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## BOOK REVIEW

**Irene Antonopoulos**\*

**Matthew Scott, *Climate Change, Disasters and the Refugee Convention* (Cambridge University Press, 2020) 184 pp. ISBN 9781108747127 (paperback)**

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The area of climate induced migration has been explored from multiple perspectives. The environmental, social, and political dimensions of cross-border movement triggered by climate change are well documented, but the legal identity of the phenomenon is yet to be determined.<sup>1</sup> Within law, climate induced migration has been explored through the perspective of human rights law, environmental law, as well as refugee law.<sup>2</sup> Matthew Scott focuses on the

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<sup>1</sup> See for example, Jane McAdam and Elizabeth Ferris, *Planned Relocations in the Context of Climate change: Unpacking the Legal and Conceptual Issues* (2015) 4(1) *Cambridge J. Int'l & Comp. L.* 137; Issa I. Berchin et al, *Climate change and forced migrations: An effort towards recognizing climate refugees* (2017) 84 *Geoforum* 147; Tony G. Puthucherril, *Climate Change, Sea Level Rise and Protecting Displaced Coastal Communities: Possible Solutions*' (2012) 1(2) *GJCL* 235; Michael B. Schwebel, *Measuring climate change adaptation in Pacific small Island States: nissology and success* 9(1) (2018) *Journal of Water and Climate Change* 112.

<sup>2</sup> Gaim Kibreab, *Climate Change and Human Migration: A Tenuous Relationship* (2009) *Fordham Env'tl. L. Rev.* 357; Jane McAdam, 'Climate Change-related Displacement of Persons' in Cinnamon P. Carlane et al (eds), *The Oxford Handbook of International Climate Change Law*

latter in his book, making the case for the inclusion of climate induced migration within the auspices of the 1951 *Refugee Convention*. Scott explores the meaning of refugee status, almost attempting to redefine it to include natural disasters and climate change. Scott's methodology is contingent on the analysis of the relevant case-law in interpreting the definitions upon which a determination of 'refugee status' relies, within the context of unexpected natural changes. Through an extensive overview of the existing literature on the matter, Scott argues that the necessary elements of discrimination and human agency exist in the context of natural disasters and climate change, capable of satisfying the requisite element of persecution. He delves into *de jure* and *de facto* discrimination in order to establish that the denial of or failure to provide for human rights is key in determining the element of persecution - rather than focusing on the natural event that has exacerbated these denials or omissions.

Scott also investigates the natural disaster elements that have, so far, made the link to the 1951 *Refugee Convention* impossible due to the absence of human agency. Article 1(A)2 of the *Refugee Convention* stipulates that a refugee is a person outside their home country who is unwilling or unable to return due to a well-founded fear of persecution 'for reasons of race, religion, nationality, membership of a particular social group or political opinion'. The case law illustrates the difficulty in bringing the effects of climate change under this provision, as climate change is experienced by the whole population of the affected area,<sup>3</sup> and any fear of harm upon return does not relate to State or non-State actors' actions and inactions or persecution.<sup>4</sup>

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(Oxford University Press 2016); Brittan J. Bush, *Redefining Environmental Refugees* (2012) 27 *Geo. Immigr. L. J.* 553

<sup>3</sup> The recent decision of the Human Rights Committee on the application authored by Ioane Teitiota, halts this distinction. The Committee clarifies that although climate change affects the whole of the country's population, the possibility of the rights of the whole population being affected, would not stop the obligations of the sending authority under the non-refoulement principle. Human Rights Committee, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning communication No. 2728/2016, CCPR/C/127/D/2728/2016, 7 January 2020, para 11

<sup>4</sup> See for example the decisions in *Refugee Appeal No. 72189/2000, 72190/2000, 72191/2000, 72192/2000, 72193/2000, 72194/2000, 72195/2000, Refugee Status Appeals Authority, New Zealand*,

Scott takes a step further in discussing the shortcomings of the attempt to interpret the 1951 Refugee Convention in this area. Relying on the extensive literature in this area, he identifies the problems deriving from the current definition of 'natural disaster'. Scott is equally interested in distinguishing 'vulnerability to disasters' from 'exposure to disasters'. He analyses the case-law according to their environmental circumstances and the applicant's reliance on these circumstances, and state actions following these circumstances. Scott makes an important contribution in this area by explaining the hazard paradigm versus social paradigm, observed in the case-law and the work of several commentators on the subject. Scott calls for a preference of the social paradigm for two reasons. Firstly, natural disasters do not come from merely the natural hazard but derive from the disaster following this hazard due to the 'exposure and vulnerability to natural hazards' (p.14). Secondly, the social context during a natural disaster and/or climate change could satisfy the eligibility requirements for securing refugee status. This sets the groundwork for the guide that Scott provides on determining refugee status. His analysis on persecution, fear, foreseeability and the social paradigm forms the basis for concluding that determination of refugee status should not rely on a distinction between human agency and a 'natural disaster'.

This book offers an important perspective into the debate on whether 'climate migrants' could qualify for refugee status under the 1951 *Refugees Convention*. It is well-grounded on the case-law and literature that established the terms of the determination of refugee status in these circumstances. The book is not simply a useful and informative account of the debate for researchers in the area, but will also be of great benefit to postgraduate students in terms of furnishing them with the essentials of understanding the significance of the social paradigm; knowledge that is pivotal for understanding multiple debates around the determination of the refugee status.

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*Decision of 17 August 2000; AF (Kiribati) [2013] NZIPT 80041, Decision of 25 June 2013; and Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment, [2015] NZSC 10, 20 July 2015*