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Aller au sommaire du numéro

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Symposium

Beyond the Global Compacts: Re-imagining Protection

JENNIFER HYNDMAN AND JOHANNA REYNOLDS

How can protection for refugees and migrants (hereafter "refugee-migrants") be imagined outside and beyond the status quo? The challenge of providing better protection for them is addressed through the Global Compact on Refugees (GCR) and the Global Compact for Migration (GCM) is acute, and yet this distinction between migrants and refugees is deeply flawed. How do our civil societies and the "international community" of governments and intergovernmental organizations move beyond improving the status quo? Notions of "protection" are themselves fraught. Who is protecting whom? Who authorizes protection? And what power relations shape its terms? Highlighting where and how protection is self-authorized at scales that are not conventionally international or state-based is a critical first step. These questions—first discussed in a 2018 workshop in Toronto—are presented here as efforts that reframe protection strategies and meanings. In this introduction to the symposium that follows, we report on the broader workshop, identify key interventions that remain largely invisible at national and international scales, and call for more. We ask scholars of migration, asylum, and displacement to engage more critically with protection at different scales and in spaces not governed by international law, as highlighted further in the three articles that follow.

Since 2014, more than ten thousand migrants have died in the Mediterranean Sea.[1] Deaths along many other routes remain uncounted, on land and at sea. In 2015, 1.3 million people, a record number of asylum seekers, made refugee claims in Europe, with more than half coming from just three countries: Syria, Afghanistan, and Iraq.[2] In European countries, the term *refugee crisis* became a hyperbolic characterization but also a rallying cry for something to be done, on humanitarian and security fronts, through a proliferation of public policy responses to fortify Europe's borders. The "crisis"[3] was constructed largely by states in the Global North about the uninvited asylum seekers arriving on their shores, often ignoring the violence and displacement and displacement in Syria, but also South Sudan and Eritrea. According to

this view, the "problem" was defined as the refugee-migrants arriving in Europe, and focused on restrictive policies to reduce the "flow" of people heading towards Europe.

In September 2016, world leaders met to determine what could be done to address record levels of displacement at the United Nations Summit and meetings in the United States. Remarkably, all 193 UN member states signed the New York Declaration on Refugees and Migrants in 2016, a pledge of support to those affected and the states that host them, and a catalyst for the GCR and the GCM, also known as the Global Compact for Safe, Orderly and Regular Migration.

In 2018, the GCR was launched and signed by 164 states; the GCM was also released and signed by 152 countries. While legally non-binding, the compacts replicate in some ways the spirit of human rights principles encapsulated in the Universal Declaration of Human Rights after the Second World War, a legally non-binding document that has become customary law. In our view, the political hope was that the compacts could breathe new life and action into what had largely been considered a humanitarian failure of the international community; former UN Secretary General Ban Ki-Moon called it "a test of our collective conscience."[4] And yet this idea of a moral obligation to save lives and assist was questioned, and in some cases criminalized in the case of refugee-migrant rescue ships.[5] The not new, but palpable tension between providing protection to refugee-migrants and denying access to it in the name of national security remains the biggest "test" of our time.

While constructive and laudable in many respects, the global compacts are unlikely to shift the political and institutional frameworks that manage migration. Rather, we contend they will maintain the status quo whereby migration is encouraged to stay within Global South countries or people are turned away from state borders as they approach the Global North. Much scholarship has engaged with the compacts and their "plans of action."[6] This introduction and the articles that follow challenge the standard solutions and responses to displacement and migration. The GCR performs a kind of "legal orientalism"[7] that uses the 1951 Convention Relating to Refugees and 1967 Protocol to frame its Plan of Action and Comprehensive Refugee Response Framework. To the extent that the GCR focuses on states that are signatories to the 1951 Convention and its 1967 Protocol, it suffers from "convention-centrism" and excludes major parts of the world (most notably, South and Southeast Asia, as well as Jordan, Lebanon, and Turkey—in relation to Syrian asylum seekers). We contend that the GCR works to *improve the status quo* but does little to shift the containment paradigm of managing displacement in regions of the Global South. The GCM is a very different document that builds upon development and climate-related commitments, with indicators to measure its progress.

Research presented by leading migration scholars at a 2018 workshop in Toronto challenges the state-centrism of the GCR and the GCM and documents interventions that address protection challenges for people on the move. Freedom from forced return to violence at home, or *non-refoulement*, is the central pillar of refugee protection in law, but interdiction, return protocols, and readmission agreements (now often called "partnerships" in the European context) undermine obligations with spatial fixes that block refugee-migrants from accessing the territory of signatory states that would trigger such obligations, putting this basic principle of *non-refoulement* in question. A proliferation of such "partnerships" with transit countries continues to develop between Europe and its neighbouring countries, such as Libya, Mali, and Niger, effectively turning them into refugee-migrant holding cells.[8] Of course such containment strategies are not found in Europe alone: evidence of U.S. border externalization can also be found in the Americas,[9] just as Australia "offshores" asylum to islands in the South Pacific.[10]

The tension between simultaneous calls for protection and exclusion of people on the move, especially northward, cannot be ignored. The global nexus of refugee-migrant exclusion continues to be galvanized through a politics of securitization and related practices.[11] Beginning in the 1990s, the political valence of the "refugee" was transformed from "strategic and valuable" in a Cold War context to "costly and avoidable." This post–Cold War aversion to refugees was immensely consolidated by the global "war on terror," when wealthier countries in the Global North began finding myriad ways to outsource refugee care and maintenance to host countries in the Global South that were adjacent to displacement.[12] Alex Betts and James Milner note that European states are willing to pay for, but not host, refugees: for EU states "it doesn't matter where asylum is provided as long as it is provided."[13]

In this geopolitical context, workshop participants were asked to expand notions of protection beyond conventional meanings and "solutions" to foreground lesser-known, more local and regional interventions and practices that provide security to people whose lives and livelihoods have been displaced or destroyed.

How, then, can one reimagine "protection" outside and beyond current norms? The realm of possibility is truncated by the language we use,[14] the policy categories we adopt and deploy,[15] the longstanding research practices we employ, and the inequalities they reproduce.[16] Building on the work of many others, we contend that these inherited categories artificially delineate different migrant statuses that legitimize containment and constrain the agency of displaced persons. They naturalize state divisions and hide historical interstate relations of exploitation, including imperialism, colonialism, and slavery.

Refugees are often represented as bona fide and "deserving," while those fleeing structural violence, slow violence, or acute deprivation are seen as opportunistic. Betts and Collier assert this questionable distinction: "Migrants are lured by hope. Refugees are fleeing fear. Migrants hope for honeypots; refugees need havens."[17] Such false binaries and simplistic stereotypes do little more than obscure the multifaceted conditions and considerations that shape refugee-migrant journeys and the people who refuse the migrant/refugee distinction.

The very existence of two distinct global compacts reproduces the fiction that refugees and migrants are discrete, unrelated groups of people on the move. Examples in this symposium remind us of the fraught in-between categories and spaces where formal, legal protection statuses do not apply and more people-centred processes are needed to understand protection, security, and their meanings. We elaborate further on these themes in the Humane Mobility Manifesto, an outcome of the 2018 workshop, and the Kolkata Declaration, signed in November 2018, to which we return below.

Alternative Solutions to Refugee Protection: The Workshop

The workshop, "Alternative Solutions to Refugee Protection,"[18] held June 5 and 6, 2018, in Toronto, was organized around three questions:

1. What alternative forms of civil society engagement, solidarity, and legal intervention lie within global and regional frameworks that could be used to further the interests of international migrants and address racialized exclusions?
2. How can refugee-migrant agency and autonomy be taken seriously?
3. Building on the knowledge of refugee-migrants' decisions, actions, and self-authorized forms of protection, what alternative ways of imagining people's movement in search of security are possible? How are such alternatives enacted? What changes do they imply for the ways that states understand and "manage" international migration?

Scholars from Singapore, India, South Africa, the United States, the United Kingdom, and Canada addressed the workshop to unsettle the salient discourse of "solutions" to refugee protection. As Katy Long wrote, "The very fact of protracted displacement is evidence that existing approaches to 'solving' displacement have failed. Voluntary return, local integration and resettlement—the traditional 'durable solutions'—are not accessible for those trapped in protracted displacement.… *One question which must be asked … is whether the very language of 'solutions' is in fact creating—rather than confronting the apparent impasse in protracted displacement crisis*" (emphasis added).[19]

Research at the Toronto workshop included critiques of this salient language of "solutions," but also of the prevailing "self-reliance" trope found in the GCR and the neo-liberal loan schemes by the World Bank Group offered to states hosting most of the world's refugees, a strategy also promoted by scholars keen to keep displaced persons where they are: in Global South host countries.[20] In contrast, Morris (in this issue) analyzes this self-reliance strategy in Jordan, noting that it ignores *self-determination*. Workshop presenters highlighted concrete strategies that do create safe space for people and research showing how de facto protection in cities is possible without de jure official, permanent status. Informal humanitarianism in civil society creates fertile grounds for protection.

Key contributions at the workshop highlighted the "messiness" of categorization (Clark-Kazak, Crawley, Payne) and the need for more nuanced approaches that engage with the multifaceted reasons for migration. Recognition that the 1951 Refugee Convention does not enumerate all the rights that refugees have (Jones) and is not a reference point for refugee-migrants in many parts of the world was also underlined. Getting legal de jure status for most people on the move has been the exception rather than the rule. The "varieties" of displacement point to a wider range of responses to the challenge of protection, including informal and everyday humanitarianism (Abraham). Local literacy by refugee-migrants in urban sites creates de facto protection and highlights the limits of the identity politics of solidarity (Landau, Nah). Scholars challenged the very notions of responsibility (Samaddar) and self-reliance (Morris, Ilcan) and made the case for an expanded conceptualization of protection by showing that refugee-migrants will creatively make secure spaces for themselves, even in the absence of official protection policies or law (Payne, Mountz). Education was highlighted as a portable tool that benefited people on the move (Stevens) and even a pathway to resettlement for a select few.

Protracted Displacement in "Crisis"

As Aleinkoff and Zamore argue, the international refugee regime "constructs a bargain: hosting states will keep their borders open and house refugees in exchange for cash and camps and the international community will turn a blind eye to protection of rights and granting of membership."[21] Giles and Hyndman contend that the problem of protracted displacement is "crisis"-by-design and is not anomalous to global geopolitics. While international refugee law may provide basic protection against *non-refoulement* for refugees and asylum seekers, a geopolitical consensus among the world's wealthiest countries to support and finance management of

human displacement in Global South regions prevails.[22] The tacit message is clear: refugee-migrants should remain in their *regions of origin*. The GCR aims to improve conditions for refugees and host states with a model that does little to reimagine protection and security for displaced people.

States will use the guise of "national security" to authorize extraordinary expenditures, extra-legal border enforcement or detention strategies, and legally questionable interdiction practices. The security of their own citizens is paramount. That of refugee-migrant non-citizens is not. Strategizing to gain public consent to use whatever means necessary to protect polity, economy, and society is a political priority of governments. This short introduction cannot analyze national security and securitization discourses employed by states, but the workshop did echo a call to rescale security to that of the person affected by displacement, against the salience of national security discourse.

Scholarship that highlights the more embodied notion of *ontological security*, a notion of "feeling safe," as a refugee-migrant is foregrounded here.[23] To reclaim security discourse back from Global North governments that aim, without exception, to externalize refugee-migrants at high cost is no small undertaking. To place an emphasis, instead, on ontological security that reframes the scales and ways security is *practised* renders visible finer local and urban sites at which protection is being forged in new ways. Foregrounding *self-authorized* modes of protection is critical in contexts where one's legal sttatus does not confer a clear suite of rights and entitlements. Such modes also mitigate the paternalistic expressions of protection of refugee-migrants who are represented as unable to protect themselves.

While the workshop had several objectives, first among them reimagining refugee protection, we briefly touch upon two of the most salient aims that are steps to achieving this overarching objective: (1) to foreground agency, authority, and categorical distinctions between "refugee" and "migrant"; and (2) to highlight urban and regional protection strategies—beyond the state.

Agency, Authority, and Categorical Distinctions between "Refugee" and "Migrant"

The drafting of the Global Compact *on* Refugees, led by the UNHCR, was separate from that of the Global Compact *for* Safe Orderly and Regular Migration (aka GCM), convened by the IOM. The prepositions in each are telling: a Global Compact *on* Refugees signals a more top-down approach[24] compared to the GCM *for* migration, and its social media presence #ForMigration. The difference in them may be stylistic, but the categorical distinction between refugee and migrant has political and epistemological implications. Each is embedded in a separate compact.

To address this chasm, we employ the term *refugee-migrants* as an imperfect working concept that blurs any discrete boundary between the categories *refugee* and *migrant*. Categories are the outcome of social and political negotiations, debates, and histories that are not neutral.[25] A "fleer of necessity"[26] may claim both migrant and refugee statuses during a single journey to safety. The lively discussion of *refugee* versus *migrant* and other terminology has been ongoing for many years.[27] Many people on the move are displaced for reasons not of their own making. They may not have access to "refugee" status merely because the state in which they seek asylum has not signed on to international refugee law, the gold standard of protection available to a select few.

By focusing on refugee populations narrowly defined by the 1951 Convention and those states that are signatories to it, the GCR leaves out entire histories and groups of displaced persons, including Palestinians. The immense and violent displacement caused by Partition between India and Pakistan is omitted, though admittedly it occurred before the convention was signed (neither country is a signatory to it). The plight of the Rohingya from Burma (aka Myanmar) arguably receives less attention than other "case studies"; neither state is a signatory to the convention.[28] Is a universal solution even possible under such a variety of conditions of displacement, across vastly different political landscapes where displaced people reside (e.g., temporary camps, semi-permanent camps, detention centres, etc.)?

Workshop participants were invited to present existing and plausible practices, tactics, strategies, or policies at local, urban, and regional scales, employed both by civil society and state actors. Clark-Kazak reminds us that re-centring refugee agency and authority is vital to protection, as refugee-migrant narratives of their journeys reveal nuanced decision-making shaped by multifaceted constellations of power relations. She shows how the GCR, in contrast, tends to frame refugees as objects of policy, objects of concern, or objects of aid. With a few exceptions, there has been no input from displaced people themselves.[29]

Urban and Regional Protection Strategies—beyond the State

One way to question the quietly countenanced refugee-migrant containment paradigm is to challenge the *scale* at which protection and safety from violence is provided. To their credit the authors of and state signatories to the GCR recognize "complementary pathways" for refugee protection. These current protection practices have received some attention since the 2016 New York Declaration was signed in the United States with the impressive consensus of 193 UN member states. In the section that follows, we highlight some such practices as well as others that have remained "off the grid" of

the GCR discourse. The ideas that cities become the de facto sites of residence and livelihood for most displaced people and that informal humanitarianism and refugee-migrant autonomy characterize urban centres are highlighted here.

As Fawaz et al. show, on the basis of their urban research in Lebanon, refugees are "citymakers," protagonists who forge livelihoods and homes in dense urban spaces.[30] Cities are de facto spaces where people on the move seek multiple sources of security. Social and political solidarity among host and refugee-migrant groups may be scarce and not possible or desirable as the result of xenophobia or other anti-migrant sentiment.[31] In four large Southern African cities, housing, work, and education are available to newcomers who have experience in urban contexts.[32] If a national government authorizes the entry of asylum seekers to a territory, even if it cannot provide economic, health, education, and housing security to those it lets in, research shows that city bureaucracies can facilitate inclusion on these fronts.[33] In South Africa, concrete backdoor relations of bureaucratic cooperation help create de facto pathways to people's "integration."[34] This constitutes what Kihato and Landau call "stealth humanitarianism," whereby lived security is a nexus of quotidian relationships forged among neighbours, parents, teachers, and co-workers.[35]

What kind of community and institutional networks can be tapped in urban spaces where no one is from? Landau argues that solidarity is less important than opportunity for improving protection at an everyday urban scale. Relative long-term security and possibility come from informality, where legal status remains unclear; social relations are destabilized and remade; and outsider status is largely invisible. Protection is forged through opportunities for urban inclusion. Similarly, Darling shows how informal practices in the city highlight the "ever-shifting urban relationship between the legal and the illegal, legitimate and illegitimate, authorized and unauthorized."[36] Magnusson contends that "urbanism as a way of life is a form of human freedom: for many people the ultimate form of human freedom," and goes on to name practices of self-regulation, mutual tolerance, and collective action for the greater public good as inherently urban.37 Refugee-migrant protection and precarious legal status can co-exist where there is opportunity to live, work, and study in urban centres. As Katy Long notes, de facto integration is much more likely for refugee-migrants than de jure status in the current geopolitical framing of human displacement across borders.

The Kolkata Declaration is a subaltern regional response to the GCR, signed in that city in November 2018. The declaration demands that the displaced be included in wide-ranging dialogues about their futures: "Nothing about us without us" is a common refrain that has emerged from refugee advocate groups during the writing of the global compacts. The declaration recognizes the multiple scales at which protection and security are enacted and captures the *irrelevance* of the GCR for South Asian states who have not signed onto international refugee law. It highlights instead the salient issues noted earlier, that states that are not signatories to the 1951 Refugee Convention are rendered much less visible by legal orientalism[38]—statelessness and migrant worker rights especially, all in the absence of the narrow, if still important, Occidental "refugee" definition that focuses on civil and political rights, coined more than seven decades ago.

The Kolkata Declaration shows how the geopolitical privilege of the Global North/First World or "West" translates into epistemological dominance when knowledge is produced.

The declaration is more radical than the compacts. While both the GCR and GCM are forward-thinking on relations of gender and age, the Kolkata Declaration goes much further: "Discrimination and exclusion based on race, religion, caste, ability, sexuality, gender and resources cannot be tolerated. This situation refuses to privilege majoritarian, male, and monolithic cultural values, which may dispossess refugees, migrants or stateless women undermining their individuality, subjectivity, citizenship and the ability to make political and social choices."

The declaration goes on to make eight statements of purpose:

1. The right to move is a universal human right and any restriction on that right cannot be subject to policies and measures that violate the dignity of human beings;
2. The refugees, migrants, stateless and other displaced persons are central figures in any protection system, legal regime, government and societal institutions;
3. The idea of a global compact must acknowledge the practices of protection at various regional, country, local, customary, city, and other scales. Any global compact aiming at sustainable resolutions must be based on wide-ranging dialogues involving refugees, migrants, stateless persons and groups defending them;
4. Any protection framework—global and local—must combat discrimination based on race, religion, caste, ability, sexuality, gender and class that affect rights and dignity of all human beings;
5. In any redesigning of the global framework of protection, perpetrators of violence and displacement must be held accountable for their actions;
6. Refugees, migrants and stateless persons working as informal labourers are entitled to social and economic rights;
7. Stateless persons should be prioritised for protection. Restoration of their citizenship rights is a global responsibility;

8. In the context of widespread forced migration and statelessness in Asia, a regime of protection along the lines of the African Charter of Human and People's Rights and its regional systems and institutions is imperative. Such a Charter must involve specific provisions of human rights, including labour rights, of migrants, refugees, asylum-seekers, and stateless persons to ensure the dignity and rights of all.

The Kolkata Declaration is a not-so-subtle critique of the global compacts, yet it raises as many new questions to address as answers. This symposium and this discussion based on the 2018 workshop are reminders of the fraught, highly imperfect categories employed in international law and the global refugee regime. The compacts and the Kolkata Declaration's responses to them highlight their shortcomings: formal, legal protection falls short.

In the three articles that follow this introduction, the subaltern mode of knowledge production of the Kolkata Declaration is elaborated in more detail, as Ranabir Samaddar addresses the limited relevance of the GCR in South Asia and adjoining regions. Samaddar highlights the spatial slippage and political exclusions of the GCR. The protection provided to refugee-migrants, from Thailand to India and Bangladesh, is largely unrecognized by the GCR, leaving the GCM as the relevant reference point on migration. Julia Morris examines a different kind of regional compact, the Jordan Compact, already considered a failure. Funded by EU donors and financed in part by the World Bank Group, economic investment in production facilities that employ Syrian refugees is consistent with the puzzling neo-liberal logic of the GCR. This loan-driven recipe for greater self-reliance promised to make refugees into self-sufficient development actors: precisely what the GCR promotes. This "fix," whereby displaced persons are made to be less of an economic burden on the host countries in which they reside, may improve their material conditions but provides deeply problematic conditions for protection and does little to change the prospects for remaking home among the displaced or to transform the intransigent norm of protracted displacement. Finally, Alison Mountz's article demonstrates how people seeking refuge will "make space" in the absence of protection policies that fit their circumstances. Based on a study of U.S. war resisters coming to Canada over two generations—people fleeing the draft during the U.S. war in Vietnam, as well as professional soldiers in the 2000s avoiding tours of duty in the legally questionable war in Iraq—Mountz underscores the *making* of refuge where there are no official state categories or easy fit with refugee definitions. Applying a subaltern lens to this article, the "Vietnam War" may more accurately be called the American War on Vietnam once stripped of its imperialist tinges and the legacy of U.S. defeat.[39] Each generation of U.S. soldiers fleeing is also racialized in distinct ways that speak to inequality, class, and terms of military service, though this article focuses on the possibilities for protection at local scales that are forged within civil society.

An outcome of the 2018 workshop, the manifesto on humane mobility, is a collective statement and question, as well as a political act of refusal. Is the current epoch a moment of potential transformation or one of imposing an amended status quo? In a spirit of optimism that keeps us engaged in this field of research, we conclude without solutions,[40] but with a call for change.

A Call for More: A Manifesto for Change

"Humane Mobility: A Manifesto for Change" urges the global community to engage beyond the global compacts. The document was first drafted by University of Ottawa Professor Christina Clark-Kazak with input from workshop participants. It has been translated from English into eight other languages—Swahili, Arabic, Dari, Pashtu, Sgaw, Spanish, Portuguese, and French—and has been endorsed by academics and leaders in the field.[41]

Humane Mobility: A Manifesto for Change

A deep reimagining of migration is urgently needed. We are profoundly concerned about responses to human mobility, including the GCR and the artificial separation from wider migration issues. It emerges from exclusionary drafting and decision-making processes that ignore the lived realities of the people and spaces most affected by displacement. It privileges state sovereignty over human beings. It reinforces unequal power relations and waters down commitments to human rights and dignity.

In an act of refusal rather than reform,[42] we propose this manifesto as one mechanism to re-centre[43] people and spaces of displacement. We hope to contribute to a generative, inclusive movement that finds creative and humane ways to work in solidarity with people on the move, and the individuals, communities, and organizations who live and work within these spaces of displacement.

Our Manifesto

Human beings have migrated since the beginning of time. National borders and passports are recent creations and often reinforce colonial practices. The current "crisis" reflects not the fact that people are moving, but rather the deep inequalities and violence at the root of mobility, as well as the militarized, racist, xenophobic, and exclusionary responses to this displacement. The people and places most affected by human mobility—i.e., people who are on the move and the people and communities with whom they interact—should be central to all decision-making processes.

This requires a fundamental reordering of current global, regional, and national migration governance norms, structures, and practices.

Human dignity, self-determination, self-representation and justice should be central to these norms, structures and practices.

People are more than their migration status. They are individuals with intersecting identities interacting with others in dynamic relationships. All responses to human displacement should attend to these relationships, especially power relations embedded in them.

Immigration detention, containment, and the separation of families are inhumane and should be discontinued. We recognize the real threats posed by terrorism, smuggling, and armed incursions. However, indiscriminate detention and border militarization will not make us safer, but will drive precisely these kinds of illicit activities and violence.

People leave their homes in response to a complex interplay of dynamic economic, social, political, and environmental factors. Reductionist categories based on modes or rationale for migration limit understandings of complex migration journeys.

We need to take the time to listen to individual narratives and collective her/his/their-stories. Any assistance should support people's own livelihood strategies, expand opportunities for all who are excluded, and re-centre local ways of knowing and doing.

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41 The manifesto marked its official launch on July 25, 2018, at the International Association for the Study of Forced Migration Conference in Greece. To view "Humane Mobility: A Manifesto for Change" and to sign on to the recommendations made in document, visit Humane Mobility, humanemobility.net.

42 Refusal is a "generative stance" that serves "to counter narratives and images arising (becoming-claims) in social science research that diminish personhood or sovereignty, or rehumilitate when circulated." See Eve Tuck and K. Wayne Yang, "Unbecoming Claims: Pedagogies of Refusal in Qualitative Research," *Qualitative Inquiry* 20, no. 6 (2014): 811–18. As McGranahan further elaborates, "Refusal is social and affiliative… Refusal is hopeful, refusal is willful." See Carole McGranahan, "Theorizing Refusal: An Introduction," *Cultural Anthropology* 31, no. 3 (2016): 319–25.

43 We draw here on bell hooks, *Feminist Theory: From Margin to Center* (London: Pluto, 2000).

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