



A Framework for Compensating Climate Change Damages

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Abstract

Anthropogenic climate change is expected to contribute to mass migration from many different regions. Heyward and Ödalen (2016) propose a tailor-made migration option for victims of total territorial loss: a Free Movement Passport for the Territorially Dispossessed (PTD). The PTD presents a significant advancement over standard proposals for individual migration in response to total territorial loss. However, I argue that the compensatory obligations of states are more restrictive than the PTD scheme assumes (sec. 5), and that the contents of the right to compensation of the territorially dispossessed are not as far-reaching as required by it (sec. 6). In response to these difficulties, I argue that its purpose is better served by means of collective migration and propose a Passport for Territorially Dispossessed Collectives, which is also well positioned to serve as a framework for compensating a range of other climate-change related losses (sec. 9).

Keywords Climate · Migration · Autonomy · Identity · Voluntariness · Culpability

1 Introduction

Anthropogenic climate change is expected to contribute to mass migration from many different regions. Heyward and Ödalen (2016) identify citizens of low-lying small island states as being particularly vulnerable because a rise in the sea level may make their entire territory uninhabitable. Commonly discussed examples of such states are Tuvalu, Kiribati, and the Maldives. In response, Heyward and Ödalen (2016) propose a tailor-made migration option for victims of total territorial loss: a Free Movement Passport for the Territorially Dispossessed (PTD).

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This proposal makes an important contribution to the development of the non-ideal theory of climate migration in that it builds extensive compensatory rights for the territorially dispossessed on a nuanced analysis of theories of compensation. The resulting proposal for far-reaching institutional reform is characterized by a concern for implementability as well as an emphasis on the normative weight of the relocation preferences of climate refugees. This emphasis is important because it goes against the grain of the discussion within the ethics of migration. Therefore, the PTD deserves careful scrutiny.

Section 2 lays the groundwork by providing a preliminary sketch of the proposal and contrasting it with its main rival. Section 3 presents the compensatory theories grounding the PTD before section 4 shows how the PTD is thought to derive from them. Section 5 demonstrates that in one important dimension the compensatory obligations of states are more restrictive than the PTD assumes. In particular, it argues that duties to support the PTD cannot be established for non-culpable states. Section 6 contends that the PTD has important counterintuitive implications and that the contents of the right to compensation of the territorially dispossessed are not as far-reaching as proponents of the PTD claim. Section 7 addresses an objection based on an assumed homogeneity among climate culprit nations. Section 8 emphasizes the important role collectives play not only for our sense of place and our identity but also in the realization of other functionings. Section 9 builds upon this perspective and presents the Passport for Territorially Dispossessed Collectives which not only is (i) better positioned to compensate for the losses which inspired the PTD but (ii) can also serve as a suitable framework for compensating a large range of climate-change related losses. Section 10 concludes.

2 The PTD and its Main Rival

Heyward and Ödalen (2016: 209) defend a “‘Passport for the Territorially Dispossessed’, which gives them a right to choose their new nationality”. Such passports allow their recipients to choose *any* state as their new home and must be provided to *all* victims of total territorial loss.

Importantly, the proposal does not endorse the requirement that individual states accept climate migrants in proportion to their unjust emissions or other factors. Such is the position of quota-based accounts as have been proposed, e.g., by Byravan and Rajan (2006, 2010, 2015) as well as Risse (2009).¹ Heyward and Ödalen’s (2016: 217) major objection to such quota-based accounts is that “[r]egardless of the principle determining the quota [...], any quota-based account faces a problem: what happens in cases of ‘oversubscription’ where a greater number of individuals wish to be admitted than that prescribed by the quota?” Heyward and Ödalen (2016: 217) respond that even in such cases the territorially dispossessed should get to choose where they resettle – even if they do so in excess of any proposed quota. However, this extensive reach as

¹ Here, I focus on quota-based accounts as they are the main rival of the PTD. For more comprehensive literature reviews of proposals from ideal and non-ideal theory, see Dietrich and Wünderlich (2015: 90–94), Wünderlich (2018: 316–318), and Wünderlich (2019b: 15–17).

well as the focus on the loss of a sense of place may make the proposal difficult to justify.

3 The Compensatory Theories Grounding the PTD

3.1 Goodin

Heyward and Ödalen's (2016) proposal is based on theories of compensation offered by Goodin (1989, 1991, 2013) and de-Shalit (2011).² Whereas Goodin's work on the justification of compensation as well as his distinction between means-replacing and ends-displacing compensation provides the foundation of Heyward and Ödalen's approach, they rely upon de-Shalit's analysis to defend the particulars of the PTD.

According to Goodin (1991: 156) what justifies compensation is that "people had been reasonably relying upon the settled status quo ante persisting in much the same shape into the future when framing their life plans" and that it has value to respect these reasonable expectations. In particular he (152) argues that:

"1. People reasonably rely upon a settled state of affairs persisting (or, anyway, not being interrupted in the ways against which compensation protects them) when framing their life plans.

2. That people should be able to plan their lives is morally desirable.

3. Compensation, if sufficiently swift, full, and certain, would restore the conditions that people were relying upon when framing their plans, and so allow them to carry on with their plans with minimal interruption."

However, ideal compensation which is "sufficiently swift, full, and certain" and which supports one in pursuing one's original plans "with minimal interruption" is often unavailable – either because it is principally impossible to provide or because practical considerations make it infeasible or simply too costly. To explicate the specific deficiencies of some kinds of compensation, Goodin (1989: 60) distinguishes two of them: means-replacing compensation and ends-displacing compensation. Means-replacing compensation aims at "provid[ing] people with equivalent means for pursuing the same ends" whereas ends-displacing compensation aims at "helping them to pursue some other ends in a way that leaves them subjectively as well off overall as they would have been had they not suffered the loss at all".

As an example of an attempt at ends-displacing compensation Goodin (1989: 60) refers to a case where a person who suffers from a bereavement is offered a Mediterranean cruise. As an example of an attempt at means-replacing compensation Goodin (1989: 60) offers a case where a person who lost a leg is offered a prosthetic leg.³

According to Goodin (1989: 67) means-replacing compensation is superior to ends-displacing compensation because successful means-replacing compensation leaves people exactly as they previously were without forcing intrapersonal re-distributions between personal ends. While successful ends-displacing compensation leaves people

² To avoid confusion for those consulting the originals, let me clarify that Heyward and Ödalen's (2016: 214) references to "Goodin (1991: 60)" seem to result from a clerical error. The relevant content is found at Goodin (1989: 60) although that source is not explicitly mentioned.

³ See also Goodin (1989: 66) for further illustration of the two kinds of equivalence that are offered by means-replacing and ends-displacing compensation.

“globally *as well off* as we found them” (original emphasis) it forces intrapersonal re-distributions.

Note a difficulty in Goodin’s theory which is due to our ends being self-chosen. Even if it is true that forced changes to the self-chosen means we use in achieving our self-chosen ends are acceptable (while forced changes to our ends are not) because, as Goodin (1989: 67n55) supposes, “people’s ‘moral personalities’ are more heavily invested” in the choice of their ends, it may well be that what appears as a means to one person is an end to another.⁴ Put differently, the more specific any person’s conception of her ends, the less likely the possibility of means-replace compensating her.⁵

3.2 de-Shalit

In contrast to Goodin’s foundational work, de-Shalit (2011: 312) focuses on the potential for compensating a particular loss – the loss of a “sense of place” which is caused by forced displacement due to climate change. His (de-Shalit 2011: 325) central claim is that such compensation will not be possible and that, therefore, climate culprits have a duty to avert displacement.

According to de-Shalit (2011: 317) this sense of place is part of what “constitutes one’s identity”. As de-Shalit (2011: 317) puts it “place orientation is a feature of people’s experience of their immediate environment and how they understand their ‘environment.’” Because our experience of our immediate environment has developed over time, it depends on “memories, attachments, [and] stories” (de-Shalit 2011: 323), and the way in which it contributes to our self-identity cannot be replicated by just any other place.

Because of this unique role that particular places play in the constitution of our self-identities, forced displacement cannot be compensated. In Goodin’s (1989) terminology, de-Shalit (2011: 316, 322) contends that in such cases neither ends-displacing nor means-replacing compensation is available.⁶ Ends-displacing compensation is unavailable because victims of forced displacement cannot be placed on the same indifference curve as prior to their displacement.⁷ Means-replacing compensation is unavailable because while being offered refuge in a new place may offer shelter, it cannot play the same role in one’s self-identity as the old place (de-Shalit 2011: 323).

4 Deriving the PTD

As mentioned above, Heyward and Ödalen (2016) rely on Goodin’s work as the basis of their compensatory theory but use de-Shalit’s theory to develop the specifics of their proposal.⁸ In particular, they follow de-Shalit (2011) in emphasizing the connection between one’s sense of belonging to a particular place and one’s identity. Therefore,

⁴ Goodin (1989: 60n23) seems to be aware of this problem, witness his critique of another author. See also Goodin (1989: 65).

⁵ See also Wolff 2003: 209).

⁶ de-Shalit (2011: 322) uses a different terminology. He refers to ends-displacing compensation simply as “compensation” and to means-replacing compensation as “rectification”.

⁷ See also Goodin’s (1989: 63–6) discussion of the distinction between ends-displacing and means-replacing compensation in the context of welfare economics and, in particular, indifference curves.

⁸ I return to Goodin’s theory in section 6.

they (215) argue, “the territorially dispossessed should be provided with the means to construct a new identity in a new place”. However, this new place cannot simply be any place. As de-Shalit (2011: 323, 327n25) argues in a different context, it must be conducive to developing a *voluntary relationship* with it, for otherwise the new place cannot support one’s new identity. However, according to de-Shalit (2011: 327n25) one can develop such a voluntary relationship even with one’s obviously unchosen birthplace “if one continuously and regularly reflects on one’s attachment to that place and one’s conception of identity”.⁹ Accordingly, a voluntary relationship with one’s place does not presuppose that one chose it but merely that one shapes that relationship. Therefore, following de-Shalit, one can establish a new sense of place even with reference to a place one has been assigned by others.

Nevertheless, Heyward and Ödalen (2016: 215) conclude that “the territorially dispossessed *must be given a free choice over where to resettle*” (original emphasis). The underlying thought is that even if one need not choose one’s place to form a voluntary relationship with it, having a *voluntary choice* among places makes developing that *voluntary relationship* with one’s new place easier. Heyward and Ödalen (2016: 215) argue that having an unrestricted choice over where to migrate “means that the voluntary element is maximized” which in turn makes “the often difficult process of constructing new identities as painless and smooth as possible”.

To bolster their case, they (215–6) seek to defend it against the objection that the PTD need not be global in scope because allowing climate refugees a choice between some subset of states is sufficient to make their choice voluntary. For the sake of argument, Heyward and Ödalen (216) accept the position that voluntary choice—in principle—does not require unrestricted choice but argue that (i) voluntary relationships can only be developed with places that one regards “as viable and valuable”¹⁰ (based on, e.g., family connections, climatic preferences, or economic reasons) and, further, that (ii) no viable and valuable options may be excluded from one’s choice set. Because different people hold different places to be viable and valuable, predetermining the boundaries of such a set risks excluding some viable and valuable options. In Heyward and Ödalen’s (2016: 216) view this provides “practical reasons why the territorially dispossessed are owed a full and free choice about where to resettle and naturalize”. They (216) conclude that “[t]he PTD scheme will therefore be *more just*—a second best solution—if it is globally implemented than if it applies to a subset of states.” (my emphasis).

5 Limits to Compensatory Obligations

5.1 Rights and Duties

Heyward and Ödalen (2016) first and foremost focus on the content of the right to compensation of the territorially dispossessed. They seek to establish this right first and only later address the content of any compensatory duties. This approach implies that

⁹ See also de-Shalit (1995, 1998).

¹⁰ This position appears to conflict with the previously expressed view (215) that a voluntary relationship is possible with any place although building such a relationship is less painful if the choice of that place was voluntary.

the content of a right and the content of a compensatory duty can diverge. However, they (216) seem to go one step further when they conclude – independently of concerns about the duty bearers and without labeling their judgement as *pro tanto* – that “[t]he PTD scheme will [...] be *more* just [...] if it is globally implemented than if it applies to a subset of states”. In my view, this conclusion cannot be justified because the comparative justness of the PTD scheme can only be assessed when the relevant rights and relevant duties are considered together. In particular, the justifiability of the PTD scheme hinges on whether the relevant compensatory duties can be established. We must be able to prove a duty of each individual state to naturalize any and all of the territorially dispossessed who choose that particular state. To shed some preliminary doubt on the defensibility of this duty is the purpose of the following subsections.

To be clear, my position does not depend on a particular connection between rights and duties. Neither do I rely on the claim that rights always tightly correlate with duties¹¹ nor do I need to oppose the view that a right can persist although, e.g., due to scarcity, a corresponding duty no longer holds, but gives rise to derivative duties instead.¹²

5.2 Justified Emissions cannot Support Compensatory Duties

Why would states that have not contributed to climate change to an unjust extent have to offer climate migrants the option of settling within their borders? Sovereignty, traditionally conceived, entails the right to exclude non-citizens. Heyward and Ödalen (2016: 218–219) are well aware of this challenge but remain adamant that the Passport for the Territorially Dispossessed should allow for migration to *any* country. In support, they present a number of arguments. For one, they (218) hold that because all states have caused *some* emissions, “defining the threshold above which a state incurs a moral obligation to join the PTD scheme is going to be difficult—empirically as well as politically”. In my view, no plausible theory of compensation would hold agents liable based on their just emissions. Agents may have emitted subsistence emissions or simply per capita emissions¹³ below a level which could be expected to cause dangerous climate change—in particular climate change that causes territories to be submerged.¹⁴ Empirically, there are a number of states

¹¹ See Hohfeld’s (1917) discussion of claim rights but also Lyons (1970), Raz (1984: 199–200), and Waldron (1989).

¹² See Miller (2007: 194) and Oberman (2016: 51). However, on the danger of establishing mere “‘manifesto’ rights”, which do not generate duties in particular duty-bearers see O’Neill 2010: 126–7; O’Neill 2005) but also, more sympathetically, Feinberg (1970: 255).

¹³ For a defense of the carbon egalitarianism implied here, see e.g. Singer (2002). For a critique, see Bell (2008).

¹⁴ In opposition to this view, some may argue that emitting one’s fair per capita share of emissions is not sufficiently conservative to avoid liability. What low-emitting states should have done instead is to reckon with the likelihood of others over-emitting and either (i) emit even less to offset the unjust emissions of others or (ii) be prepared to pay some compensation for having themselves at least contributed to climate change.

I acknowledge that from the perspective of non-ideal theory agents may have weighty reasons to, e.g., use their political influence to urge compliance or to take up the slack for those who fail to fulfill their moral obligations. However, such duties do not derive from having contributed to climate change. See section 5c and 5e. To appreciate the independence of such duties from having contributed to climate change, consider a hypothetical state with zero cumulative emissions but faced with unrelenting climate culprits who—in addition to failing to curtail their emissions—also rebuff any demands to accept climate migrants. If that state had the ability to counteract the unjust emissions of others by means of carbon sequestration and/or the ability to provide a safe home to climate migrants, it may well have a duty to do so despite not having contributed to climate change.

that have caused per capita emissions *well below* any such level.¹⁵ Certainly, the specific threshold in question will be politically contentious but that does not entail that it could be argued that no countries lie below it.

5.3 Vertical Inequality Merely Grounds Conditional Duties

Heyward and Ödalen further contend that, irrespective of any duties that derive from having contributed to climate change, all states have duties to admit stateless migrants (219). To support this claim, the authors rely on a thought-experiment introduced by Paula Casal (2003: 18):

“[I]magine a group of hikers overlooking a badly injured man, who has slipped down a cliff and is now hanging on for his life. After the man shouts to one hiker for help, the potential rescuer refuses on the ground that it is unfair to be singled out when there are other similarly situated individuals who could also perform the rescue.”

According to Casal (2003: 18) one way to explain the strong intuition that the rescue should proceed despite the unequal distribution of burdens among the hikers appeals to the distinction between vertical and horizontal inequality. The vertical inequality between the injured man and his potential rescuer is far greater than the horizontal inequality between the burdened rescuer and his hiking partners. Therefore, one may argue, the hiker should rescue the victim even if he must act alone.

Heyward and Ödalen (2016: 219) recognize that this case is not analogous to that of climate change-induced territorial destruction because none of the hikers have caused the injured man’s predicament, while climate change culprits knowingly and wrongfully cause territorial loss. However, it is precisely this disanalogy, which prevents the construction of a duty of all states analogous to the duty of the hikers. It is implausible to postulate an unconditional duty of all potential rescuers if some among them have caused the predicament. In such situations, culprits have a primary duty of assistance and a duty of others only comes into play if either (i) it is clear that culprits fail to fulfill their duty or (ii) there is no time to determine whether they will.

Accordingly, Heyward and Ödalen may well deduce a *conditional* duty of states without culpable emissions to assist migrants by admitting them *if* climate culprits refuse to allow them to immigrate. However, such a passport policy is significantly different from one that grants all climate migrants their first choice and allows entry and naturalization into any state independently of whether other states permit immigration.

5.4 Ex-Post Compensation Does Not Justify Rights Violations

The authors (219) recognize that their proposal may introduce significant horizontal inequality between low-emitting and high-emitting states. To counterbalance this inequality, they propose measures by which high-emitting states could compensate low-emitting states. In my view, duties to resettle climate migrants indeed result *if* low-emitting states were offered and agreed to a trade ex-ante. If, however, low-emitting states reject or are not even offered such a trade, they are under no obligation—based on the compensation offered or provided to them—to allow migrants to settle within their borders.

More specifically, if we assume that—in the absence of compensation payments—low-emitting states have a right to reject climate migrants, then they retain this right even if

¹⁵ See The World Bank (2018).

ex-post compensation is provided. Under such circumstances, compelling low-emitting states to accept climate migrants cannot be justified for at least three reasons. First, rights violations cannot be justified by ex-post compensation because otherwise rights would not offer sufficient protection. In particular, we would constantly need to be afraid of others who can afford compensating us for rights violations.¹⁶ Second, it would unfairly divide the benefits of exchange because those harmed would never receive more than their reservation price, i.e., the minimal price at which they would have been willing to sell the good or accept the harm in question.¹⁷ Third, even if ex-post compensation could legitimize otherwise illegitimate policies, it may be impossible to provide the right kind of compensation to low-emitting states. As introduced in section 3a, Heyward and Ödalen rely in part on the compensatory theory defended by Goodin (1989). In Goodin's view (Goodin 1989: 56, 68–70, 73), a policy can only be justified by its accompanying compensation if that compensation eliminates concerns over the policy's redistributive effects. However, only means-replacing compensation can address interpersonal and intrapersonal redistribution and means-replacing compensation is unlikely to be available in the context of a loss of sovereignty. For example, if a state was committed to the end of restricting immigration, compensatory payments made in response to forcing that state to accept the PTD can only amount to ends-displacing compensation. It may help the state to achieve different ends but not the previously established end of restricting immigration.¹⁸

Based on these three reasons, I conclude that ex-post compensation cannot justify forcing low-emitting states to accept climate migrants. This does not preclude one from arguing that the PTD can be justified by other reasons. In particular, it holds open the door for offering low-emitting states ex-ante incentives to allow climate migration.

5.5 Full Compensation Vs. Fulfillment of Basic Needs

There seem to be many instances where assistance is required from parties other than the perpetrators. For example, if you come across Casal's badly injured man or a child left to starve it will be your duty to provide substantial support. However, the required support will likely not rise to full compensation unless only the fulfillment of basic needs is at issue. In the case of the hiker you will likely have a duty to rescue him from immediate danger and to tend to his injuries. However, you will not be liable to replace his watch or the contents of his briefcase – even if those losses impede his autonomy.

Therefore, the case for forcefully enlisting low-emitting states in the compensation of the territorially dispossessed can only be justified if failing to do so will make the territorially dispossessed very badly off. It does not suffice to show that the level of compensation can be improved, even substantially, if low-emitting states are forced to contribute.¹⁹

¹⁶ Nozick (1974: 65–71).

¹⁷ Nozick (1974: 63–65).

¹⁸ If the state rejects immigration for purely economic reasons, means-replacing compensation is, of course, possible. However, restrictive immigration policies are seldom motivated by purely economic concerns.

¹⁹ I assume that low-emitting countries have not benefitted sufficiently from the unjust emissions of others to make the beneficiary-pays principle applicable. For informative discussions of the principle see, e.g., Kolers (2014) as well as Barry and Kirby (2017).

6 Limits to the Content of the Right to Compensation

6.1 Overview

Above, I have argued that the compensatory duties of low-emitting states required by the PTD cannot be established. Yet the territorially dispossessed may still have pro tanto rights to be thus compensated. In this section, I argue that the rights of the territorially dispossessed are neither violated nor infringed if the PTD is not granted. In fact, and as I will seek to establish over the course of sections 6–9, the territorially dispossessed have rights to compensation which are in some sense more and in another sense less extensive than those granted by the PTD.

6.2 Implausible Implications

6.2.1 Settlement Choices Cannot Be Limited to Those between States

To begin with my argument against the claim that the territorially dispossessed have a right to an unrestricted choice of nationality, I contend that the demand for unrestricted choice has intuitively implausible implications. In particular, if settlement choices must be unrestricted internationally, they must also be unrestricted intranationally.²⁰

As Heyward and Ödalen's overall argument does not ride on allegiance to particular states but rather on a sense of belonging to a particular place, migrants would have to be allowed to settle anywhere—even within particular states. This is so because being allowed to choose between states does not suffice to maximize the voluntary element of choice as Heyward and Ödalen (215) characterize it. Consider choosing U.S. citizenship. The variety of places one could theoretically move to is impressive. However, in practice already financial constraints reduce options significantly. One way to address this problem is to rely upon market forces. However, without offering financial resettlement support this approach would make a mockery of maximizing the voluntary element of choice. At the same time, it is implausible that justice demands financial support to allow even half a million territorially dispossessed to migrate to Manhattan. Therefore, restricted migration options are significantly more plausible. Why such restrictions should exist with regard to selecting a place within a particular state but not with regard to choosing between states, cannot be explained by the theory offered. Restricted migration options would allow for a more limited application of the proposed passport scheme. At the very least, they would allow some states to restrict offering immigration rights to some of the territorially dispossessed.

A potential counterargument against unrestricted intranational settlement rights for climate refugees would be that – as in the case of nationals – a right to freedom of movement, as it is traditionally understood, does not extend to being financially supported, e.g., to resettle in a particularly desirable part of one's state. However, at least one crucial difference between the case of nationals exercising their right to freedom of movement and climate refugees choosing a place of resettlement with the help of the PTD, is that the PTD must include at least some financial resettlement

²⁰ In fact, Miller (2016) offers a number of reasons why intranational freedom of movement can be justified more easily than international freedom of movement.

support. Otherwise, a right for resettlement will do very little to protect the interests of the predominantly poor climate refugees. One could, of course, conclude that the PTD should only support liberty rights to resettlement but the radical curtailment of international and national resettlement options for climate migrants would not square well with the proclaimed importance of voluntariness in choice.

That unrestricted intranational settlement rights are not necessary to support voluntary choice does not in itself allow for the conclusion that unrestricted choice of nationality is not warranted. However, let me reiterate that Heyward and Ödalen's argument does not ride on the particular importance of nationalities. To the contrary, de-Shalit's (2011: 317) concept of place is built on one's "immediate environment". Therefore, I conclude that in the context of Heyward and Ödalen's theory, intranational resettlement options should be just as important as international resettlement options. If one can be limited without impeding voluntary choice, so can the other. In summary, I hold that a mixture of limited international and limited intranational settlement options can offer a fully voluntary choice of one's new place.

6.2.2 Statelessness Cannot Be A Requirement for Inclusion in the Passport Scheme

Heyward and Ödalen (2016), following de-Shalit (2011), focus their analysis on the loss of a sense of place, rather than actual statelessness. Therefore, it is unclear why being territorially dispossessed should be a requirement of being granted the relocation privileges they defend. Again, de-Shalit (2011: 317) holds that the relationship to one's "immediate environment" is decisive. Even though some may construe that relationship via their (federal) state (318), others see themselves *not* as e.g. U.S. Americans but as Floridians or even as Miamians. Following the demand for unrestricted relocation options for the territorially dispossessed, persons who suffer a loss of their immediate environment e.g. in Miami – but who do *not* become stateless – should then also partake in the proposed passport scheme. This conclusion may be counterintuitive as long as significant resettlement options remain in Florida or even the U.S. as a whole. Importantly, a focus on compensating for a loss of a sense of place in combination with a commitment to maximizing the voluntary element of choice would support such international resettlement options even if local or national resettlement options abound.

In response, it could be pointed out that Heyward and Ödalen specifically restrict the proposal to those who are territorially dispossessed. In fact, they (210–2) dedicate an entire section to emphasizing the risks of statelessness. Also, they (222) explicitly address the case of the likely displacement of citizens of Bangladesh but argue that as long as their state continues to exist, they should not be recipients of the PTD.

However, this qualification is not well grounded. According to Heyward and Ödalen (212, 210) statelessness is at its core a "loss of legal status" and "[a] stateless person is any person who is not effectively recognized as a national by any state, and who therefore lacks the political and social rights commonly associated with citizenship". Should both a loss of one's immediate environment *and* statelessness be preconditions of qualifying for a right to choose one's new nationality without restrictions? Let us consider persons who fulfill both conditions. If any state were to grant them citizenship the complaint of not being "effectively recognized as a national by any state" would cease to be valid – thereby undermining what is made out to be one necessary condition of receiving a PTD.

I fully recognize that statelessness is a severe burden and distinct from a loss of a sense of place. However, if actual statelessness were at issue, any state's citizenship should be accepted as rectifying the burden. We may want to add the requirement that the receiving state should be stable and offer the full range of “political and social rights commonly associated with citizenship”.²¹ However, if we demand more, then statelessness is no longer at the heart of our complaint. As a matter of fact, it should not be, if we are concerned with a loss of a sense of place and its relevance for our self-identity. However, under those circumstances a loss of a sense of place in itself – independently of statelessness – should ground a right to the PTD. Assuming that arguments for open borders do not succeed, this result speaks against the PTD. If arguments for open borders do succeed, the PTD is superfluous.

6.3 Voluntary Choices and Minimally Sufficient Choice Ranges

The PTD scheme takes up an extreme position on the spectrum between assigning all climate refugees specific states for their resettlement and granting all climate refugees an unfettered choice between all nationalities. Of course, the PTD scheme is not wrong simply because it is, in this regard, extreme, but it thereby becomes vulnerable to counterexamples. If it could be argued that, e.g., North Korea could be excluded from the relevant set of states without undermining the capability of the PTD scheme to compensate the territorially dispossessed, its demand for unfettered freedom of choice of nationality may be called into question.

However, the more substantive question is whether unrestricted choice of nationalities for climate refugees is necessary in order to provide just compensation. According to Heyward and Ödalen, this hinges on whether the refugees' choice between states can be voluntary even if their choice range is not maximal. With reference to the discussion regarding freedom of movement and open borders²² Heyward and Ödalen (215–6) argue that even if unfettered choice is not a conceptual necessity for voluntary choice, we must require it for practical reasons.

Their (216) key argument appears to be that “[g]iven the many different reasons as to why persons might choose to settle in a particular state, to determine in advance which states should be included in the set of ‘sufficient’ options will be near-impossible without ruling out some [viable and valuable] options for at least some individuals.” Unspoken is the assumption that ruling out some viable and valuable options is impermissible. This argument implies that the sufficient set of options which enables voluntary choice must contain *all* viable and valuable options for each individual.²³ This assumption is extremely restrictive and does not arise from but is supposed to support the practical reasons for unfettered choice of nationality. If we were to relax it, even slightly, unrestricted choice could no longer be demanded. Given that this assumption does the heavy lifting in the argument for the PTD, and operates much

²¹ Heyward and Ödalen (2016: 210).

²² See, e.g., Carens (1987: 258), Miller (2016), and Oberman (2016). See also the discussion regarding the relationship between autonomy and the number and variety of choices (e.g. Feinberg (1980), Raz (1986: 374–5), Mills (2003: 500–1), Dietrich (2020: 108)).

²³ If “some” is interpreted to mean “at least two”, the implication would be that “the sufficient set of options which enables voluntary choice must contain all *but one* viable and valuable option”. As this complication is of very limited import for either their argument or my counterargument, I neglect it here.

like the claim of the conceptual necessity of unrestricted choice for voluntary choice, it requires support. Here I seek to undermine it.

To taper expectations let me state outright that, once conceptual arguments are disregarded, all that can be offered on either side of this debate is a direct appeal to intuitions. I argue—based on the significant cultural, topographical, social, economic, linguistic, religious, and legal diversity among the approximately 80% of existing nations who have culpably contributed to climate change—that a choice among high-emitting states would suffice to allow for fully voluntary choice of the territorially dispossessed. Independently, of whether an objection to this position is framed in terms of voluntariness or, perhaps more persuasively, in terms of the potential for improved compensation, an objector could point out that the opportunity set of some of the territorially dispossessed would potentially be better if choice were unrestricted.

I agree, but claim that no right to this improved opportunity set can be established. To support this position, I offer a general worry about incommensurability in compensatory theory. If we assume that a loss is partially incommensurable with any compensation that can be offered, full compensation is impossible.²⁴ However, by extraordinary measures we may be able to approach full compensation. This appears to be Heyward and Ödalen's aim. They accept that full compensation is impossible, but an unrestricted choice of one's new nationality is believed to be the second-best solution. In such situations it is plausible to assume that whatever the currency we are compensating in, it has non-linearly diminishing marginal returns as full compensation is approached. A completely unrestricted choice of nationalities is unlikely to be far superior to unrestricted choice among all countries except one.²⁵ However, having a choice between two countries is indeed likely to be far superior to having no choice at all. The problem is obvious when we try to compensate losses that have no full financial equivalent with money. Full compensation is impossible by monetary means but more money will usually be better compensation than less money. However, even if we assume that full compensation is required, it is unlikely that we should spend infinite resources trying to achieve it, or that it makes sense to speak of a victim having

²⁴ Note, that I do not assume that the territorially dispossessed experience a kind of loss that cannot be compensated even partially. Such a loss would be completely rather than partially incommensurable with other dimensions of value—or to put things differently, parts of the loss would be fully incommensurable with what could be offered as compensation. If that were so, “compensatory” efforts would merely be punitive in nature or demonstrate recognition of a wrong having been committed (see Radin 1993). Rather, I argue that while full compensation is unlikely to be possible under all circumstances, an approach based on multiple dimensions of compensation can support very significant compensation for most of the territorially dispossessed (see, especially, sections 8 and 9). Here, I understand efforts of compensation to be targeted at raising the wellbeing of the affected parties to that level of wellbeing they would have experienced in the absence of the relevant loss. This usage of the term “compensation” corresponds to that of de-Shalit (2011: 322) and is in line with the concept of “ends-displacing compensation” as introduced by Goodin (1989: 60).

As an aside, one may interpret common trade-offs migrants make, e.g., between their sense of place and economic opportunities as a guide to rough commensurability. However, such assessments are complicated by the frequent injustice of the economic background conditions which motivate such decisions.

²⁵ To illustrate, some groups of states are likely to have sufficient group-internal homogeneity with respect to most of their relevant characteristics for it to be the case that specific members of that group can be excluded from the option set of potential migrants without significantly lowering the value of that option set.

Although I do not press this point here, I contend that, based on such reasoning, the exclusion of specific high-emitting states from the option set of potential immigrants could also be justified. Such a policy would, of course, raise the question which states among a homogenous group should be excluded. I merely flag these concerns for future consideration.

a right to infinite resources – even if we accept that rights do not necessarily generate duties to fulfill the associated claims.²⁶ Applied to our case, I argue that the marginal benefit that comes with unrestricted choice as compared to the very substantial choice among all culprit nations is too small to justify limiting the sovereignty of low-emitting countries.²⁷

However, my overall argument does not rely on this result. Even if unrestricted choice of nationality could be established as a *pro-tanto* right in the absence of all other methods of compensation, this narrow perspective is unwarranted. Above I have argued, that intranational resettlement options can compensate for a perceived lack of international resettlement options. Below, I argue more generally that other dimensions of compensation cannot only make up for but exceed what unrestricted choice of nationality has to offer.

6.4 Disadvantages of Adjustment Are Commensurable

According to de-Shalit, we can develop a voluntary relationship with places that have been chosen for us. Therefore, we can develop a sense of place in relation to an unchosen place. Nevertheless, Heyward and Ödalen suggest that not only our relationship with our new place needs to be voluntary but also our choice of it. The criterion for this choice being voluntary is that it is unrestricted. However, as long as each climate migrant gets to choose one place which is viable and valuable to her, then the disadvantage resulting from not having had an unrestricted choice does not, according to Heyward and Ödalen (215), undermine one's having a sense of place and one's identity. It will merely make developing such a sense of place more painful and less smooth. Although, according to de-Shalit (2011: 321), the loss of a sense of place is incommensurable with other functionings, this is unlikely to be true of the difficulties of developing a sense of place under suboptimal conditions.

Therefore, even if a voluntary choice cannot be guaranteed for all climate migrants (although I dispute that this is so), the resulting loss can be compensated in other ways, at least in principle. To appreciate this, consider that I am not proposing forcibly relocating climate refugees to nations they despise, but to give them a reasonable choice among a variety of nations which will be likely to be viable and valuable from their perspective. Therefore, e.g. economic or educational opportunities combined with housing and healthcare (over and above what is owed in compensation for other losses) may well compensate for the displeasure and additional effort that comes with developing a sense of place in the absence of unrestricted choice of nationality.

²⁶ In defense of the PTD scheme it could be argued, that the burden it places on selected states is quite limited because only the citizens of a few small island nations would receive a PTD. As I argue in section 6b, limiting the distribution of the PTD in this way cannot be justified. However, even if the numbers of likely climate refugees eligible for the PTD were assumed to be limited to approximately one million (Heyward and Ödalen 2016: 220), collectives not at fault for climate change usually have no duties to admit them, in part, because a highly diverse set of climate culprit nations are available to either (i) accept the climate refugees themselves or (ii) to incentivize other nations to do so voluntarily. For duties of low-emitting states in the face of the non-compliance of climate culprits see sections 5c and 5e as well as footnote 14. However, note that the duties of low-emitting states discussed there do not derive from their having contributed to climate change.

²⁷ In addition, a practical advantage of restricting the scope of the proposal is that a commitment to ensure the cooperation of each and every state is likely to be extraordinarily challenging and ground for numerous conflicts. While that does not undermine theoretical rights claims, it should inform non-ideal theory.

6.5 A Focus on Autonomy

Above I have argued that de-Shalit's compensatory theory with its focus on a sense of place cannot support a defense of the PTD. In response, one may ask whether Heyward and Ödalen could, instead, ground the PTD primarily in Goodin's theory of compensation. In this section I argue, that neither Goodin's theory of compensation, nor Heyward and Ödalen's interpretation of it can ground unrestricted choice of nationality for the territorially dispossessed.

Heyward and Ödalen (213) hold that according to Goodin's theory "compensation [is] a matter of respecting individual autonomy". Therefore, they suggest that "when someone's life plans are seriously disrupted by our actions we ought to act in a way [...] which protects their capacity to form and carry out their life plans". Specifically, they (213) hold that this requires "that the territorially dispossessed should be given as much control over their future as possible, in the form of a full and free choice about where they settle and naturalize". This form and extent of compensation is justified, they claim, because "the territorially dispossessed ought to be compensated for the fact that they have lost control over many of the most important aspects of their lives."

Understood from this perspective, Heyward and Ödalen seem to be motivated by the aim of supporting the territorially dispossessed in reestablishing as much of their autonomy as possible. Let us assume that this aim can be justified. Nevertheless, it remains unclear why this aim should be pursued only by giving a free choice of nationality. There are many factors beyond nationality which determine opportunity-sets and, therefore, the extent of one's autonomy. Even if nationality governs a substantial part of one's opportunities, it is hard to argue that nationality is always decisive. Therefore, if our compensatory theory is based on the aim of reestablishing autonomy, it seems more plausible that the territorially dispossessed should receive a reasonably free choice (i) of their nationality, (ii) among national settlement locations, and (iii) among other goods and services.²⁸

Does a focus on the distinction between means-replacing and ends-displacing compensation yield a different result? No, neither kind of compensation can ground the PTD scheme. If we focus on means-replacing compensation for territorial dispossession generally, we are seeking to replace old means by new means with which to achieve pre-established ends. Therefore, the offer should likely extend to a new place and nationality in addition to other goods and services which are well suited to reach pre-established ends. However, these pre-established ends are unlikely to be restricted to having a sense of place. Likely, economic success, being in good health, and maintaining political self-determination will matter as ends as well.

If we artificially narrow our perspective and exclusively ponder the potential for means-replacing compensation for the loss of a sense of place (now viewed as an end in itself), we need to consider that a physical place is not the only means of achieving a sense of place. While it is certainly necessary to that end, it is unlikely to be sufficient

²⁸ In the context of any compensatory theory, we must be mindful of the risk of overcompensation. When focusing on autonomy, we can easily imagine climate migrants whose opportunities and choice sets are significantly enhanced – making them better off than they previously were – by being offered the option to migrate freely. Here we must bear in mind the historical and economic circumstances in endangered small island states. Making their inhabitants better off than they would have been in the absence of territorial loss is unlikely to be morally wrong but doing so is not covered by theories of compensation.

because our conceptualization of our “immediate environment”, as de-Shalit (2011: 323) puts it, rests on “memories, attachments, [and] stories” which are very likely to be intimately connected to our social environment. Therefore, having a sense of place and, more importantly in our case, regaining a sense of place in a new environment, is greatly benefitted by or even requires a suitable social environment. Hence, a fitting social environment can go some way towards alleviating concerns over one’s physical environment, so that an unrestricted choice of nationality is not required. I develop this claim more fully in section 8.

If we focus on ends-displacing compensation, we are no longer bound to any particular currency of compensation because it precisely aims at supporting different ends. All that matters is making the territorially dispossessed as well off as they would have been in the absence of territorial loss. I am not claiming that this is easy. However, just as in the case of enhancing autonomy, it will be easier to achieve this result with a combination of reasonably free choice of nationality, local settlement location, and a range of other goods and services.

In summary, an unrestricted choice of nationality is unlikely to be a requirement either for successful means-replacing compensation or for successful ends-displacing compensation and, therefore, cannot be established as the content of a right to compensation.

7 An Objection: An Unrestricted Choice Among Developed Nations Is Principally Insufficient

Above I have argued, that if choice among nationalities is restricted, within reason, this can be compensated by other means. Even if true, this does not necessarily establish that a choice among all high-emitting nations is sufficient because integration into high-emitting nations may in principle not be viable and valuable to some of the territorially dispossessed. Why may this be so? The group of high-emitting nations is characterized by great cultural, topographical, social, linguistic, economic, religious, and legal diversity. What they have in common is that the economic development which enabled them to become climate culprits offers comparatively substantial economic opportunities. These are such that a subset of these nations consistently ranks as the most attractive to immigrants. Nevertheless, one may wonder whether the territorially dispossessed will shun offers to move to the nations of climate culprits, because living in a place where the majority of people accept the destruction of the homelands of others as an acceptable price for furthering their own luxuries, is principally unacceptable.

This is an interesting challenge because it seems to unearth a problematic kind of homogeneity among a set of countries that otherwise looks diverse.²⁹ However, the challenge does not succeed for the following reasons: First, major climate culprits such as the US, the EU, Australia, and the UK continue to be among the most highly sought-

²⁹ A similar challenge could derive from an alleged unwillingness of the territorially dispossessed to relocate to high-emitting states for fear of being discriminated against. However, the ugly truth is that xenophobia is widespread and certainly not confined to high-emitting states. Also, justified fears of discrimination have not made high-emitting states unpopular among potential migrants.

after destinations for migrants. Therefore, the objection appears to be on empirically shaky ground. Second, and in a similar empirical vein, most major climate culprits are pluralistic societies with large and growing awareness of the wrongfulness of excessive emissions. Third, it would be implausible for climate migrants to think that low-emitting countries are essentially different with respect to their willingness to sacrifice the well-being of others for their own benefit. Low-emitting nations are not in their position because they have made a conscious decision some 30 years ago to cut back on their emissions in order to protect others, but mainly because they are not sufficiently economically developed to have the opportunity to destroy the livelihood of others by way of their emissions.

8 The Role of Collectives

While I reject the above objection, the underlying idea that the receiving culture plays a major role in whether or not a destination can be the basis for establishing a new sense of place emphasizes a crucial point. As introduced in section 6e, our sense of place is inseparably intertwined with our social world. Recall that compensating for a loss of a sense of place by means of the PTD is aimed at supporting the territorially dispossessed in constructing new identities. Specifically, that process is meant to be made “as painless and smooth as possible” (215). It is safe to assume that the construction of a new identity is significantly easier if it can incorporate large parts of one’s old identity. Being separated from it and having to integrate into a different collective directly hinders the process of constructing a new sense of place and a new identity in a new place. Therefore, the people we share our new place with are at least as important to our new life as is our immediate physical environment. If it is our goal to make the process of developing a sense of place “as painless and smooth as possible”, we are well advised to take into consideration the option of collective migration. Rather than focusing on the question of which community should offer territorially dispossessed individuals a new place, we should expand our perspective and support the territorially dispossessed in reestablishing their own. This approach would go a long way towards alleviating concerns over culture, language, education, and family ties in a new location.

And this is not the only reason why enabling collective migration should be a priority. Ultimately, we must develop a framework for compensating a host of climate-related damages and for supporting a wide range of functionings which are at risk. Many of these consist of or are intricately linked to being a member of a particular community. Consider, for example, the importance of being politically self-determined in the context of a specific collective. Heyward and Ödalen (2016: 213) expressly recognize that the territorially dispossessed lose not only “their homeland, their belonging to a certain place” but also “their status as a self-governing, sovereign political community”. This status and the associated functionings are undermined if collective migration is not supported. Therefore, we need a Passport for Territorially Dispossessed Collectives, which enables displaced collectives to resettle in a suitable place (see section 9).

This result is especially noteworthy, given that Heyward and Ödalen (220) identify as a “key feature of the PTD scheme [...] that it allows for possible *dispersion* of the

territorially dispossessed” (my emphasis). Should PTD recipients freely choose to disperse, they certainly may. The collective right to political self-determination derives from the value of individual autonomy. Therefore, a collective cannot justify restricting its members’ right of exit based on the collective right to political self-determination.³⁰ However, those who want to continue as a collective should be enabled to do so. For this purpose, the PTD does not suffice because already economic pressures make it virtually impossible for the inhabitants of an entire small island state to settle in a new place in close proximity of each other. Of course, Heyward and Ödalen cannot be asked to offer solutions for all that is lost. However, even if we focus on particular functionings, compensatory solutions that are compatible with compensation for other aspects of climate change related destruction should be preferred.

9 A Passport for Territorially Dispossessed Collectives

In ideal theory, total territorial loss should be compensated by means of territorial compensation—effectively providing displaced communities with suitably large and suitably similar replacement territories upon which to rebuild their states.³¹ To facilitate resettlement and rebuilding, territorial compensation would have to be coupled with significant financial compensation. Especially if such compensation packages were to be provided before inevitable territorial loss actually occurs, territorial compensation could go a long way towards compensating most losses caused by climate change.

Given that territorial compensation would require that some states downscale their territory, its implementation faces significant hurdles. Therefore, a non-ideal approach, which anticipates the likely non-compliance with the proposal of territorial compensation, yet delivers many of its benefits, is necessary. In non-ideal theory displaced collectives should be offered compensation which approximates access to new territories, i.e., collective migration.³² Specifically, displaced collectives should receive legal, financial, and organizational support to resettle as a cohesive group, being offered the opportunity to exercise a form of local autonomy over, e.g., cultural and educational matters.³³ As I have argued above, this approach is particularly well suited not only to provide compensation for a sense of place which is likely to be superior to that offered by the PTD scheme, because it relies upon the importance of our social environment for our sense of place, but also because it offers an effective framework for compensating other salient losses caused by climate change. One such loss consists in the reduction of political self-determination suffered by the affected collectives. However, collective migration also offers the opportunity to compensate for violations of property rights.

³⁰ See also Article 13(2) of the Universal Declaration of Human Rights as well as Wündisch (2019b). The claim that the collective right to political self-determination cannot justify restricting the individual right of exit does not entail a position on whether collectives may have other legitimate reasons to disincentivize the general phenomenon of brain drain. For a discussion see, e.g., Brock and Blake (2015).

³¹ See Dietrich and Wündisch (2015) and Wündisch (2018).

³² See Wündisch (2019b).

³³ If resettled collectives had the right to secede from their host state, states would likely be significantly more hesitant to offer land for collective resettlement. Such opportunities for secession would turn collective migration into a pathway to territorial compensation. Therefore, I argue that – in non-ideal theory – we have grounds to restrict collectives from seceding from their host state, even if such secessions were to be justified under different circumstances.

Not only losses in private property can be easily addressed – individual migratory approaches may do that as well – but losses in public property such as large-scale infrastructure, public parks and the like can thus be compensated.

In principle, collective migration could be coupled with the central element of the PTD scheme: unfettered freedom of choice of nationality. However, as I have argued above, that level of choice cannot be justified. Collective migration must be organized such as to provide sufficient compensation for territorial loss without being overly demanding. In particular, it must not place unjustified burdens on low-emitting states.

How then is such non-ideal collective climate migration to be implemented?³⁴ Briefly, compensatory liability should be distributed between states based on their proportional contribution to the causes of territorial loss, chiefly climate change. As many high-emitting countries, unlike, e.g., Australia, are not in an ideal position to offer suitably similar areas for relocation to displaced collectives, and because proportional contributions to compensation should be maintained, a mechanism for separating compensatory duties from the provision of replacement spaces must be found. For this purpose, responsible states should contribute to a climate fund that, in turn, pays states which are in a position to offer suitable land for collective resettlement. The specific conditions these areas must offer should be determined in close collaboration between territorially displaced collectives and the compensating parties. Likely requirements are that (i) the new area be of comparable size and (ii) suitable for the cultural needs and way of life of the collective.³⁵ Once a number of suitable sites have been located, a negative auction – in which states offer to support the collective migration of a particular group at a particular price – may be used to make this process efficient. However, as Heyward and Ödalen emphasize, much is to be said for supporting voluntary choice. Therefore, it would be preferable for displaced collectives to be offered a choice among a number of places which are viable and valuable to them.

While the proposal has the advantage of making the support from low-emitting countries voluntary, it is also faced with the disadvantage of having to gain that support. However, as I have argued above, collective migration – even if it is limited to suitable areas within high-emitting states – can offer superior compensation. Therefore, the support of innocent parties is not necessary. Second, I submit that the significant differences in economic success between many high-emitting and many low-emitting states make it empirically plausible that offers for collective resettlement by some low-emitting states can be incentivized by economic means.³⁶ Third, in practice, the implementation of the PTD scheme would also require a mechanism to ensure the cooperation of the low-emitting countries because the scheme demands an unrestricted choice of nationality.³⁷

³⁴ See Wündisch (2019b).

³⁵ See Dietrich and Wündisch (2015: 95–96).

³⁶ Here, I sidestep the problems resulting from the myriad of background injustices which may call into question the ethical defensibility of any such trade.

³⁷ Any proposal of how to compensate victims for their losses faces the challenge of non-compliance. In the absence of a world government the global challenge of non-compliance is particularly pronounced because coercive methods of ensuring compliance are limited. Realistically, economic sanctions are the most aggressive means that can be justified to force compliance. Although, territorial dispossession is likely a just cause for war, such a war could not be justified because it would likely neither be proportional nor successful. See Wündisch (2019a: 173).

Collective decisions are rarely unanimous. None of what I have argued implies that individuals must join in collective migration – even if their collectives have democratically decided to accept it. While I hold that offers of collective migration (i) are well suited to fulfill any compensatory duties high-emitting states have towards the territorially dispossessed and (ii) fully respect the rights of the territorially dispossessed, little speaks against offering individual relocation privileges in addition to that. As some states and some individuals may well prefer such options – either to reduce the space requirements for collective migration or because they seek a future apart from their collectives – such offers could be mutually beneficial. Therefore, a PTD scheme with a reduced scope based on ex-ante agreements between climate culprits and host countries may well play an important role in offering compensation for territorial loss.

10 Conclusion

The PTD scheme presents a significant advancement over standard proposals of individual migration in response to total territorial loss. However, the proposal is too extensive and too limited at the same time. It is too extensive in that it requires countries who have not culpably contributed to territorial loss to support the PTD scheme. It is too limited in that it focuses on compensating for a loss of a sense of place and the concomitant reduction in the autonomy of the territorially dispossessed by means of enhancing the choice sets of individuals in a comparatively narrow range of dimensions.

As I have argued, collective migration is not only better suited to compensate for a loss of a sense of place but also provides a broad framework for compensating a number of other losses caused by territorial dispossession. For example, the proposal of collective migration is ideally positioned to address cultural, familial, linguistic, and economic concerns often associated with international resettlement.³⁸

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³⁸ See Risse (2009: 297), who argues that “preexisting relations, cultural or linguistic ties, historical connections, or practical capacity” could bear on where specific migrants should settle.

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