu, *Reparative Justice in the U.S. Territories: Reckoning with America’s Colonial Climate Crisis*, 110 CALIF. L. REV. 1281, 1300–05 (2022); Maxine Burkett, *Climate Migration and the Deep Roots of Climate Justice*, 93 TEMP. L. REV. 653 (2021); Sunjana Supekar, *Equitable Resettlement*

with recent scholarship demonstrating the intellectual indefensibility of borders.⁵⁵ In an era certain to be marked by hundreds of millions of climate refugees, many have come to see borders as outdated and deeply harmful.⁵⁶ In an influential 2019 article, *Migration as Decolonization*, E. Tendayi Achiume argued that former colonial powers have an obligation to open their borders to former colonial subjects.⁵⁷ Another legal scholar, Carmen G. Gonzalez, made a similar argument specifically with respect to climate refugees in a 2020 article, *Migration as Reparation*.⁵⁸

The goal of this review is twofold. First, it seeks to advance a brief but rigorous case for climate reparations. Second, it aims to broaden legal discussions of climate reparations by placing the subject in direct conversation with the histories of land enclosure, seizure, and privatization. It attempts to do this by reading two seemingly disparate books alongside one another: *Reconsidering Reparations* and *The Long Land War*. It is revealing that two such different books ultimately end with the same prescription—that a massive reordering of the world order is perhaps the only thing that can save it. One might call this reordering “reparations.” One might call it “revolution.” One might even call it (as these writers do not) communism. But it is an idea with which all conversations about reparations or climate change must contend.

This review proceeds in five parts. Part I recounts a capsule history of global empire and racial capitalism—a history, that is, of property. Part II considers what, exactly, the victims of this history are owed. Part III shows where, then, climate change enters the picture. Part IV articulates what, specifically, climate reparations would look like. And Part V contemplates how this all might happen.

for *Climate Change—Displaced Communities in the United States*, 66 UCLA L. REV. 1290 (2019); Maxine Burkett, Jainey Bavishi & Erin Shew, *Behind the Veil: Climate Migration, Regime Shift, and a New Theory of Justice*, 53 HARV. C.R.-C.L. L. REV. 446 (2018).

55. See generally HARSHA WALIA, *BORDER AND RULE: GLOBAL MIGRATION, CAPITALISM, AND THE RISE OF RACIST NATIONALISM* (2021).

56. C.J. Polychroniou, *We Need a World Without Borders on Our Increasingly Warming Planet*, TRUTHOUT (Sept. 2, 2022), <https://tinyurl.com/mv2e28f6> [<https://perma.cc/BWY8-6BZ8>]; see also JOHN WASHINGTON, *THE CASE FOR OPEN BORDERS* (2024).

57. E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1551 (2019).

58. Carmen G. Gonzalez, *Migration as Reparation: Climate Change and the Disruption of Borders*, 66 LOY. L. REV. 401, 403–04 (2020).

I. HISTORY

All cases for reparations begin with history. This is inevitable: it is the injuries of the past that give rise to movements for repair in the present. The historical maldistribution of resources is, obviously, the reason to redistribute resources today. Or, as Katherine Franke poetically put it, history has a “residue” that “binds present injustice to unaddressed wrongs of the past.”⁵⁹

To this end, a full quarter of Táiwò’s book is taken up by one long chapter narrating the history of “global racial empire.”⁶⁰ So much of the conversation about poverty and violence in the United States and the broader world, he writes, can be boiled down to decontextualized shrugs: “here’s some poverty, there’s some wealth, it’s a shame that things somehow ended up this way.”⁶¹ But things didn’t just happen to end up this way. Modern inequities are the direct products of a long, tortured, and violent history.

It started on the farms. Beginning in the 15th century (and even earlier in some places), European elites began “enclosing” the land—that is, divvying up common land that had previously been used by the peasants, forcing many of these peasants into cities and across oceans, setting in motion not just the Industrial Revolution but also colonialism, imperial domination, and global capitalism.⁶² The elites of the Old World coerced or compelled their former villeins and serfs into the New World and then started to violently carve up Indigenous territories, as well. Armed with novel weapons, deadly microbes, and an insatiable hunger for land and gold, the colonizers from Spain, England, Portugal, and other European kingdoms spread systems of private property, forced labor, and resource extraction to cover the globe. The march toward modernity entailed ever more enclosure—hundreds of millions of people were evicted to make room for the

59. FRANKE, *supra* note 15, at 3.

60. Táiwò, *supra* note 23, at 14–68.

61. *Id.* at 66.

62. See generally IAN ANGUS, *THE WAR AGAINST THE COMMONS: DISPOSSESSION AND RESISTANCE IN THE MAKING OF CAPITALISM* (2023); J.M. NEESON, *COMMONERS: COMMON RIGHT, ENCLOSURE AND SOCIAL CHANGE IN ENGLAND, 1700–1820* (1993); LEONARD CANTOR, *THE CHANGING ENGLISH COUNTRYSIDE, 1400–1700* (2017); J.A. YELLING, *COMMON FIELD AND ENCLOSURE IN ENGLAND, 1450–1850* (1977); KARL POLYANI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* 35 (1957). On resistance to enclosure, see BUCHANAN SHARP, *IN CONTEMPT OF ALL AUTHORITY: RURAL ARTISANS AND RIOT IN THE WEST OF ENGLAND, 1586–1660* (1980). Much of the literature on “enclosure” per se focuses on England, yet “in the context of continental Europe, historians find considerable evidence of developments not unlike the changes that transformed the English countryside in the early modern period.” Allan Greer, *Commons and Enclosure in the Colonization of North America*, 117 *AM. HIST. REV.* 365, 366 fn.4 (2012). See also MARTINA DE MOOR ET AL., *THE MANAGEMENT OF COMMON LAND IN NORTH WEST EUROPE, c. 1500–1850* (2002).

mines and dams that would power the swelling cities; millions more were expelled as new nations expanded, plot-by-plot, across the New World.⁶³

The colonizers enslaved first the indigenous inhabitants of the lands they invaded, then generations of Africans stolen from their homes. European intellectuals created racist ideological justifications for the systems of hereditary slavery that arose in the following centuries.⁶⁴ They also created colonial legal systems to enable mass property seizure.⁶⁵ Each European nation sought ever greater land, wealth, and *growth*, and they knit the world into a global capitalist economy with ships carrying cotton, humans, and, later, factory-produced goods.⁶⁶

When rebellions or revolutions toppled the world-bestridding empires, occasionally the spoils of colonialism were redistributed to some extent. After beheading King Louis XVI, for instance, French peasants seized the land of aristocrats and the church.⁶⁷ A group of landless English poachers, known as the Blacks (for their soot-covered faces), wrought havoc by deliberately hunting game on private estates—giving some meaning to the modern slogan, “eat the rich.”⁶⁸ Yet, through the 18th and 19th centuries, the rise of global capitalism faltered little. After generations of uprisings, slaves in England finally won their freedom, but the English lords granted the liberated no reparations and, indeed, continued to rely on indentured

63. Greer provides an effective historiography on this subject in his article's footnotes. See generally Greer, *supra* note 62; Ben Maddison, *Radical Commons Discourse and the Challenges of Colonialism*, 108 *RADICAL HIST. REV.* 29 (2010); PETER LINEBAUGH & MARCUS REDIKER, *THE MANY-HEADED HYDRA: SAILORS, SLAVES, COMMONERS, AND THE HIDDEN HISTORY OF THE REVOLUTIONARY ATLANTIC* 44 (2000); E.P. THOMPSON, *Custom, Law and Common Right*, in *CUSTOMS IN COMMON* 97, 161–75 (1991); FRANCIS JENNINGS, *THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST* 82–83 (1975). On evictions, see GULDI, *supra* note 24, at 5.

64. See generally PATRICIA SEED, *AMERICAN PENTIMENTO: THE INVENTION OF INDIANS AND THE PURSUIT OF RICHES* (2001); EDMUND S. MORGAN, *AMERICAN SLAVERY, AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA* (1975); see also BRENNA BHANDAR, *COLONIAL LIVES OF PROPERTY: LAW, LAND, AND RACIAL REGIMES OF OWNERSHIP* (2018).

65. See generally STUART BANNER, *HOW THE INDIANS LOST THEIR LAND: LAW AND POWER ON THE FRONTIER* (2005); see also Liz Alden Wily, ‘*The Law Is to Blame*’: *The Vulnerable Status of Common Property Rights in Sub-Saharan Africa*, 42 *DEV. & CHANGE* 733 (2011).

66. CEDRIC ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 2 (1983) (defining racial capitalism).

67. See generally P.M. JONES, *The “Agrarian Law”*: *Schemes for Land Redistribution During the French Revolution*, 133 *PAST & PRESENT* 96 (1991).

68. Eula Biss, *The Theft of the Commons*, *NEW YORKER* (June 8, 2022), <https://tinyurl.com/2p86frfp> [<https://perma.cc/EJF5-YMWH>]; see also E.P. THOMPSON, *WHIGS AND HUNTERS: THE ORIGINS OF THE BLACK ACT* (1975).

“coolie” labor across their torturous empire.⁶⁹ When the enslaved rose up and cast off their French overseers in Haiti, their new nation’s price for admission to the world economy was that the former slaves pay reparations to their former masters.⁷⁰ Empires adapted, modernized, and grew still larger and wealthier.⁷¹

In the aftermath of the U.S. Civil War, many proposed seizing southern plantations and redistributing that land (forty acres of it, plus a mule, in some proposals) to formerly enslaved people.⁷² Indeed, as Franke notes, a number of locales across the South actually experimented with granting reparations of land to freed Black people—utopian experiments that briefly created Black wealth and sovereignty.⁷³ But the opposition to these proposals and experiments was swift, fervent, and broad. “The fundamental integrity of capitalism was at stake, not to be undermined by backward looking claims made by poor Black people in the South,” summarized Franke.⁷⁴ Confederate sympathizers within the federal government blocked reparative policies and then acceded to the passage of the Black Codes, which condemned multiple generations of Black people to sharecropping, debt peonage, and other forms of indentured servitude. As several of the essays in *Time for Reparations* make clear, this pattern of abolition followed by functional re-enslavement is mirrored in many post-slavery societies, including Caribbean Island nations.⁷⁵ This pattern amounted to a refusal to allow Black people to own property, depriving them of the primary way of accumulating transgenerational wealth.

Still, demands for reparations remained. Activists like Callie House, born into slavery, fought for “pensions” for ex-slaves for decades, even suing the federal government in its own courts.⁷⁶ After

69. Táíwò, *supra* note 23, at 34.

70. See generally Catherine Porter et al., *The Ransom: The Root of Haiti’s Misery: Reparations to Enslavers*, N.Y. TIMES (Nov. 16, 2022), <https://tinyurl.com/s5a2m6un> [<https://perma.cc/G2RE-TF3X>].

71. See generally J.A. HOBSON, *IMPERIALISM: A STUDY* (1902).

72. FRANKE, *supra* note 15, at 14; see also Sarah McCammon, *The Story Behind Forty Acres and a Mule*, NPR (Jan. 12, 2015, 6:02 PM), <https://tinyurl.com/4pzcxm7p> [<https://perma.cc/7QCW-MZAB>].

73. FRANKE, *supra* note 15, at 12–13.

74. *Id.* at 105.

75. Bert S. Samuels, *The Jamaican Case for Reparations Against the British Government for Slavery and Colonization*, in *TIME FOR REPARATIONS*, *supra* note 18, at 59; France, *supra* note 45, at 83.

76. See *Johnson v. McAdoo*, 45 App. D.C. 440 (1916); see also Adjoa Artis Aiyetoro, *Truth Matters: A Call for the American Bar Association to Acknowledge Its Past and Make Reparations to African Descendants*, 18 GEO. MASON U. C.R.L.J. 51, 56 n.18 (2007) (discussing how Callie House, the leader of the National Ex-Slave Mutual Relief, Bounty and Pension Association, initiated the *Johnson v. McAdoo* lawsuit).

the feds succeeded in hounding her organization out of existence, many of House's followers migrated to the movement for Pan-Africanist solidarity.⁷⁷

An ocean away, in the 1880s, a "land war" broke out in Ireland. Thousands marched, boycotted, and engaged in rent strikes, arson, and even vigilante violence, demanding "reparations in land"—that is, the return of the land to the Irish people (most of whom were legally forbidden from owning or inheriting property).⁷⁸ The land war, Guldi writes, "would bring an empire to its knees."⁷⁹ Buckling under the pressure, the British Parliament passed a series of laws protecting tenants, entitling the tenants to buy their right to land from landlords, and even creating the world's first system of rent control.⁸⁰ The tactics deployed in Ireland soon spread, from Egypt to the United States. Rent control and tenancy rights proliferated across the British Empire. In Mexico, Russia, and later China, meanwhile, revolutions resulted in widespread land redistribution (and even the recognition of Indigenous land claims in parts of Mexico).⁸¹

In the 20th century, the descendants of slaves, serfs, servants, and sharecroppers began to unite their struggles against the forces of colonialism and racism. As Táíwò notes, some people of color within the United States started calling themselves "Third World Americans."⁸² Indeed, the civil rights and anti-colonial movements can both be seen as advocating, and achieving, massive redistributions of wealth and power. From Cuba to Nigeria, revolutionaries and reformers seized control of the state and then redistributed wealth and property held by former colonizers and enslavers. From Turkey to Tanzania to Guatemala, Guldi adds, the rural poor won the right to vote—"and programs for land redistribution soon followed."⁸³ In the 1920s and 1930s, some Black communists in the United States called for a self-governing Black nation in the Deep South.⁸⁴ In the 1960s, Black activists in Detroit sought to declare independence from the United States and found their own nation (the Republic of New Afrika) on the land occupied by Alabama, Georgia, Louisiana, Mississippi, and South Carolina; they also demanded monetary reparations in the amount of \$300 billion.⁸⁵ Civil rights leader James Forman issued a

77. See generally BERRY, *supra* note 14.

78. GULDI, *supra* note 24, at 13.

79. *Id.* at 14.

80. *Id.*

81. *Id.* at 14–15.

82. Táíwò, *supra* note 23, at 70.

83. Guldi, *supra* note 24, at 17.

84. HARRY HAYWOOD, A BLACK COMMUNIST IN THE FREEDOM STRUGGLE: THE LIFE OF HARRY HAYWOOD 138–59 (Gwendolyn Midlo Hall ed., 2012).

85. Táíwò, *supra* note 23, at 71.

“Black Manifesto,” which called for hundreds of millions to repay the theft of Black-owned farmland.⁸⁶

Alarmed by such demands, many nations in the First World—led by the United States—began to condemn land redistribution, reparations, and Indigenous rights as “communism in disguise.”⁸⁷ Only the free market and large-scale industrial agriculture, American and British economists, agencies, and foundations averred, could “solve” poverty while assuring inexorable growth.⁸⁸ Even in an age of decolonization, First World nations remained ready and willing to intervene by force to guarantee unfettered capitalism. The World Bank, dominated by First World power-players, announced in 1974 that it would no longer fund any development program that subsidized land turnover.⁸⁹ That same year, Guldi notes, Friedrich Hayek won the Nobel Prize, heralding the triumph of neoliberal economics.⁹⁰ Central to the neoliberal turn in global land governance was the conversion of smallholder plots into massive industrial farming operations, which displaced tens of millions in places like Brazil and India. “Today,” Guldi concludes, “few Westerners have heard of land reform.”⁹¹

Yet, as she also notes, occupancy rights *were* achieved across the world. Landless farmers became landowners in much of postwar Asia;⁹² two-thirds of farmers became owners in Sweden and Russia a century ago;⁹³ citizens of Singapore now enjoy a right to affordable housing;⁹⁴ and new laws are still passing, such as a 2003 enactment in Scotland guaranteeing a “community right to buy.”⁹⁵ History, then, is replete not only with pollution and corporate intransigence, empire and violence, but also with “precedents for a shared administration of land and water.”⁹⁶ In other words, hope.

Táíwò agrees. “The mid-twentieth century *started* the remaking of the world but it only got so far. The project of reparations is to finish the job.”⁹⁷

86. James Forman, *The Black Manifesto*, 16 AFR. TODAY 21 (1969).

87. GULDI, *supra* note 24, at 29.

88. *Id.* at 29–30.

89. *Id.* at 29 (citing WORLD BANK, BANK POLICY ON LAND REFORM (1974)).

90. *Id.*

91. *Id.* at 281.

92. *Id.* at 6.

93. *Id.* at 8.

94. *Id.* at 6.

95. *Id.* at 282, 396.

96. *Id.* at 35.

97. Táíwò, *supra* note 23, at 69.

II. WHAT IS OWED

But for centuries, the idea of reparations has generated fierce controversy and contestation. Who, exactly, is owed? By whom? How much? And in what way?

Táíwò identifies two broad types of arguments many use in favor of reparations. The first, which he calls “harm repair” arguments, view reparations as a form of restitution or retribution.⁹⁸ In *From Here to Equality*, for instance, Darity and Mullen make a “harm repair” argument, advocating direct transfers of wealth—“restitution”—to Black Americans in order to end the racial disparities that were caused by centuries of racist violence.⁹⁹ Indeed, for decades economists and historians have been producing ever more sophisticated calculations of the debts owed to the descendants of the enslaved.¹⁰⁰ For Táíwò and others (including political theorist Lawrie Balfour), this approach may be well-suited to compensating those who had their land stolen, but it “isn’t obviously up to the task of redressing other systematic aspects of suffering such as systematic sexual violence.”¹⁰¹ How much is pain—or generational trauma—worth? Further, noting that Darity and Mullen view reparations as eliminating “racial disparities,”¹⁰² Táíwò writes (a bit glibly) that poisoning the drinking water of white neighborhoods might eliminate the disparity between those neighborhoods and Flint, Michigan, but it certainly wouldn’t achieve racial justice.¹⁰³ Indeed, so long as we all reside under racial capitalism, addressing a disparity is unlikely to mean permanent equity.

The second approach to reparations, which Táíwò calls “relationship repair,” views reparations as a project of reconciliation, in which the payment of historical debts would repair the relationship between the descendants of the wrongdoers and the descendants of the wronged.¹⁰⁴ In India, as Guldi narrates, a mystic (and former

98. *Id.* at 124.

99. DARTY & MULLEN, *supra* note 7, at xi, 3.

100. See generally Thomas Craemer, *Estimating Slavery Reparations: Present Value Comparisons of Historical Multigenerational Reparations Policies*, 96 Soc. Sci. Q. 639 (2015); William Darity Jr., *Forty Acres and a Mule in the 21st Century*, 89 Soc. Sci. Q. 656 (2008); THE WEALTH OF RACES: THE PRESENT VALUE OF BENEFITS FROM PAST INJUSTICES (Richard F. America, ed., 1990).

101. Táíwò, *supra* note 23, at 126 (citing Lawrie Balfour, *Reparations After Identity Politics*, 33 POL. THEORY 786, 801–02 (2005)).

102. DARTY & MULLEN, *supra* note 7, at 3.

103. Táíwò, *supra* note 23, at 127. *But see* DARTY & MULLEN, *supra* note 7, at 391 n.29 (“We must be clear here. We *do not* advocate eliminating the racial wealth gap by taxing away white wealth until white net worth reaches the low existing levels of black wealth. We *do* advocate raising the assets held by blacks to meet higher existing levels of white wealth.”).

104. Táíwò, *supra* note 23, at 134.

apostle of Gandhi) named Vinoba Bhave marched around the country calling for the landlords to voluntarily surrender land to the poor in the name of spiritual renewal.¹⁰⁵ In the legal literature, the scholar Bernadette Atuahene has for many years been making a powerful argument in favor of “dignity restoration” in reparations programs, drawing primarily on the example of post-apartheid South Africa.¹⁰⁶ Yet what the “relationship repair” approach misses, Táíwò argues, is the centrality of the redistribution of wealth, rather than the remediation of moral injuries.¹⁰⁷ And, indeed, most of those that pledged land to Bhave later reneged,¹⁰⁸ while the South African government’s failure to “move from reparations to [dignity] restoration” resulted in “a deep sense of hopelessness.”¹⁰⁹ In our own time, corporate, municipal, university, and individual *mea culpas* for racism abound; concrete commitments to large-scale wealth redistribution are notably absent.

More broadly, Táíwò argues against a theory of reparations that envisions the descendants of the “guilty” paying damages to the children of the “innocent”—in large part because it’s so difficult and complicated to separate the “guilty” from the “innocent.”¹¹⁰ Indeed, Táíwò acknowledges that his own ancestors include those who fought for and against the maintenance of global racial empire.¹¹¹ He writes, “the sentiment ‘we were kings and queens’ back in Africa *is* true, in some sense. But that very fact, it turns out, was the problem,” since many African leaders were historically implicated in the Atlantic slave trade.¹¹² Instead, those with advantages today (those of us in the Global North, for instance) should bear a greater burden for constructing a more just world for the simple reason that we have more advantages today.

Táíwò promotes what he calls a “constructive” approach to reparations—“a third and more capacious alternative.”¹¹³ The constructive view foregrounds neither restitution nor reconciliation, but

105. GULDI, *supra* note 24, at 46–50, 311–33.

106. See, e.g., Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC. INQ. 796 (2016); BERNADETTE ATUAHENE, WE WANT WHAT’S OURS: LEARNING FROM SOUTH AFRICA’S LAND RESTITUTION PROGRAM 4 (2014); Bernadette Atuahene, *From Reparation to Restoration: Moving Beyond Restoring Property Rights to Restoring Political and Economic Visibility*, 60 SMU L. REV. 1420 (2007).

107. Táíwò, *supra* note 23, at 137.

108. GULDI, *supra* note 24, at 313, 316–17.

109. Bernadette Atuahene & Anele Sibanda, *From Reparations to Dignity Restoration: The Story of the Popela Community*, 18 AFR. HUM. RTS. L.J. 654, 661 (2018).

110. Táíwò, *supra* note 23, at 122.

111. *Id.* at 205.

112. *Id.* at 120.

113. *Id.* at 124.

the achievement of justice. Reparations, according to this view, are a path: “[t]he transition from the unjust status quo to justice in the future will not be costless, and it will come with its share of benefits and burdens. Reparation is concerned with how to distribute these.”¹¹⁴ That is to say, reparations in Táíwò’s view involve redistributing global wealth *and* fundamentally altering the existing system for distributing global wealth.

Táíwò supports reparations as a U.S. “national project,” and as a “regional” or “supranational” project (such as those proposed by Caribbean nations, African activists, and Indigenous groups), but he argues that “something of broader scope is also needed”: “justice” at a truly global scale.¹¹⁵ Slavery, colonialism, capitalism—these are global systems with little respect for imaginary, protean lines in the dirt. Goods may flow through borders, Táíwò notes, but borders are not walls, and industrial policies or warfare in one corner of the map will inexorably affect the lives of workers and the production of goods in every other corner.¹¹⁶ Echoing the historian Keeanga-Yamahtta Taylor,¹¹⁷ Táíwò acknowledges that universal programs are not, on their own, sufficient to ameliorate race-based discrimination, but he argues persuasively that reparative solutions to racial and economic injustices are not at odds; they are complementary.¹¹⁸

In an essay in the *Boston Review*, Táíwò acknowledges that some might think that “a global focus on reparations” could risk distracting from “more specific campaigns.”¹¹⁹ History, he believes, shows that this concern is misguided: “it is no coincidence that the civil rights movement and the decolonization of more than 100 nations all occurred simultaneously in the decades following World War II: each of these struggles made the others *more* likely to succeed, not less.”¹²⁰ And to those who might dismiss his constructive approach as effectively an #AllLivesMatter version of reparations, Táíwò is quick to add that the “constructive view is all-encompassing: it would unequivocally support cash transfers to African Americans. . . . The constructive

114. *Id.* at 74.

115. *Id.* at 9–10.

116. *Id.* at 101.

117. Keeanga-Yamahtta Taylor & Adolph Reed Jr., *The Reparations Debate*, DISSENT MAG. (June 24, 2019), <https://tinyurl.com/42pvf8aj> [<https://perma.cc/5ZQX-L46D>] (“[P]utting the issues that are important to African Americans at the center . . . doesn’t mean that universality isn’t important, but just universal healthcare in general does not address the particular issues that affect black people when it comes to the distribution of healthcare.”).

118. Táíwò, *supra* note 23, at 3.

119. Olúfẹ́mi O. Táíwò, *The Fight for Reparations Cannot Ignore Climate Change*, BOS. REV. (Jan. 10, 2022), <https://tinyurl.com/nh58fp3e> [<https://perma.cc/3S8E-TLHG>].

120. *Id.*

view is not a replacement for these, but a particular understanding of what they aim to accomplish: changing our social environment for the better.”¹²¹

III. WHY CLIMATE CHANGE?

Where, then, does climate change come in? The connection, to many, may not be logical. Táíwò notes that people are “usually surprised” when he suggests that a serious reparations plan must focus on climate justice.¹²²

We must return, as Táíwò does, to history. The rise of global empire and racial capitalism led to the Industrial Revolution, which led to world-historic levels of carbon being pumped from factories into the sky. To power the factories that were building such great wealth, colonial powers forced subjugated peoples to extract first coal and then oil (with the mines themselves comfortably far from European capitals).¹²³ Over centuries, mills, cars, heating and cooling systems, and entire grids laid out to light up the world have belched billions of tons of greenhouse gases into the atmosphere. Burning fossil fuels powered the ascendance of the modern global order, but it also caused the climate in which our species evolved to begin to change.

The same year that the World Bank turned against land redistribution and small farms, 1974, also marked the historical moment when scientists began debating the meaning of ice core samples recently taken in Greenland. They concluded that this archive of the Earth’s changing climate threatened “an enormous number of people with displacement,” Guldi records, and these predictions were soon borne out by mudslides and floods and drought, from Bangladesh to Somalia.¹²⁴ Migrants fled, seeking refuge on higher, dryer ground. “The global land war, which began as an attempt to address the legacy of empire in history, was changing into a series of power struggles that would determine who would survive in the era of climate change.”¹²⁵

The changing climate will affect us all, but the impacts will be distributed inequitably. In large part because of colonial laws and policies, the global poor reside in areas that are already lower and hotter and far more polluted; their homes are less protected by

121. *Id.*

122. Táíwò, *supra* note 23, at 158.

123. Samuel Miller McDonald, *Oil Age*, CURRENT AFFS. (Mar. 17, 2020), <https://tinyurl.com/45d9pr6a> [<https://perma.cc/9V94-HS8P>].

124. GULDI, *supra* note 24, at 385.

125. *Id.*

natural and artificial barriers.¹²⁶ Deaths attributed to pollution are 50 percent higher in countries that were colonized, as compared to those that were not.¹²⁷ The rising waters have already displaced millions.¹²⁸ Conservative estimates anticipate the movement of *hundreds of millions* of climate refugees within the next three decades, most of these poor and dark-skinned.¹²⁹ Droughts, famines, and desertification exacerbated by climate change will lead to increasing violence and political strife in the Global South; indeed, from Mali to Syria, they already have.¹³⁰ In the Global North, latent anxieties about a coming wave of climate refugees undergird much of the ascendant anti-immigrant vitriol that is dominating election after election.¹³¹

We are facing as much as a 5°C temperature increase within this century, which would ensure the inundation of mega-cities like Mumbai and the dehydration of broad swaths of the globe.¹³² Half of Caribbean islands are already considered “water-scarce.”¹³³ Several island nations are rapidly sinking into the sea.¹³⁴ Yet those in power—from Miami to Nigeria—are constructing sea walls and levees designed primarily to shield the privileged few, not protect the vulnerable many. Former colonial subjects, later to industrialize, contributed far less carbon to the atmosphere than their former colonial overseers. It is darkly ironic, then, that poorer countries not only face far more dire outcomes from the changing climate but have also made far more ambitious emissions reduction commitments than wealthier countries.¹³⁵

What can we do in the face of a world descending into the flames? For Táíwò, the answer is plain: reparations—which is to say,

126. Táíwò, *supra* note 23, at 170–71, app. B.

127. *Id.* at 164–65.

128. Abrahm Lustgarten, *The Great Climate Migration*, N.Y. TIMES (July 23, 2020), <https://tinyurl.com/4htf9dce> [<https://perma.cc/8MHK-98UG>].

129. Moira Lavelle, *By 2050, 200 Million Climate Refugees May Have Fled Their Homes. But International Laws Offer Them Little Protection*, INSIDE CLIMATE NEWS (Nov. 2, 2021), <https://tinyurl.com/42e8c6p5> [<https://perma.cc/3Y9P-88ZS>].

130. *See* Táíwò, *supra* note 23, at 162.

131. *See* Ari Shapiro, *Come Along as We Connect the Dots Between Climate, Migration and the Far-Right*, NAT'L PUB. RADIO (Oct. 3, 2022, 5:00 AM), <https://tinyurl.com/3uem9e3e> [<https://perma.cc/34ZB-YP4B>].

132. DAVID WALLACE-WELLS, *THE UNINHABITABLE EARTH: LIFE AFTER WARMING* 59–69, 86–93 (2019).

133. Abrahm Lustgarten, *The Barbados Rebellion*, N.Y. TIMES, <https://tinyurl.com/yucevsm3> [<https://perma.cc/5QUB-Z44E>] (last visited July 27, 2022).

134. *See generally* Melissa Stewart, *Cascading Consequences of Sinking States*, 59 STAN. J. INT'L L. 131 (2023).

135. *See generally* TESS WOOLFENDEN, *DEBT JUSTICE, THE DEBT-FOSSIL FUEL TRAP* (2023), <https://tinyurl.com/af342wbu> [<https://perma.cc/YW6K-JU2E>]. It is likewise ironic that the debts wealthy countries force poorer ones to take on have led those poorer nations to continue relying on fossil fuels. *See id.*

global, societal transformation. Noting that climate change arises from the same political history as racial injustice, he concludes that climate justice and reparations are, literally, the same political project.¹³⁶ “The transformations we succeed or fail to make in the face of the climate crisis will be decisive for the project of racial justice, and vice versa,” he writes.¹³⁷

IV. REPARATIONS, SPECIFICALLY

What, specifically, does this mean? What would climate reparations look like?

Any reparations plan must involve the redistribution of wealth—that is, literally sending some people money, or what the social scientists call “unconditional cash transfers.”¹³⁸ Darity and Mullen advocate a series of direct payments to individuals who can “demonstrate that they have at least one ancestor who was enslaved in the United States.”¹³⁹ Other organizers push something closer to a universal basic income with additional amounts paid to Black Americans.¹⁴⁰ In the climate context, Brazilian president Luiz Inacio Lula da Silva recently stated that “richer nations with their ‘historic debt’ to the planet should foot the bill for environmental damage that is being hoisted on poorer countries.”¹⁴¹ Fossil fuel companies alone would have to pay more than \$200 billion annually to compensate communities harmed by climate change.¹⁴²

Franke deliberately looks past direct cash transfers and calls instead for “redistributing land ownership to Black people”—specifically through land trusts and creative financing of collective Black property ownership, paid for through a tax on the intergenerational transfer of wealth (or what Coates might call “plunder”).¹⁴³ Like Guldi, she emphasizes the importance of “alternatives to individual, for-profit, market-based land ownership,” and notes that

136. Táíwò, *supra* note 23, at 147.

137. *Id.* at 147–48.

138. *See id.* at 175.

139. DARTY & MULLEN, *supra* note 7, at xi.

140. *See* Táíwò, *supra* note 23, at 175 (citing Erik Olin Wright, *Can the Universal Basic Income Solve Global Inequalities?*, UNESCO INCLUSIVE POL’Y LAB (Feb. 14, 2017)).

141. *Rich Nations Must Pay for Historic Environmental Damage, Says Brazil’s Lula*, REUTERS (June 23, 2023, 7:33 AM), <https://tinyurl.com/sshhkmwf> [<https://perma.cc/K9RR-WYXX>].

142. Marco Grasso & Richard Heede, *Time to Pay the Piper: Fossil Fuel Companies’ Reparations for Climate Damages*, 6 ONE EARTH 459, 461 (2023).

143. FRANKE, *supra* note 15, at 16–17; Coates, *supra* note 1.

cooperative pilot programs (such as a much-publicized community land trust in Jackson, Mississippi) already exist.¹⁴⁴

“Revolution is based on land,” Malcolm X declared in 1963. “Land is the basis of all independence. Land is the basis of freedom, justice and equality.”¹⁴⁵ Attempts at land redistribution, Guldi adds, “offer a pattern for dealing with climactic change and the contemporary rise of climate refugees.”¹⁴⁶

For her part, she advocates for “occupancy-focused environmentalism,” which would “prioritize the right not to be displaced, despite the dramatic shifts of famine, drought, pandemic, flood, weather, and fire that scientists tell us are intensifying against the backdrop of a destabilized climate.”¹⁴⁷ Land redistribution itself is already known to be a force for fighting deforestation in the Brazilian Amazon. Such environmentalism demands taking seriously non-Western property rights, such as squatting, Indigenous title, and the perpetuation of land and water as a commons. To this end, Guldi muses over the possibility of a “Magna Carta of land rights.”¹⁴⁸

Globally, tens of millions of refugees are forced to seek shelter in ad hoc camps or detention centers, with little hope of attaining “resettlement.”¹⁴⁹ Further, Guldi notes that a *majority* of those living on the African continent and the Indian subcontinent are effectively squatters, as they have no secure title to their land. “While the particular conditions and movements behind those numbers vary enormously, many squatters around the world share a common historical background in the mass migration of refugees from international conflict and land seizures,” she writes.¹⁵⁰

Although Táíwò cautions that he is “not trying to design a particular reparations proposal,”¹⁵¹ he concludes his book with a list of reparative policies. In addition to wealth transfers, he calls for the elimination of tax havens, public ownership of and control over energy, strategies of divestment from fossil fuels and investment in communities, and a global debt jubilee.¹⁵² Citing the findings of the Jubilee Debt Campaign, Táíwò notes that 34 of the world’s poorest countries are spending almost *six times* as much on debt as they are

144. FRANKE, *supra* note 15, at 135–37.

145. See THE CIVIL RIGHTS MOVEMENT: A DOCUMENTARY READER 210 (John A. Kirk ed., 2020).

146. GULDI, *supra* note 24, at 33.

147. *Id.* at xiii–xiv.

148. *Id.* at 381.

149. *Id.* at 387–88.

150. *Id.* at 351.

151. Táíwò, *supra* note 23, at 8.

152. See *id.* at 178–84.

on climate adaptation and mitigation.¹⁵³ A 2022 article in *Bloomberg* found that the number of developing countries at serious risk of defaulting on their debts had doubled in just a six-month period.¹⁵⁴ An end to the debt and austerity that the Global North has imposed on the Global South would enable the places most vulnerable to the consequences of a changing climate to actually protect themselves—and avoid the daunting prospect of large-scale relocation.¹⁵⁵

Táíwò does not explain the administration of a global reparative regime, but it stands to reason some kind of super-governmental body will be needed (a “Ministry for the Future,”¹⁵⁶ if you must). In this respect, Guldi’s work is vital. Much of her lengthy book amounts to a close study of the United Nations’ Food and Agriculture Organization (“FAO”), which heeded the call of formerly colonized peoples to promote land redistribution and create an “information infrastructure” for fighting global poverty.¹⁵⁷ Through soil maps, land management studies, and bibliographies of agricultural research, the FAO tried for decades to provide small farmers around the globe with the tools they needed to make peasant life “profitable without debt.”¹⁵⁸ Guldi attributes the failure of the most ambitious forms of land redistribution to “skepticism directed at centralized administration of all kinds.”¹⁵⁹ She notes that the destruction of centralized governance bodies like the FAO coincided with the rise of NGOs, which were inadequately regulated, poorly coordinated, and lacking accountability. And she laments that the United Nations lacked the “foresight” to demand a binding international court of justice or “the power to compel member nations to distribute land.”¹⁶⁰

153. Olúfemi O. Táíwò & Patrick Bigger, *The Global South Is Calling for Climate Reparations*, NATION (Apr. 22, 2022), <https://tinyurl.com/2ewypd73> [<https://perma.cc/ES2L-GR3J>].

154. Sydney Maki, *Historic Cascade of Defaults Is Coming for Emerging Markets*, BLOOMBERG (July 7, 2022, 5:00 PM), <https://tinyurl.com/36a4e88e> [perma.cc/3FJ2-Y8SB]; see also Robin Jaspert, *Central Bank Capitalism Is Forcing the Global South Into a Debt Crisis*, JACOBIN (Dec. 23, 2022), <https://tinyurl.com/3drxwfb> [<https://perma.cc/4KW2-CUVJ>]; Alan Rappeport, *Defaults Loom as Poor Countries Face an Economic Storm*, N.Y. TIMES (Dec. 3, 2022), <https://tinyurl.com/3kejxwy> [<https://perma.cc/K6G9-P6N5>].

155. Cf. Ketaki Zodgekar et al., *A Dangerous Debt-Climate Nexus*, 55 NACLA REP. ON AMS. 319 (2023).

156. See generally KIM STANLEY ROBINSON, *THE MINISTRY FOR THE FUTURE: A NOVEL* (2020).

157. See GULDI, *supra* note 24, at 127–79.

158. *Id.* at 127.

159. *Id.* at 384.

160. *Id.* at 280.

V. MAKING IT HAPPEN

And how, exactly, might all this happen? How can climate reparations be translated from an academic theory or a cry of activists into concrete policy?

Guldi envisions a “democratic ecology movement”—women and men, rural and urban, students and workers, of all races and classes, marching for “food, shelter, and water for all.”¹⁶¹ That *is*, in fact, the story of the fight for occupancy rights, she continues, and the march goes on.¹⁶² Táíwò likewise imagines a solidaristic approach, including unions uniting with community organizations to press corporations and states for concessions that benefit entire communities. From pushing local climate initiatives to making global demands of multinational corporations, a broad-based approach is essential.¹⁶³

Inherent in such an approach is the need for allies. As Ian Hancock’s brilliant essay in *Time for Reparations* emphasizes, the German reparations paid to Jews after the Holocaust are rightly celebrated, but the Germans have never paid significant reparations to the descendants of the European Roma, some 70 percent of whom were exterminated by the Nazis. Indeed, prominent Jewish advocates even fought against the inclusion of Romani claims to reparations, worried such demands would water down their own.¹⁶⁴ The rejoinder to such thinking is the exhortation that formed the moral core of Bernie Sanders’s run for U.S. president: be willing to fight for someone you don’t know.¹⁶⁵

The question remains, however, whether any of this will be sufficient to remake a centuries-old global order. As the climate journalist Jake Bittle recently emphasized in a challenging piece in *The Drift*, green capitalism is ascendant and likely here to stay.¹⁶⁶ At the very least, those of us opposed to capitalism (or even just its excesses) must contend with its resiliency and its ability to seduce. It is this state of affairs that has led some, including the historian Andreas Malm, to call for “another stage” in the climate movement “beyond absolute non-violence.”¹⁶⁷

161. *Id.* at 36.

162. *See id.* at 37–38.

163. *See id.* at 187–90; *see also* LEAH HUNT-HENDRIX & ASTRA TAYLOR, SOLIDARITY: THE PAST, PRESENT, AND FUTURE OF A WORLD-CHANGING IDEA (2024).

164. Ian Hancock, *The Romani Genocide During the Holocaust: Resistance and Restitution*, in *TIME FOR REPARATIONS*, *supra* note 18, at 219.

165. Bernie Sanders, *Fight for Someone You Don’t Know*, YOUTUBE (Oct. 22, 2019), <https://tinyurl.com/3uscbxx4> [<https://perma.cc/Z3FU-NPB3>].

166. *See* Jake Bittle, *Everything Has Changed: Green Capitalism and the Climate Left*, DRIFT (June 14, 2022), <https://tinyurl.com/y3kb3zhe> [<https://perma.cc/A2H9-JLKH>].

167. ANDREAS MALM, *HOW TO BLOW UP A PIPELINE* 30 (2021).

“At what point do we escalate?” Malm wrote in his recent book, *How to Blow Up a Pipeline*.¹⁶⁸ “When do we conclude that the time has come to also try something different? When do we start physically attacking the things that consume our planet and destroy them with our own hands?”¹⁶⁹

There is a violence inherent in redistribution with which Táíwò, Guldi, and the other scholars of reparations seem reluctant to engage fully. Táíwò threads throughout his narrative the story of an 1835 slave revolt, but his list of “tactics” for accomplishing “just world-making” is notably shorn of any of those actually employed by the Malê rebels he invokes as parable.¹⁷⁰ Guldi focuses the bulk of her study on the administrators of the FAO and the activist-scholars on whom the FAO relied, covering too quickly the bloodier fights for land redistribution in China, Mexico, and Soviet Russia.

Revolutions can be nonviolent, of course. A few years ago, millions of Chileans took to the streets and successfully demanded a special plebiscite, in which massive majorities ultimately voted to enshrine a wholly new constitution (though progress on ratifying a specific document has stalled).¹⁷¹ Still, even nonviolent revolutions generally depend on implicit or explicit threats of what James Baldwin called “the fire next time.”¹⁷²

All fires need room to burn. The challenges of battling planetary injustice cannot be allowed to result in an approach so careful or restricted that it morphs into minimalism. “The colonizers and conquerors of the world, from the US southern planter aristocracy to the Third Reich, have never been confused about the scale of their ambitions for injustice,” Táíwò writes.¹⁷³ “It’s time they met their match.”¹⁷⁴

If all this sounds like a bit much, that’s because it is. Of course it is—it would have to be. Reparations simply are not imaginable within the context of capitalism-as-usual. To truly repair our broken world, we must break it wide open.

168. *Id.* at 8.

169. *Id.* at 8–9.

170. See Táíwò, *supra* note 23, at 174.

171. See Noam Titelman, *The Referendum in Chile*, *DISSENT MAG.* (Sept. 15, 2022), <https://tinyurl.com/3m7bx3r3> [<https://perma.cc/K7RN-G436>].

172. JAMES BALDWIN, *THE FIRE NEXT TIME* (1963).

173. Táíwò, *supra* note 23, at 190.

174. *Id.*