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Hard Truths in Climate Policy and Politics

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In *On the Moral Challenge of the Climate Crisis*, Lucas Stanczyk offers up some hard truths about the necessary response to the planetary emergency. He focuses on two challenges underappreciated by policymakers busy architecting industrial policy to “solve” the crisis: (1) there is no way to obtain the necessary scale and pace of emissions reductions without focusing explicitly on contemporary patterns of consumption; and (2) if left unchecked, global population growth threatens to overwhelm any gains otherwise made.¹ Stanczyk proceeds to develop a novel theory of intergenerational justice to guide us in the question of *how* we might tackle these thorny challenges, even as he asserts admirable humility about the precise answers.²

These are indeed *hard* issues. I have elsewhere described consumption as the “third rail” of climate policy,³ and those who bring up population in the climate conversation are frequently branded as neo-Malthusians or worse.⁴ Because these issues are such lightning rods, I begin my commentary by exploring the question: are these really *truths*? Ultimately, I agree with Stanczyk that the climate crisis is unavertable without more attention to consumption and, in a way, population—but I think a more nuanced diagnosis of why and how each presents a critical ‘wedge’ in the climate change solution pie chart clarifies his argument.⁵

¹ See Stanczyk, at 5.

² Stanczyk, at 12-13.

³ See Clint Wallace & Shelley Welton, *Taxing Luxury Emissions*, CORNELL L. REV. (forthcoming 2024).

⁴ See *infra* Part I.

⁵ As Stanczyk traces, the ‘wedge’ concept of climate policy—though not these wedges in particular—stems from Stephen Pacala and Robert Socolow, *Stabilization Wedges: Solving the Climate Problem for the Next 50 Years with Current Technologies*, SCIENCE 305 (2004): 968-972.

After making these additions, I offer a policy scholar’s reaction to Stanczyk’s creative theory of intergenerational justice, endorsing it on slightly different grounds than he offers. Then, accepting the framework he lays down, I focus on some of the practical challenges that Stanczyk’s thought-provoking theory raises. In doing so, I grapple with a hard question of my own: what role should climate ethics play in on-the-ground climate policy and politics? Stanczyk peppers muted but potent criticism throughout his piece of initiatives like the Green New Deal and of climate policymakers’ failures to center hard truths about necessary lifestyle changes.⁶ I have been struggling myself with the absence of what I consider many critical components of ‘good’ climate policy from the much-lauded Inflation Reduction Act of 2022—the United States’ most ambitious climate legislation to date. Yet “politics is the art of the possible,”⁷ and I am far from convinced that broadly invoking consumption and population-related concerns in climate discourse and climate policy would move us forward, not backward, in our response to the problem.

Towards the end of his essay, Stanczyk offers a brilliant cautionary intervention to champions of industrial policy focused on growing carbon-stanching industries such as carbon capture and storage and solar geoengineering. He warns that all of these technological gains might be usurped by those in power to prolong the use of fossil fuels, rather than transform the system.⁸ I contend that this warning contains the seeds of wise guidance toward morally and politically sensitive climate policymaking: policymakers must strive to enact policies that improve not just the technological terrain but the political conditions for more transformative system change.

⁶ Stanczyk, at 1, 5.

⁷ Otto von Bismarck, *ST. PETERSBURGISCHE ZEITUNG* (August 11, 1867).

⁸ Stanczyk, at 15-16.

I. Are these truths?

Stanczyk’s first hard truth is that we must face the need for real limits on consumption to respond with necessary speed to the climate crisis.⁹ He is almost certainly right—indeed, even the Intergovernmental Panel on Climate Change (IPCC) finally included a full chapter on “Demand, Services, and Social Aspects of Mitigation” in its last assessment report.¹⁰ A few refinements, however, might bolster his claim. The first is more granularity in *whose* consumption—after all, average per capita emissions in Sub-Saharan Africa are already lower than what scientists calculate as necessary to reach net zero.¹¹ Even in the United States, per capita emissions among the poorest half of the population have declined since 1990.¹² As economist Lucas Chancel emphasizes, patterns of consumption-related carbon emissions are now largely explained by within-country inequality—a fact which both offers up a new set of new solutions for consumption-related emissions and creates its own political challenges.¹³

Because of these stark disparities, the elite response to contentions that climate policy must focus on consumption tends to be grounded in techno-optimism.¹⁴ Stanczyk could take on this group more directly. For the techno-optimists, a panoply of new technologies is the magical hangover elixir that will cure our carbon binge. Indeed, such technologies may be critical to a 1.5-

⁹ Stanczyk, at 6.

¹⁰ Felix Creutzig, Joyashree Roy, et al., *Demand, Services, and Social Aspects of Mitigation*, IPCC Sixth Assessment Report, Working Group III (April 2022).

¹¹ Lucas Chancel, *Global Carbon Inequality over 1990–2019*, 5 NATURE SUSTAINABILITY 931, 935 (Nov. 2022); OXFAM, CONFRONTING CARBON INEQUALITY 6 (Sept. 21, 2020).

¹² LUCAS CHANCEL ET AL., WORLD INEQUALITY REPORT 2022, at 130 (2022).

¹³ See Chancel, *supra*; see also Kysar, this volume; Wallace & Welton, *supra*.

¹⁴ See, e.g., BILL GATES, HOW TO AVOID A CLIMATE DISASTER: THE SOLUTIONS WE HAVE AND THE BREAKTHROUGHS WE NEED (2021); MICHAEL BLOOMBERG & CARL POPE, CLIMATE OF HOPE: HOW CITIES, BUSINESSES, AND CITIZENS CAN SAVE THE PLANET (2017); see also NORDHAUS, THE CLIMATE CASINO 188 (2013) (adopting a “descriptive” approach to discounting to “reflect[] the reality that capital is scarce, that societies have valuable alternative investments, and that climate investments should compete with investments in other areas”); Nils Petter Gleditsch, *This Time is Different! Or Is It? NeoMalthusians and Environmental Optimists in the Age of Climate Change*, 58 J. PEACE RES. 177 (2021) (tracing some key tenets of “cornucopian” authors writing against neo-Malthusians). On climate techno-optimism, see Sofia Ribeiro & Viriato Soromenho-Marques, *The Techno-Optimists of Climate Change: Science Communication or Technowashing?* 12 SOCIETIES 64 (2022).

or 2-degree pathway: IPCC models project carbon removal and carbon capture and storage playing *enormous* roles in counterbalancing continuing emissions in coming decades—despite their nascent status.¹⁵ Similarly, there are news reports every few years of a plane flown on solar power or kitchen scraps, and episodic fascination with meat grown in labs.¹⁶ Techno-optimists view drastic present cuts to fossil-fuel-based consumption as ill-advised because they risk slowing technological progress toward these solutions that can wholesale replace fossil fuels without significant lifestyle disruptions.

These optimists have a historical leg to stand on: the doomsayers that have long predicted that the Earth cannot possibly support our expanding lifestyles have been proven wrong many a time.¹⁷ I think there is a convincing argument that climate change is different, but there is a strong human—or perhaps just capitalist—impulse to insist it is not. Indeed, entire countries’ and corporations’ plans for decarbonization are built on this impulse: Southern Company, one of the largest U.S. utilities, is transitioning all of its coal generators to natural gas this decade, banking (or assertedly banking)¹⁸ on forthcoming carbon capture and storage to allow it to reach net zero

¹⁵ A recent analysis of IPCC modeling by the organization Carbon Brief concluded: “All pathways that limit warming to 1.5C or 2C involve substantial levels of CDR between 2020 and 2100, ranging from 450 to 1,100 GtCO₂.” Steve Smith, Jan Minx, Greg Nemet, & Oliver Geden, *The State of Carbon Dioxide Removal in Seven Charts*, CARBON BRIEF (Jan. 19, 2023), <https://www.carbonbrief.org/guest-post-the-state-of-carbon-dioxide-removal-in-seven-charts/>.

¹⁶ See, e.g., Jacopo Prisco, *This Solar-Powered Plane Could Stay in the Air for Months*, CNN (May 5, 2022); Joanna Thompson, *Lab-Grown Meat Approved for Sale: What You Need to Know*, SCI. AMER. (June 20, 2023).

¹⁷ See THOMAS MALTHUS, AN ESSAY ON THE PRINCIPLE OF POPULATION (1798); PAUL EHRLICH & ANN EHRLICH, THE POPULATION BOMB (1968); DONELLA MEADOWS, DENNIS MEADOWS, JØRGEN RANDERS & WILLIAM BEHRENS, THE LIMITS TO GROWTH: A REPORT FOR THE CLUB OF ROME’S PROJECT ON THE PREDICAMENT OF MANKIND (1972). On the history of these doomsayers, see PAUL SABIN, THE BET: PAUL EHRLICH, JULIAN SIMON, AND OUR GAMBLE OVER EARTH’S FUTURE (2013) (chronicling the infamous bet between cornucopian Simon and doomsayer Ehrlich); David Deming, *M. King Hubbert and the rise and fall of peak oil theory*, 107 AAPG BULLETIN 851 (2023).

¹⁸ Whether corporations that putatively plan for carbon capture and storage to absolve their climate sins are doing enough to bring about its commercialization is an interesting question that might tie into Stanczyk’s theory about what the present generation owes in its climate planning. See Carlos Anchondo, Jason Plautz, & Zach Bright, *EPA Says Carbon Capture is Within Reach. Utilities Aren’t Biting.*, E&E NEWS (July 11, 2023), <https://www.eenews.net/articles/epa-says-carbon-capture-is-within-reach-utilities-arent-biting/>.

by 2050.¹⁹ Switzerland has been explicit about its need to rely both on technological carbon dioxide removal and investments in actions in other countries to reach its targets.²⁰

I believe that relying on this type of magical hangover elixir in mitigation planning on the time scale of generations is not just ill-advised but unethical, under the framework Stanczyk builds. If he were to tackle head-on the relationship between present-day consumption and technologically optimistic intergenerational climate policy, he might punch his point home further. In the face of not knowing whether these tools will scale, cuts in certain types of consumption are morally demanded. The long line of work on the precautionary principle could prove useful here.²¹

On the question of population and climate, there is much truth to Stanczyk's observation that policymakers have shied away from this topic—but much dissension as to why. Several scholars continue to emphasize population growth as a core contributor to climate change.²² Others—notably many feminist scholars and scholars of global environmental justice—have mounted sustained attacks on the centering of population in climate conversations.²³

¹⁹ See Implementation and Action Toward Net Zero, S. CO. 3 (Sept. 2020), <https://www.southerncompany.com/content/dam/southern-company/pdf/public/Net-zero-report.pdf>

²⁰ See Amanda C. Borth & Simon Nicholson, *A Deliberative Orientation to Governing Carbon Dioxide Removal: Actionable Recommendations for National-Level Action*, 3 FRONT. CLIM. (July 2021); Hiroko Tabuchi, *Switzerland Is Paying Poorer Nations to Cut Emissions on Its Behalf*, N.Y. TIMES (Nov. 22, 2022).

²¹ See, e.g., DOUGLAS A. KYSAR, REGULATING FROM NOWHERE: ENVIRONMENTAL LAW AND THE SEARCH FOR OBJECTIVITY (2010); John S. Applegate, *Embracing a Precautionary Approach to Climate Change*, in ECONOMIC THOUGHT AND U.S. CLIMATE CHANGE POLICY (David M. Driesen ed., 2010); Noah M. Sachs, *Rescuing the Strong Precautionary Principle from Its Critics*, 2011 U. ILL. L. REV. 1285 (2011).

²² See, e.g., Colin Hickey, Travis N. Rieder, & Jake Earl, *Population Engineering and the Fight against Climate Change*, 42 SOCIAL THEORY & PRAC. 845 (2016) (charting a spectrum of potential interventions to influence population and condoning only some of them); Eileen Christ, William J. Ripple, Paul R. Ehrlich, William E. Rees, & Christopher Wolf, *Scientists' Warning on Population*, 845 SCI. TOTAL ENVT. 157166 (2022). Donna Haraway's *Anthropocene, Capitalocene, Plantationocene, Chthulucene: Making Kin* is one of the more surprising forays into this topic, in which she provocatively explains: "I know 'population' is a state-making category, the sort of 'abstraction' and 'discourse' that remake reality for everybody, but not for everybody's benefit. But blaming Capitalism, Imperialism, Neoliberalism, Modernization, or some other 'not us' for ongoing destruction webbed with human numbers will not work either." *Id.* at 164 n.7; see also MAKING KIN NOT POPULATION (Adele Clarke & Donna Haraway, eds., 2018).

²³ See, e.g., JADE S. SASSER, ON INFERTILE GROUND: POPULATION CONTROL AND WOMEN'S RIGHTS IN THE ERA OF CLIMATE CHANGE (N.Y.U. Press 2018); Nayantara Sheoran Appleton & Danya Labau, *Critical Engagements on Making Kin Not Population: An Epistolary Review Essay*, 124 AM. ANTHROPOL. 891, 892 (2020) ("[T]he focus on population size singularly allows the elite to virtue signal by not having children while continuing with measurably

Stanczyk doesn't give us much in terms of his thinking regarding how best to intervene in this fraught debate. His justification for enhancing the focus on population is rooted in aggregate numbers: "With every additional 500 million people on the planet, global greenhouse gas emissions are expected to grow by at least one billion tons of carbon per annum." Ergo, reduce population size, reduce emissions.²⁴ To concretize his reasoning, Stanczyk provides us the example of a couple with two children, deciding whether to have a third child on a plot of land that can only feed four. He suggests that it would be unethical (under the intergenerational framework of justice that he develops—more on this later) for the family to have a third child, because it would mean inadequate nutrition for the existing children.

This is obviously and intentionally a stylized hypothetical. But place this family down on Earth and the picture gets far more complex. It turns out, there is plenty of food to feed this hypothetical third child, but it's rotting in U.S. (and other) food distribution channels rather than getting sent where needed.²⁵ Thus zoomed out, the family no longer looks like the unethical actor.

Now, unlike in the food context, and as aptly discussed by Stanczyk, we *do* face a real shortage of remaining tons of carbon in our budget.²⁶ But from a carbon perspective, again, it is choices about the size of high-wealth populations that matter most, because population growth's impact on climate is quite clearly intermediated by affluence.²⁷ Adding one person in the United States (per capita CO₂ emissions of 14.86 tons) is, on average, about *five hundred times worse* than adding one person in the Democratic Republic of Congo (per capita CO₂ emissions of 0.03

more-damaging lifestyles."); Anne Hendrixson, Diana Ojeda, Jade S. Sasser, Sarojini Nadimpally, Ellen E. Foley & Rajani Bhatia, *Confronting Populationism: Feminist Challenges to Population Control in an Era of Climate Change*, 27 GENDER, PLACE, & CULTURE 307 (2020).

²⁴ Stanczyk, at 6.

²⁵ See FOOD & AGRICULTURAL ASS'N OF THE UNITED NATIONS, GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION (2011).

²⁶ See Stanczyk, at 4-5.

²⁷ See Chance, *supra*; Kysar, this volume.

tons).²⁸ And adding a billionaire baby is really the worst of the worst—except, of course, that it’s counter to many of the core tenets of the reproductive justice movement to think in these crude demographic terms at all.²⁹

If this diagnosis is correct, then there is still an important, complex conversation to have about the convergence of population and the climate crisis—it’s just not the one that is often front and center regarding “high-fertility” but low-emissions countries.³⁰ Even as these countries grow economically and in terms of population, the Intergovernmental Panel on Climate Change has concluded with high confidence that “eradicating extreme poverty, energy poverty, and providing decent living standards in low-emitting countries . . . can be achieved without significant global emissions growth.”³¹ Consequently, the most impactful, short-term way to influence carbon emissions via population might be to focus on U.S. (and other high-consumption countries’) reproductive justice policies—including, quite glaringly, recent contractions in the availability of

²⁸ Our World in Data, CO2 Emissions Per Capita, <https://ourworldindata.org/grapher/co-emissions-per-capita?tab=table>. See also Hickey et al., *supra*, at 855-56 (“Although it would be difficult to lower the fertility rate in the United States from 1.9 to, say, 1.4, such a reduction would have a massive impact on both near-term and long-term global GHG emissions—much more even than proportionally larger fertility reductions in sub-Saharan Africa.”). I’m using the U.S. as a stand-in for over-consumption, but of course, there is extreme inequality leading to vast gulfs in consumption patterns in every country. The U.S. just happens to be particularly high-consuming both on an average per-capita basis and in terms of its super-emitters, making it an easy target. See Chancel, *supra*.

²⁹ See Susanne Shultz, *The Neo-Malthusian Reflex in Climate Politics: Technocratic, Right Wing and Feminist References*, 36 AUSTRALIAN FEMINIST STUDIES 485, 486, 492 (2021) (strongly condemning the “neo-Malthusian reflex” in climate change policy and arguing against the “demographisation” of the climate-population nexus, by which she means the “re/interpretation of social crises as demographic ones”); Dorothy Roberts, *Reproductive Justice, Not Just Rights*, DISSENT 79 (Fall 2015) (tracing the history of the reproductive justice movement as developed by Black feminists to include “not only a woman’s right not to have a child, but also the right to have children and to raise them with dignity in safe, healthy, and supportive environments”); Appleton & Labau, *supra*, at 893 (warning against using “population” “as a concept, unmoored from history and politics, rather than as a historically contingent and murderous invention of the economic, social, and biological sciences”).

³⁰ See, e.g., Crist et al, *supra*. To be sure, I think there are many good reasons to pursue policies that empower people everywhere to manage choices surrounding reproduction and parenthood as part of a more capacious commitment to reproductive justice—but I’m not sure carbon emissions should drive the strategies pursued. Cf. Hickey, Rieder & Earl, *supra*, at 854 (advocating that “choice-enhancing interventions” “are not only permissible, but obligatory, as they are means of ensuring equal access to basic goods”).

³¹ IPCC, Summary for Policymakers, in CLIMATE CHANGE 2023: SYNTHESIS REPORT: CONTRIBUTION OF WORKING GROUPS I, II, AND III TO THE SIXTH ASSESSMENT REPORT, at 30 (Hoesung Lee & José Romero, eds., 2023).

reproductive autonomy for childbearing people in this country.³² A second area of important focus might be immigration policy. Expanded immigration quotas in high-emissions countries—particularly if targeted toward accepting emigrants from climate-ravaged areas—might prove an ethical and climate-responsive alternative to burgeoning nativist policies aimed at increasing domestic fertility rates.³³ In his evocative discussion of the social consequences of climate disasters, Stanczyk implicitly recognizes that the morality of our immigration policy and our climate policy are deeply linked.³⁴ This linkage, to me, should form a core of any discussion of climate and “population” policy.

To be clear, Stanczyk may well agree with all I’ve said here; I offer these thoughts merely as an invitation for him to give the reader more of a window into how he’s thinking through the ethical dimensions of the climate-population nexus.

II. Intergenerational Justice, One Generation at a Time

One of Stanczyk’s core contributions is a novel version of intergenerational justice that he derives by rejecting utilitarianism and focusing instead on satisfying the non-identity problem in the realm of climate change. Stanczyk convincingly argues that utilitarianism forms an illogical basis for reasoning about duties owed to future generations, given its focus on summed utility.³⁵ He then suggests that a non-utilitarian theory of intergenerational climate justice requires overcoming the challenge that any interventions made to improve the climate will produce a different set of human beings than would have existed under climate-destructive policies. Consequently, we cannot identify with precision any person yet to be born who will be specifically

³² See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. ____ (2022).

³³ See, e.g., Jake Earl, Colin Hickey, & Travis N. Rieder, *Fertility, Immigration, and the Fight Against Climate Change*, 31 *BIOETHICS* 582, 583 (2017).

³⁴ Stanczyk, at 15-16.

³⁵ Stanczyk, at 7-8.

harmful by failing to act on climate change.³⁶ Stanczyk's solution to this dilemma is to propose a human-lifespan theory of climate justice that demands that "institutions must be erected that continuously give every living person's diverse claims the appropriate weight as soon as and for as long as they live."³⁷ Over time, he asserts, this theory will generate adequate moral guidance so long as every generation makes it possible for all people living to avoid both present and future harm.³⁸

As a disciplinary outsider, the non-identity line of reasoning always takes me by surprise. With a problem like climate change, which is likely to make *every future person's* life worse, I am not sure it takes being a committed utilitarian to believe that intervention is morally required despite its inevitable alteration of precisely who is born. It seems enough to me to reason that climate intervention is (at least in part) about handing each non-identifiable but actual future person a life as dignified, meaningful, and free from suffering as we can manage.³⁹ But maybe that is just the policy-oriented consequentialist in me speaking out of turn.

I also have some more applied inquiries about the theory: what if the world finds out that the main climate tipping point will suddenly occur in 200 years on current emissions trajectories? Does Stanczyk's theory leave the present generation without a duty to forestall this, because no contemporaries will themselves experience the tipping point or likely be alive with those who will? Are we okay with that? In contemplating this (also stylized) example, it strikes me there may be

³⁶ See Stanczyk, at 9-10.

³⁷ Stanczyk, at 10.

³⁸ Stanczyk, at 11.

³⁹ Cf. KYSAR, REGULATING FROM NOWHERE, *supra*, at 177 (suggesting that one promising starting point for moving beyond the non-identity problem might be "conceiving of future generations as coherent collective entities, rather than merely as individual lives-in-waiting").

reasons for holding onto a longer time horizon, such as the commonly cited “seven generations” paradigm of Iroquois natural resource management.⁴⁰

That said, I find Stanczyk’s theory quite appealing in the climate context for a different reason—one that he emphasizes later in the essay. That reason is the immense uncertainty surrounding both climate consequences and climate interventions. In fact, there is much we don’t know about the magnitude or timing of climate tipping points, what social and political reactions to them might be, or how and when technological and social landscapes might shift.⁴¹ Stanczyk’s contemporary-regarding theory works well in these conditions—demanding precaution but not prescience.

III. Policymakers’ Duties

As a philosopher, Stanczyk is right to center hard issues and grapple with how theories of justice might help us approach them—and to call for more transdisciplinary research into the same. But part of his critique is that climate *policymakers* are “systematically avoid[ing]” these issues in “mainstream policy discussions.”⁴² In this final part, I work through this claim to consider what exactly the duty of those attempting to craft or influence climate policy might be, under his intergenerational theory. As he suggests, I think the answer is quite difficult—and might well point in a different direction than more overt discussion of these particular topics.

I’m currently part of a research project examining energy poverty in the southeastern United States. Part of this effort involves interviewing households that self-identify as energy vulnerable, and one such interviewee is a rural eastern Tennessean whom I will call “Jerry.” Jerry is relatively sophisticated in his understanding of the energy system, with an excellent grasp of energy sources,

⁴⁰ See, e.g., Winona LaDuke, *Chapter 10, The Seventh Generation*, in *ALL OUR RELATIONS: NATIVE STRUGGLES FOR LAND AND LIFE* (Haymarket: 2016).

⁴¹ See Stanczyk, at 14.

⁴² Stanczyk, at 5, 6.

major energy bill drivers, and energy management techniques. He explained to us that to keep his energy bill affordable, he powers only two things with electricity in his home: his refrigerator and a single overhead bulb. He goes without air conditioning. For heating, he scavenges abandoned coal mine sites for leftover chunks of coal to burn in a coal stove. This profile suggests that Jerry is both struggling to get by and a fairly heavy consumer of carbon.

Stanczyk argues that policymakers have a duty to tackle both population and consumption in climate policy.⁴³ But I suspect that any policy that restricted Jerry's ability to glean for coal and forced him to buy unaffordable electric heat, or increased the price of staple but high-carbon products such as meat, would prove wildly unpopular with him and others in similar situations. This intuition forms the basis of geographer Matt Huber's argument in *Climate Change as Class War*. Huber contends that the obsession with outsized individual consumption is really a professional class distraction that resonates not at all with lower- and middle-class Americans, who have experienced shrinking spending power over the past several decades (along with falling emissions).⁴⁴ Consequently, he suggests, focusing on changing the consumption habits of the masses is simply bad politics, unlikely to garner results.

If everyday people seem to want to ignore hard truths, U.S. congresspeople appear far worse—influenced not only by their constituents' desires but also the financial imperatives of running for office and their own elite consumption preferences. And under hyper-partisan conditions, it is the raw numbers of the U.S. Congress, along with the convoluted rules of reconciliation, that ultimately dictate the shape of U.S. climate legislation. These dynamics caused the 2022 Inflation Reduction Act (IRA) to focus predominantly on industrial policy to ramp up domestic production of core climate technologies, from renewable energy to hydrogen, nuclear,

⁴³ Stanczyk, at 6.

⁴⁴ MATT HUBER, *CLIMATE CHANGE AS CLASS WAR* 147-51 (2022).

carbon capture and storage, and carbon dioxide removal.⁴⁵ These investments, which come mainly in the form of tax credits, are predicted to substantially shift emissions trajectories—although they are far from enough to put the U.S. on the necessary path to net-zero emissions.⁴⁶ But the IRA would not have been more robust had policymakers pushed to center the themes of consumption and population—if anything, it might have never gotten off the ground. So, were policymakers unethical to background these issues? Or were they morally justified in doing so, to gain the climate progress that they did?

Stanczyk offers an essential warning to those who would reflexively justify these political machinations. As he explains, climate will create “auto-catalytic social effects,” as disasters disrupt communities and “provide the occasion for yet more wrongdoing by powerful people bent on exploiting all available fossil fuels.”⁴⁷ If the IRA’s industrial policy interventions do nothing to change political and social conditions, then they might be seized upon to *expand* the production of fossil fuels, not wind them down.

This point is crucial and disheartening—especially if one thinks there is nothing to do about it. Stanczyk appears resigned about the immutability of elite domination, wryly observing that “the powerful will predictably not obey any of the most important imperatives of climate ethics.”⁴⁸ Left unexplored are the linkages that undergird this assumption—linkages among ethics, policy, law, power, politics, and domination. Those of us who spend our time in these domains have to believe that there is space here for transformation.

⁴⁵ See Abha Bhattarai, *Infrastructure and Green Energy Spending are Powering the Economy*, WASH. POST (July 28, 2023).

⁴⁶ See John Bistline et al., *Emissions and Energy Impacts of the Inflation Reduction Act*, 380 SCIENCE 1324 (June 2023).

⁴⁷ Stanczyk, at 15; see also NAOMI KLEIN, *THE SHOCK DOCTRINE* (2007).

⁴⁸ Stanczyk, at 14; see also *id.* at 16 (“[T]he worst effects of climate change will come not from the storms or the fires or the simultaneous crop failures. The worst effects will come when the economic elites and other people respond morally wrongly to the burgeoning human fallout.”).

Fortunately, exploring these connections forms the core of a (re)emerging movement in legal scholarship focused on the interrelationships of law, social order, and power. The Law and Political Economy movement, along with several predecessor movements, has recently resurfaced questions of how and why the law serves as a tool to maintain and reinforce elite economic domination.⁴⁹ While too immense a movement to do justice to here, the point to emphasize for present purposes is this: laws intermediate social and economic relations and have the power to shift them, even as these relations also help shape the content of law.⁵⁰ Any set of laws creates what Samuel Moyn describes as “situated freedom”—some room (sometimes less, sometimes more) within them in which “critique and transformation” can occur.⁵¹

I’m curious about how law’s situated freedom might relate to Stanczyk’s ethical imperative. To try to put some pieces together: Stanczyk’s concern is that we are failing our intergenerational ethical duty by not talking enough about population, consumption, and other hard climate truths. My concern raised above is that talking about these things might actively set back climate policy in the current political order. But this political order is contingent, and emerging insights from law and political economy offer us the possibility to interrogate how laws themselves might provide space for transformation of this elite, fossil-fuel-dominated political order. Put these

⁴⁹ See Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020).

⁵⁰ See, e.g., *id.* at 1820 (calling for attention to “the constitutive power of law to create endowments that shape all voluntary bargains, the market power that legal structures enable, and the political power that may arise from differential endowments, market power, or ways that legal rules insulate economic power from democratic reordering”); Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 118 (1984) (arguing that “[w]hat [legal] structures ‘determine’ is not any particular set of social consequences but the categories of thought and discourse wherein political conflict will be carried out”). There is a related though narrower movement in political science focused on “policy feedback” that is also relevant, inasmuch as it explores how policies create their own political economies that in turn create new landscapes of political opportunity. See, e.g., Leah Stokes, *Short Circuiting Policy: Interest Groups and the Battle over Clean Energy and Climate Policy in the American States* (2020); Eric Biber, *Cultivating a Green Political Landscape: Lessons for Climate Change Policy from the Defeat of California’s Proposition 23*, 66 VAND. L. REV. 399 (2013).

⁵¹ See Samuel Moyn, *Reconstructing Critical Legal Studies* (unpublished manuscript), at 34; Samuel Moyn, *From Situated Freedom to Plausible Worlds*, in *CONTINGENCY IN INTERNATIONAL LAW: ON THE POSSIBILITY OF DIFFERENT LEGAL HISTORIES* (Ingo Ventzke & Kevin Jon Heller eds., 2021).

together, and I think you have the beginnings of an ethical pathway forward for policymakers today.

If Stanczyk’s diagnosis of the ignored hard truths of climate policy is correct, it is not enough for policymakers to simply “do industrial policy” and hope the system sorts out where to go next. They must actively theorize and embed within these laws possibilities for larger structural change—they must build in what situated freedom they can.

What might such freedom look like, concretely, in climate change law? I want to draw in here a concept advanced by legal scholar Shalanda Baker, who excoriates the practice of “climate change fundamentalism.” Baker defines “climate change fundamentalists” as those “activists who advocate for policies to mitigate and adapt to the impacts of climate change without concern for issues of equity.”⁵² Baker worries that a focus within climate policy on reducing tons of carbon alone, without attention to policies’ distributive impacts, risks exacerbating structural inequalities and environmental injustice.⁵³ This worry is related to Stanczyk’s warning that industrial policy alone might serve more as a cover than a cure for entrenched fossil fuel interests. Both evince an awareness that any climate change policy that is focused exclusively on technological decarbonization contains an explicit and risky choice *not* to recognize inextricable linkages among climate change, capitalist economic and social relations, inequality, colonialism, race, and broader ecological threats beyond mounting carbon.⁵⁴

I want to posit that policymakers’ duty in attempting to address climate change under real-world political conditions, in a way that respects intergenerational equity, is to resist climate

⁵² Shalanda H. Baker, *Anti-Resilience: A Roadmap for Transformational Justice within the Energy System*, 54 HARV. C.R.-C.L. L. REV. 1, 15 n.64 (2019).

⁵³ See *id.* at 15-18.

⁵⁴ See, e.g., Maxine Burkett, *Root and Branch: Climate Catastrophe, Racial Crises, and the History and Future of Climate Justice*, 134 HARV. L. REV. F. 326 (2021); ANDREAS MALM, *FOSSIL CAPITAL* (2016); TIMOTHY MITCHELL, *CARBON DEMOCRACY: POLITICAL POWER IN THE AGE OF OIL* (2011); AMITOV GHOSH, *THE NUTMEG’S CURSE: PARABLES FOR A PLANET IN CRISIS* (2021).

change fundamentalism. Ethical climate policy must foreground—as much as politically possible—the linkages between climate change and the conditions that produce what often feels like intractable elite domination, which in turn produce the focus on expanded material-consumption-as-wellbeing that Stanczyk insists must change.

I harbor more optimism about the broad program of the Green New Deal than Stanczyk does because I see it as an effort in this vein. In its fullest, “radical” form, the Green New Deal offers a vision for a new sort of abundance rooted in leisure time and enhanced social ties, rather than material consumption.⁵⁵ It gets there via significant shifts in labor power and job conditions, public investment and ownership, and government support for care work and workers, broadly defined.⁵⁶ Under this vision, a renewed public sector and shifting social and economic power dynamics unlock the potential for more dramatic shifts in how we eat, play, work, and live together. This program is, arguably, a more oblique but politically efficacious way of tackling Stanczyk’s hard truths about the extent of social change necessary to adequately respond to climate change.

The United States obviously is not yet ready to accept this version of a Green New Deal.⁵⁷ But even the IRA—pared down as it was—contains seeds planted in this fertile ground. Although the Act doubles down on neoliberal private investments as its core climate strategy,⁵⁸ it has

⁵⁵ See DANIEL ALDANA COHEN, ALYSSA BATTISTONI, THEA RIOFRANCOS, & KATE ARONOFF, A PLANET TO WIN 18, 89-92, 187-91 (2019); Rhiana Gunn-Wright & Robert Hockett, Mobilizing for a Just, Prosperous, and Sustainable Economy: The Green New Deal 6 (Cornell Legal Studies, Research Paper No. 19-09, 2019).

⁵⁶ See, e.g., H.R. Res. 109, 116th Cong. (1st Sess. 2019) (House Resolution introduced by Senator Markey and Representative Ocasio-Cortez calling for community ownership of resources, a federal jobs guarantee, and “high-quality health care” and “affordable, safe, and adequate housing” for all Americans”).

⁵⁷ Cf. Allysa Battistoni, *Picking Winners*, SIDECAR (Nov. 24, 2021), <https://newleftreview.org/sidecar/posts/picking-winners> (describing the IRA as “more Silicon Valley than the Tennessee Valley Authority” and “tak[ing] cues not from the public investment-driven Green New Deal of Alexandria Ocasio-Cortez but from the innovation-oriented Green New Deal of the late 2000s”).

⁵⁸ McKinsey estimates that of the approximately \$394 billion predicted by Congressional estimates to be dispersed in IRA tax credits, \$216 billion will go to corporations. McKinsey & Company, *The Inflation Reduction Act: Here’s What’s In It*, <https://www.mckinsey.com/industries/public-sector/our-insights/the-inflation-reduction-act-heres-whats-in-it> (Oct. 24, 2022). See also Brett Christophers, *Why Are We Allowing the Private Sector to Take Over Our Public Works?*, N.Y. TIMES OP-ED (May 8, 2023); Daniela Gabor, *The (European) Derisking State*, Working Paper 2023.

provisions to strengthen worker power through prevailing wage and apprenticeship requirements.⁵⁹ It attempts to channel investments to low-income and so-called “energy” communities through enhanced tax credits for investments in certain locales.⁶⁰ And it removes several barriers that long kept publicly owned utilities and energy cooperatives from being able to invest in renewable energy the same way that large corporations can.⁶¹ As the law moves from paper to practice, ample opportunities exist for administrators to channel the investments of the IRA into tangible redistributions of wealth and power. Jerry could soon potentially afford solar-powered electricity from his rural electric cooperative to replace his coal stove, with no direct limits on consumption necessary.

I wish the IRA did so much more. But these anti-climate-fundamentalist components of the Act were hard fought and scarcely won, via what journalist Kate Aronoff describes as “an extraordinarily fragile political coalition.”⁶² It is commendable that even within this fragility, climate policymakers cobbled together some situated freedom—that is, some possibility of economic and social change towards a political order less beholden to fossil fuel interests.⁶³

That said, I worry that I may be wrong. It may be that passing legislation like the IRA is another form of denial—of the seriousness of the problem, of the scale of the necessary solutions, of the precious little time left to respond. Under Stanczyk’s version of climate justice, perhaps it is cowardly of policymakers to advance such legislation, knowing full well that it cannot prevent numerous disasters from befalling even the presently living. Perhaps it is immoral of legislators to

⁵⁹ See HANNAH SACHS & DAVID FOSTER, *JOB QUALITY: THE KEYSTONE OF CLEAN ENERGY INDUSTRIAL POLICY*, ENERGY FUTURES INITIATIVE (Aug. 2023).

⁶⁰ *Id.*

⁶¹ See Chirag Lang, *Direct Pay: An Uncapped Promise of the Inflation Reduction Act*, Center for Public Enterprise (Mar. 30, 2023), <https://www.publicenterprise.org/reports/direct-pay-uncapped-ira>.

⁶² Kate Aronoff, *The Case for Pool Party Progressivism*, NEW REPUBLIC (Aug. 15, 2023), <https://newrepublic.com/article/174860/public-doesnt-know-well-inflation-reduction-act-working>.

⁶³ *Cf.* Moyn, *supra*, at 34 (“Legal orders can produce agency sufficient to change them . . . though they differ radically in the extent to which they do so.”)

vote to pass it. Laws can retrench power as well as shift it, and not for nothing did Shell USA, BP America, and Ford join a letter supporting passage of the Act.⁶⁴

Yet there are also compelling reasons not to rapidly dismiss the IRA as an important building block. In a sea of uncertainties about climate change, one thing seems clear: 3.5 degrees of warming versus 1.5 degrees of warming is not a cliff; it's a continuum. Policies that bring us to 2.5 degrees of warming are thus immensely more protective of existing persons than policies that leave us at 3 degrees. And policy shapes possibility. Keeping this in mind, policymakers' ethical duty is to craft policies that not only promote new technologies but also shift the political terrain towards the potential for more radical climate responsiveness. That probably does not translate to more conversations about population or consumption *as such*. It does translate to resisting purely techno-optimist solutions that do little more than kick the proverbial can of hard climate truths down the road.⁶⁵

⁶⁴ See Business Support Statement for the Inflation Reduction Act (n.d.), [https://www.ceres.org/sites/default/files/Business%20Support%20Statement%20for%20the%20Inflation%20Reduction%20Act%20\(1\).pdf](https://www.ceres.org/sites/default/files/Business%20Support%20Statement%20for%20the%20Inflation%20Reduction%20Act%20(1).pdf).

⁶⁵ See Stanczyk, at 2.