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The ethics of people smuggling

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ABSTRACT

People smugglers help transport migrants across international borders without authorization and in return for compensation. Many people object to people smuggling and believe that the smuggling of migrants is an evil trade. In this paper, I offer a qualified defense of people smuggling. In particular, I argue that people smuggling that assists refugees in escaping threats to their rights can be morally justified. I then rebut the objections that people smugglers exploit migrants, have defective motivations, and wrongly violate the law. My conclusion is that people smuggling is sometimes a permissible way of helping refugees to evade unjust immigration restrictions and compelling states to bear their fair share of the global refugee population.

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1. Introduction

People smugglers assist migrants in crossing international borders without official authorization and in return for compensation. People smugglers are guides who escort migrants to and from specific points, drivers who transport migrants in trucks or boats, staff who operate safe houses for migrants, guards who protect migrants on their journeys, or coordinators who handle the logistics of smuggling operations.¹ Every year millions of migrants hire people smugglers to help them to immigrate (Kyle and Koslowski 2011). In recent years, people smugglers have transported hundreds of thousands of refugees who are fleeing wars and political collapse from the Middle East to Europe.

People smuggling is generally illegal. Over a hundred countries have signed a United Nations protocol that commits signatories to criminalizing people smuggling (United Nations 2011). The European Union has even initiated military operations against smugglers in order to disrupt their activities in the Mediterranean. The illegality of people smuggling reflects widespread moral condemnation of this practice. The Australian Prime Minister Kevin Rudd expressed a common view when he remarked: 'People smugglers are engaged in the world's most evil trade and they should all rot in jail because they represent the absolute scum of the earth. People smugglers are the vilest form of human life' (Missbach and Sinanu 2011, 58). Why do people object to people smuggling? Some critics argue that smugglers take unfair advantage of desperate migrants. On their view, smugglers wrongfully exploit vulnerable migrants. Other critics argue that people smugglers only benefit migrants in order to secure profits and that this is a defective motivation.

We may also have duties to obey the law and people smugglers violate these duties. There are other objections to people smuggling as well.

In this paper, I will argue that people smuggling is sometimes morally justified. Roughly speaking, I will defend the view that people smugglers act permissibly when they help refugees to escape threats to their human rights. I have organized this paper as follows. In Section 2, I will argue that people smuggling can be presumptively permissible. In Section 3, I will respond to the objections that people smuggling is exploitative. In Section 4, I will consider the objection that smugglers have defective motivations. In Section 5, I will rebut the objection that people smuggling is impermissible because smugglers violate the law. In Section 6, I will conclude the paper.²

2. Permissible smuggling

In this section, I will argue that people smuggling is *prima facie* permissible in certain cases. By ‘*prima facie* permissible,’ I mean that there is a strong reason to believe that people smuggling is *normally* permissible when smugglers satisfy the conditions that I will specify below, but this reason is defeasible. I will examine whether other considerations defeat this reason in later sections of the paper.

To motivate my argument for people smuggling, I want to start with a stylized case. Consider:

The Smuggler. Ibrahim is a smuggler who operates in Libya. Ibrahim rents and staffs cargo ships to transport migrants across the Mediterranean to Europe. One of these migrants is Khaled. Khaled wants to flee the ongoing civil war and political collapse in Libya and claim asylum in Europe. The voyage across the Mediterranean is risky. But Ibrahim is honest with Khaled about the risks and Khaled nonetheless agrees to use Ibrahim’s services. Ibrahim’s boat transports Khaled and other migrants to the Italian coastline where the smugglers turn off their motors and send out emergency signals. Italian coastguards rescue the passengers and these passengers claim asylum once they reach the mainland. Khaled pays Ibrahim for his services and Ibrahim makes a small profit from this exchange.³

It seems to me that Ibrahim acts permissibly in smuggling Khaled to Europe.

Why though? Here is my argument for the claim that Ibrahim acts permissibly:

- (1) While Ibrahim has moral reasons to transport Khaled to Europe, it is false that Ibrahim is morally required to transport Khaled to Europe without compensation.
- (2) If it is permissible for Ibrahim to refrain from transporting Khaled to Europe without compensation, then it is *prima facie* permissible for Ibrahim to transport Khaled in return to compensation if (i) Khaled consents to use Ibrahim’s services, (ii) Khaled benefits from using Ibrahim’s services, and (iii) this interaction avoids violating the rights or entitlements of other agents.
- (3) Ibrahim secures Khaled’s consent, Khaled benefits from the exchange, and Ibrahim avoids violating the rights of third parties.
- (4) So, it is *prima facie* permissible for Ibrahim to smuggle Khaled to Europe.

Let me clarify and justify each premise in turn.

The first premise says that Ibrahim can permissibly refrain from smuggling Khaled without compensation. This premise is just the denial of the view that Ibrahim is

morally required to unconditionally aid Khaled. To be clear, I believe that Ibrahim has strong moral reasons to aid Ibrahim. Assume that civil war and the breakdown of political order in Libya means that Khaled's rights are insecure and that he is vulnerable to violence from militants. Imagine that Khaled's rights would be better protected if Khaled could reach Italy or another part of Europe. Ibrahim is in a good position to aid Khaled and other refugees by smuggling them to Europe (by 'refugee,' I mean broadly any migrant whose human rights are credibly threatened in his or her country of origin). If you are in a good position to help another person in need, then you have moral reasons to do so irrespective of whether you have any prior relationship or interaction with this person. This explains why Ibrahim has significant moral reasons to smuggle Khaled and other refugees.

But most people think that our duties to aid other people are sensitive to costs. If it is too costly or risky for you to aid other people, then these costs or risks release you from an obligation to aid them.⁴ Suppose that you could reduce poverty and suffering by transferring most of your income to the citizens of poor states. This would probably be a good thing to do, but most of us would deny that you are required to give away most of your income because this sacrifice is too costly. Of course, people disagree about what counts as unreasonable or excessive costs. But, while it may be unclear where the threshold lies, there is plausibly some threshold of cost that undercuts duties of assistance. If that is true, then it seems permissible to refrain from helping other people when aiding them generates sufficiently large costs to the duty-bearer.

If duties to aid other people are sensitive to costs, then it is plausible that Ibrahim lacks a duty to assist Khaled and other refugees without compensation. Let's stipulate that, in *The Smuggler*, it is costly and risky for Ibrahim to smuggle Khaled and other refugees to Europe. For one thing, Ibrahim incurs financial costs in transporting Khaled. Suppose that it is expensive to secure a boat and hire a crew to man it. Ibrahim also confronts risks of punishment from the authorities because people smuggling is illegal. If Libyan or European officials catch Ibrahim, they could imprison him or harm him in other ways. If significant risks and costs undercut duties of assistance, then it seems false that Ibrahim has a duty to unconditionally aid Khaled. Ibrahim could reasonably refuse to bear the costs and risks of aiding Khaled without compensation. This is surely true about people smugglers in general as well. While people may have duties to help refugees in some way, it seems unlikely that bystanders are morally required to smuggle refugees across borders for free in large part because the risks and costs of doing so can be great.

The next step in my argument is that, if it is permissible for Ibrahim to refrain from engaging in smuggling without compensation, then it is *prima facie* permissible for him to participate in smuggling insofar as migrants consent to his assistance, this assistance benefits them, and Ibrahim avoids violating the rights of third parties. Here is the rationale for this premise. If you can permissibly refuse to benefit someone, then it stands to reason that you can permissibly benefit this person in a consensual way. You have moral reasons to benefit other people and, if they consent to these benefits, it is hard to see how you could wrong these people by benefiting them when it was permissible to deny them these benefits altogether. Suppose, as I have argued, that it is generally permissible for Ibrahim to refuse to smuggle refugees to Europe for free. If it is permissible for Ibrahim to refrain from benefiting migrants without compensation, then how could be wrong for Ibrahim to make his assistance conditional on payment for his services if his clients

consent to these terms and this interaction does not violate the entitlements of other people?⁵ Remember though that premise 2 is a claim about *prima facie* permissibility. I leave open for now whether it is sometimes all-things-considered impermissible in these kinds of cases for you to benefit someone in a consensual manner if, say, these benefits are unfair. But we have reason to believe that it is normally permissible to consensually benefit someone if you can permissibly refuse to benefit this person in the first place.

Let's now turn to the conditions of premise 2 and examine more closely how they apply to The Smuggler. As I noted above, Ibrahim benefits Khaled and other migrants by smuggling him to Europe. If Khaled could reach Europe, his rights would be substantially more secure. While the voyage across the Mediterranean is risky, the expected benefits of migrating to Europe can outweigh the risks of the voyage for Khaled. Thus, the *ex ante* prospects of attempting to migrate to Europe are positive for Khaled and other migrants.⁶ Khaled also consents to Ibrahim's services. This fact is important because Ibrahim exposes Khaled to risks by smuggling him to Europe. Normally, it is wrong to expose people to large risks. But we can waive our rights against these risks. If someone imposes risks on you but you consent to these risks, then it may be permissible for this person to expose you to these risks. For this reason, Khaled and other refugees can waive their rights against the risks that Ibrahim imposes on them.

You might worry that the refugees who hire Ibrahim are in a desperate position. Refugees may face the option of contracting with Ibrahim and undergoing a risky ocean voyage or continuing to live in dire conditions in Libya. But a person's consent can be morally transformative even if this person has only bad options. Consider an example. Suppose that a patient, Susan, is suffering from a life-threatening condition. Susan has two options. First, Susan can undergo a risky surgery that might cure her, but it might also kill her. Second, Susan can forgo surgery and face a high probability of death in the next year. If Susan takes the first option and consents to surgery, then it seems permissible for the surgeon to operate on her. Although Susan has terrible options, she remains capable of waiving her right against the risks that the surgeon imposes on her.

The same goes for refugees. Khaled's options are severely constrained. Khaled has the options of continuing to live in Libya under the threat of violence or trying to reach Europe via a dangerous ocean voyage. Yet Khaled retains the normative power to waive his rights against the risks to which Ibrahim exposes him. Perhaps it would still be wrong to expose Khaled to risks if the risks of harm from smuggling substantially outweighed the benefits. Along similar lines, some people think that it is wrong for a surgeon to expose Susan to high risks of harm if the expected benefits of the surgery were low, even if Susan consented to these risks. But I am assuming that the *ex ante* expected benefits of smuggling Khaled outweigh the risks of harm in the case that I am describing. So, Ibrahim avoids wronging Khaled by smuggling him to Italy.

It can still be impermissible to engage in a mutually beneficial and consensual interaction if this interaction violates the rights of third parties. For instance, Ibrahim's actions could impose unfair costs on the citizens of recipient states. When states admit refugees, they must typically spend funds on processing asylum-claims and providing refugees with housing, food, and job training. The migration of refugees can impose other indirect costs on citizens, such as increased competition for jobs, housing, and other scarce goods. However, the citizens of recipient states are often obligated to bear the costs of admitting refugees. Almost every political theorist who writes about the

ethics of immigration agrees that states are morally required to admit and resettle *some* refugees. For instance, Michael Walzer, Christopher Wellman, and David Miller argue that states have rights to self-determination that permit them to restrict immigration. But each of these authors accepts that states' immigration policies are constrained by general duties to assist foreigners, and that these duties can require states to admit refugees (Walzer 1984, 48–51; Wellman and Cole 2011, 120–122; Miller 2013).

If states are obligated to admit refugees, then it is generally false that smugglers impose unfair costs on these states by transporting refugees to their borders. Here is an analogy to illustrate why. Imagine that a busing company transports people from a poor inner city to an affluent suburb, and some of these people move to the suburb. The residents of the inner city tend to be much poorer than the residents of the suburb. As a result, they consume more social services and receive more welfare payments than do the average residents of the suburb. Suppose also that these services are financed by local taxes on the suburbanites and the migration of people from the city to the suburb causes taxes to go up. So, by transporting people from the inner city to the suburb, the busing company contributes to imposing costs on people in the suburb. Nonetheless, the busing company does nothing wrong in transporting people from the inner city to the suburb. This is the case because it would be wrong for the suburb to forcibly exclude people from the city and deny them the benefits that other residents receive. If the suburb is obligated to admit them and provide them with benefits, then the busing company avoids violating the entitlements of the suburbanites by contributing to the imposition of these costs.

The underlying principle here is that, if agent A is obligated to bear certain costs, then it is permissible for some agent B to act in a manner that imposes these costs on A. If this principle is correct, then Ibrahim's conduct may refrain from violating the entitlements of recipient states. As I noted above, political theorists generally think that rich democracies have obligations to admit at least some refugees when these refugees face significant threats to their human rights. Khaled faces significant threats to his rights. So, it is plausible that other states, such as affluent democracies, are obligated to admit Khaled. Assume for the moment that European states are obligated to admit the Khaled and other refugees. If European states are required to admit and resettle Khaled, then they are also obligated to bear the costs of his integration. So, the citizens of these states might lack entitlements against the costs that smugglers like Ibrahim help impose on them.

For these reasons, it seems that Ibrahim acts in a permissible manner. To generalize from Ibrahim's case, my argument for the permissibility of people smuggling goes like this:

- (1) While people smugglers have moral reasons to transport refugees to states that can adequately protect their human rights, it is false that smugglers are, in general, morally required to transport refugees across borders without compensation.
- (2) If it is permissible for potential smugglers to refrain from transporting refugees to other states without compensation, then it is *prima facie* permissible for smugglers to transport refugees in return for compensation if (i) these refugees consent to this interaction, (ii) refugees benefit from interacting with smugglers, and (iii) this interaction avoids violating the rights or entitlements of other agents.

- (3) In some cases, refugees consent to interacting with smugglers, refugees benefit from interacting with smugglers, and this interaction avoids violating the rights or entitlements of other agents, such as recipient states.
- (4) So, it is *prima facie* permissible to engage in people smuggling in these cases.

Call this: *the presumptive argument* for people smuggling.

The presumptive argument is compatible with the claim that most people smugglers act wrongly in practice. Some smugglers deceive migrants, negligently expose them to risks, kidnap them, and abuse them in other ways. These smugglers are engaged in serious wrongdoing. Furthermore, this misconduct is predictable. People smugglers operate in black markets. Participants in black markets are often unable to appeal to courts or other legal institutions to resolve conflicts or report abuse. Smugglers have incentives to use violence to settle disputes and customers often lack effective recourse if smugglers defraud or exploit them. These incentives explain why many smugglers violate the conditions of permissible smuggling.⁷

But some smugglers avoid wronging their customers. People smugglers usually want to make money. It is a bad business strategy to acquire a reputation for abusing clients and violating their rights. After interviewing smugglers (or 'coyotes') on the Mexico–United States border and the migrants who employ them, the sociologist David Spener reports:

Migrants typically chose their coyotes based on information they obtained by word of mouth in their social networks Thus, to the extent that they need to attract customers, coyotes needed to be concerned with their reputations 'on the migrant street,' since word of failure, imposition of hardships, or malfeasance on their part was likely to travel throughout the region in which they operated.

(2009, 187)

Studies of smugglers operating in Europe and Australia arrive at similar conclusions (Van Liempt 2007; Missbach and Sinanu 2011). In their research on migration to Austria, Veronika Bilger, Martin Hofmann, and Michael Jandl report that 'the commonly held view of smuggled migrants being fully at the mercy of their smugglers in many cases does not correspond to reality' (Bilger, Hofman, and Jandl 2006, 87). Smugglers usually prefer to protect their reputations. To protect their reputations, smugglers generally need to treat their customers well (Palacios 2015; Sanchez 2015). Smugglers often have other incentives to respect the rights of their customers as well. They may want to avoid social stigma and some of them are morally motivated to help migrants. Some smugglers respond to these incentives by protecting the welfare of their customers and securing their voluntary consent.

Smugglers may also avoid violating the entitlements of recipient states in practice. This is the case because many states, particularly affluent democracies, should arguably admit more refugees than they currently do. Why? One reason is that the standard definition of refugees is under-inclusive. According to the definition of refugees embodied in international law, refugees are migrants who are fleeing well-founded fears of persecution on grounds of race, religion, political opinion, nationality, and membership of a particular social group. But people face other urgent threats to their human rights besides persecution. Severe poverty, disease, natural disasters, and war constitute grave threats to human rights as well. Yet migrants are often unable to claim refugee status under international

law if they are fleeing these threats, as these migrants are not the victims of political persecution. As a result, states may exclude and deport migrants who face urgent threats in their countries of origin but nonetheless fail to qualify for refugee status.

In addition, rich democracies host a relatively small fraction of the global refugee population. Most refugees in the world live in poor and middle-income states, such as Ethiopia, Pakistan, and Turkey (UNHCR 2015). For example, Lebanon and Jordan currently host more refugees from the Syrian civil war than do all European countries combined (UNHCR 2014). It seems unfair for relatively poor countries to shoulder the burden of hosting and resettling most of the world's refugees, as rich states can more easily bear these costs than can poorer states. But rich democracies have actually implemented immigration policies that make it difficult for refugees and asylum-seekers to immigrate through legal channels. These states have limited offshore applications for asylum, interdicted asylum-seekers in international waters, created international zones in airports and other locations where they can turn back refugees, imposed carrier sanctions that encourage airlines to refuse to transport unauthorized migrants, and enacted other measures to prevent the migration of refugees and asylum-seekers (Gibney 2005). Moreover, the international refugee regime lacks mechanisms to compel rich states to admit more refugees. The international regime is unable to enforce burden-sharing.

People smugglers can help compensate for these defects in the international refugee regime. Smugglers can assist migrants in moving to states where their human rights are adequately protected despite the fact that these migrants would be ineligible for refugee status under international law. For example, suppose that a refugee is escaping war or severe poverty, but she is not a victim of persecution. Under international law, this person lacks a legal claim to asylum. However, the distinction between political persecution and other threats to human rights seems to be morally arbitrary (Gibney 2004; Ferracioli 2014; Betts 2015). If people have moral claims to international protection because their human rights are threatened through persecution, then people also have claims to protection when their rights are threatened in other ways. Imagine that a people smuggler assists a migrant who is fleeing war or destitution to cross borders without official authorization and this migrant's human rights are adequately protected as a result of immigrating. The smuggler in this case helps secure protection for a refugee who merits asylum from a moral perspective, but may not be legally entitled to protected status because it is false that she is escaping persecution.

People smugglers also transport refugees from states that host a disproportionate number of refugees to rich states that host relatively few. In fact, to evade the border restrictions and immigration agents of rich states, refugees often need to rely on the expertise of smugglers. This explains why perhaps a majority of refugees in high-income democracies employed smugglers in order to immigrate. According to some estimates, over 50% of asylum-seekers in European states, such as the Netherlands and Germany, were smuggled there (Koser 2011, 260–262). It seems unlikely that smugglers who transport refugees to rich democracies would be imposing excessive costs on these countries or otherwise violating their rights. Smugglers that transport refugees to rich states may merely be inducing rich states to bear their fair share of the global refugee population. If affluent democracies should accept more refugees than they currently do, then we have reason to conclude that people smugglers who transport refugees to these states avoid violating the rights of recipient states in practice.⁸

3. Exploitation

I will now examine objections to the presumptive argument for people smuggling. One common objection to people smuggling is that smugglers take unfair advantage of vulnerable migrants. Dimitris Avramopoulos, the European Union's Commissioner for Migration, Home Affairs, and Citizenship, contends that the European Union 'cannot allow ruthless smugglers to make a fortune through criminal acts, exploiting migrants looking for a safe passage to Europe' and that 'smugglers are finding new routes to Europe and are employing new methods in order to exploit desperate people who are trying to escape conflict and war' (2015). On this view, people smuggling is objectionable in virtue of the fact that people smuggling is wrongfully exploitative. Call this: *the exploitation objection* to people smuggling.

I agree that people smuggling can be wrongfully exploitative. Consider the following case:

Exploitative Smuggling. Khaled wants to immigrate to Europe and Ibrahim is the only smuggler in the area who can assist Khaled in reaching Europe. If Khaled is unable to immigrate, he will likely suffer serious harm at the hands of militants in Libya. Ibrahim could smuggle Khaled to Europe for the equivalent of \$1000 without bearing any large costs or risks. But Ibrahim decides to charge Khaled \$5000 instead and Khaled is willing to pay this amount, although Khaled is penniless after paying Ibrahim. Ibrahim makes a significant profit from this exchange.

On a standard definition of exploitation, person A wrongfully exploits person B if A extracts unfair benefits from interacting with B. It seems to me that Ibrahim wrongfully exploits Khaled in this example by extracting excessive benefits from him. As this example illustrates, people smugglers can in fact wrongfully exploit migrants.

But I deny that people smuggling is necessarily or generally exploitative. Consider another case:

Fair Smuggling. Khaled wants to immigrate to Europe. Ibrahim is one of many smugglers in the area who can assist Khaled in reaching Europe, and these smugglers compete against each other for customers. Ibrahim offers to smuggle Khaled to Europe for \$1000, which is about the competitive market price for this service. At this price, Ibrahim will make a small profit, although Ibrahim would also incur significant risks and costs by smuggling Khaled. If Khaled declines Ibrahim's offer, he can easily find another smuggler to help him to reach Europe.

It appears that Ibrahim avoids exploiting Khaled in this case. The interaction between Khaled and Ibrahim seems fair. Cases like this one are possible. Therefore, it is false that smugglers *necessarily* exploit migrants.

What is the difference between Exploitative and Fair Smuggling? I lack the space to develop a theory of exploitation here. But we can take some prominent theories of exploitation off the shelf and use them to explain the difference between Exploitative and Fair Smuggling. Here is an illustration. In an influential paper, Valdman (2009) argues that one person A wrongly exploits another person B if and only if A extracts excessive benefits from B when B cannot reasonably refuse A's offer. Valdman says: 'To wrongly exploit someone is to *extract* excessive benefits from him – it is to use the fact that his back is to the wall, so to speak, to get him to accept lopsided and outrageous terms of exchange' (2009, 13). To explain Valdman's account, consider Exploitative Smuggling. In this case, Khaled is unable to reasonably refuse Ibrahim's offer because Khaled confronts a threat

of violence if he stays in Libya and Ibrahim is the only person who can help Khaled escape. In other words, Ibrahim has an effective monopoly over a service that is necessary for Khaled to secure his basic rights and Ibrahim uses this monopoly to extract benefits from Khaled.

Moreover, the benefits that Ibrahim gains from interacting with Khaled are excessive. Valdman claims that person A extracts excessive benefits from person B if A charges B more than A would receive in a competitive market. In Exploitative Smuggling, the market for smuggling services is non-competitive because there are few providers in the market. As a result, Ibrahim can charge Khaled more than the competitive market price and thus Ibrahim reaps excessive benefits from the exchange. Valdman's theory of exploitation can explain why Ibrahim avoids exploiting Khaled in Fair Smuggling as well. In this case, Khaled can reasonably refuse Ibrahim's offer because Khaled can easily hire another smuggler to assist him. Ibrahim lacks a monopoly on essential services. Ibrahim also charges the competitive market price for his assistance. So, Ibrahim refrains from extracting excessive benefits from Khaled. Their interaction in this case is non-exploitative on Valdman's theory of exploitation.

It is a difficult empirical question whether actual smuggling markets more closely resemble Exploitative Smuggling or Fair Smuggling. But we have some reason to believe that, in at least *some* cases, the interactions between smugglers and migrants resemble Fair Smuggling. Social scientists who study human smuggling find that smuggling markets are sometimes fairly competitive. There are typically low barriers to entry for engaging in smuggling and the large potential supply of smugglers might make the smuggling market competitive. In his fieldwork on smugglers, Spener observes that no single smuggler or group of smugglers monopolized the market along the United States–Mexico border (2009, 174). Bilger, Hofmann, and Jandl report that the smuggling market in Europe is characterized by 'intense rivalry between smugglers competing for the same pool of clients' (2006, 65). Competition reduces the bargaining power of smugglers. Economists have documented how people can develop mechanisms to mitigate market failures even in the absence of legal regulation (Leeson 2014; Stringham 2015). These mechanisms are present in smuggling markets. For example, while there are information asymmetries between smugglers and migrants, smuggling markets evolve mechanisms that compensate for these asymmetries. Smugglers offer insurance and 'money back' guarantees, and they rely on social ties and reputations to signal information about their trustworthiness (Bilger, Hofman, and Jandl 2006). If smuggling markets are sometimes reasonably competitive, then it is less likely that these markets involve significant exploitation.

So far, I have been relying on Valdman's theory of wrongful exploitation in order to show that it is false that people smuggling is necessarily exploitative. But perhaps his theory of exploitation is incorrect. Even if this theory turns out to be wrong, we still have reason to doubt whether people smuggling is exploitative. To see why, consider legal analogs to people smuggling, such as commercial airlines, busing companies, and shipping companies. It seems that these services are often non-exploitative. Few people argue that commercial airlines are inherently unjust because they exploit their customers. Yet it is hard to see how people smuggling is fundamentally different from these legal services. After all, both people smuggling and commercial airlines or busing companies involve transporting people to new locations in return for compensation, but people smuggling just happens to be illegal. At first glance, if people smuggling is necessarily

exploitative, then it seems that we must conclude that airlines or busing companies are necessarily exploitative too. It is unlikely that any theory of wrongful exploitation can show that people smuggling is necessarily or generally exploitative without implying that many ordinary commercial transactions are wrongfully exploitative as well. As it is implausible that airlines and busing companies are necessarily exploitative, we should also reject the view that people smuggling must be exploitative.

4. Defective motives

People often level a related objection against people smuggling. This is the objection that people smugglers are selfish. Commentators in popular discourse frequently criticize people smugglers on the grounds that they are solely motivated by greed. Gerhard Øverland says that smugglers ‘help desperate people solely for the money’ and that ‘smugglers might be liable to condemnation for profit maximization’ (2007, 182).⁹ In other words, people smugglers have morally defective motivations and this fact explains why people smuggling is impermissible. This objection seems to go:

- (1) If person A helps person B for the wrong reasons, then A acts impermissibly.
- (2) People smugglers help needy migrants for the wrong reasons, such as profit-seeking rather than other-regarding concern for the welfare of these migrants.
- (3) So, people smugglers act impermissibly.

Let’s call this *the motivational objection* to people smuggling.

One problem with the motivational objection is that it is unclear why bad motivations would transform actions that would otherwise be permissible into impermissible actions. Many philosophers argue that we should distinguish between the moral status of actions and the status of motives (Mill 1998; Scanlon 2008). Your motives can be defective while your actions are permissible. If you aid people in need solely for selfish reasons, then this impeaches your character and motivations. Your motivations are worse than they ought to be. Yet your actions can still be morally justified. Consider the following variations on The Smuggler. In Variation 1, Ibrahim aids needy refugees in Libya solely in order to make a profit and Ibrahim tries to make as much money as possible. So, Ibrahim only helps refugees to reach Europe for selfish reasons. In Variation 2, Ibrahim wants to make a sufficient income to support himself, but he also assists refugees because he cares about protecting them from harm. Let’s stipulate that Ibrahim’s activities in Variations 1 and 2 are otherwise identical.

Ibrahim’s character and motivations are morally worse in Variation 1 than in Variation 2. Ibrahim’s character would be better if he were motivated to assist refugees for other-regarding reasons. But it is difficult to see why this fact would entail that his actions are objectionable. It is more natural to say that Ibrahim’s actions are permissible and his motivations are faulty. People can do good things for bad reasons. If we can distinguish between moral evaluations of a person’s character and evaluations of their conduct, then my argument in this paper is compatible with the claim that ‘smugglers might be liable to condemnation for profit maximization.’ This is so because we can condemn the motivations of people smugglers and nevertheless conclude that their actions are permissible. Thus, if a person can perform permissible actions for defective reasons, then premise 1 is false.

We should also reject premise 2. Premise 2 says that people smugglers assist migrants for the wrong reasons, such as the desire to maximize profits. The implication is that smugglers should help migrants for the right reasons, such as a concern for their well-being and a desire to protect their rights. That is, smugglers should act out of other-regarding concern, but smugglers fail to do so. However, while smugglers are generally motivated by the desire to make money, motivations for smuggling can be over-determined. To see how this is possible, consider an analogy. Suppose that someone wants to earn a high income and she trains to become a surgeon in part because surgeons are well paid. But this person also wants to save lives and this fact motivates her to become a surgeon as well. This person's motivations are over-determined. She is motivated both by financial considerations and other-regarding concerns.

The same can hold true for smugglers. The anthropologist Gabriella Sanchez interviewed 'smuggling facilitators' and many of them report that they are motivated by a desire to help migrants. Many smugglers are unauthorized migrants or refugees and they say that they want to assist people like themselves. Sanchez writes:

Many were adamant that their participation contributes to the wellbeing of others. The recognition of similar experiences to their own among their clients was a constant theme in the interviews Among respondents, there was also an ethical element to their participation – namely the assistance provided to people who, as facilitators or clients, would otherwise face high levels of risk and vulnerability.

(2014, 77)

These respondents might be exaggerating their moral motivations. Yet it is surely the case that some smugglers are motivated by ethical considerations. Furthermore, many smugglers report that they engage in smuggling because they have a family to support and they lack alternative employment options. These smugglers are motivated by other-regarding concerns and it is for this reason that they desire a higher income.¹⁰ Thus, a desire to make money and other-regarding concerns are sometimes compatible. Some people smugglers may act for the wrong reasons. But it is false that people smugglers generally act for the wrong reasons.

5. Law-breaking

A final objection to people smuggling is that smugglers violate the law. People smuggling is illegal and states often impose significant criminal punishments on people smuggling. Many people think that it is wrong to break the law. If it is impermissible to break the law, then people smuggling is also wrong. Call this: *the law-breaking objection* to people smuggling.

Philosophers disagree about whether we have content-independent obligations to obey the law (a content-independent duty is a duty to obey laws irrespective of the content of these laws). But let's assume for the sake of argument that we do have content-independent duties to obey the law. Nonetheless, it is doubtful whether law-breaking *per se* involves significant wrongdoing when the law forbids an activity that is not intrinsically impermissible. Consider some examples to illustrate. Suppose that you drive slightly over the speed limit in order to make an appointment in time. Or suppose that you jaywalk in the middle of the night when no one else is around. Or imagine that you drink an alcoholic beverage on the day before your twenty-first birthday and

you live in a jurisdiction that prohibits the consumption of alcohol before you are 21. In each of these cases, you have violated the law. Yet it is rather implausible that you have engaged in serious wrongdoing in any of these cases.

Perhaps we do have moral reasons to obey the law as such. But, as the above cases suggest, these reasons must be relatively weak. It is not intrinsically wrong to go slightly over the speed limit or jaywalk when doing so avoids endangering others. In cases where it is not independently morally wrong to engage in the conduct in question, it appears that even minor considerations can override the reasons to comply with the law. For example, I suspect that most people would say that your promise to meet your friend for lunch at a certain time could justify going slightly over the speed limit if you are late and you avoid imposing excessive risks on other people. If my arguments in this paper are correct, we should reject the view that there is anything intrinsically wrong with people smuggling. Furthermore, smugglers have moral reasons to engage in people smuggling and these reasons are often far from minor. The smuggling of refugees is often necessary to protect human rights and there are strong reasons to protect the human rights of vulnerable people. If even weak reasons can defeat content-independent duties to comply with the law, then the reasons to engage in people smuggling can surely defeat the moral reasons to obey the law at least in cases where the people smuggling in question satisfies the conditions of permissible smuggling.

Let's suppose that the foregoing claims are wrong and that we in fact have weighty content-independent duties to obey the law. Even if we have stringent duties to obey the law, most people would still agree that you could permissibly violate the law in exceptional cases. Consider the necessity defense in the common law. A necessity defense holds that a person's illegal conduct is justified if this conduct prevented a greater evil than her conduct caused, there was no legal alternative action that would have averted the harm, and this person was not responsible for creating the threat that she helped avert (Mancilla, [forthcoming](#)). When successful, a necessity defense nullifies criminal liability, as this defense establishes that the illegal behavior in question was all-things-considered permissible or required. People who think that we have weighty duties to comply with the law agree that it is in principle permissible to violate the law in cases of necessity.

People smuggling can sometimes satisfy the conditions of a necessity defense because people smuggling may be necessary to rescue people from grave harm. Consider the following case:

Rescue Smuggling. Moutassem is a resident of Damascus, Syria. There is intense fighting between the government and rebel armies near Damascus. This fighting poses a grave threat of injury or death to Moutassem. Even if Moutassem avoids injury, the government will soon conscript him and force him to serve in the army, which will also expose him to high risks of harm. To avoid imminent conscription and collateral harm from the fighting, Moutassem plans to immigrate to Turkey. If Moutassem can reach Turkey, he will be reasonably safe and his human rights will be better protected. But imagine that Turkey has begun closing the border to Syrian refugees. Moutassem locates a smuggler, Anas, who can secretly transport Moutassem across the border to Turkey. Suppose also that it is unlikely that Moutassem can locate another smuggler who can help him escape before he is conscripted. Anas successfully transports Moutassem to Turkey and Moutassem pays Anas for his assistance.

In this example, Anas rescues Moutassem from a threat of harm in Syria by smuggling him to Turkey. Anas' actions are necessary to prevent severe and imminent harm to

Moutassem and Anas refrains from causing equal or greater harm to anyone else in smuggling Moutassem. It is easy to imagine that there are no alternative legal means of preventing harm to Moutassem. As I noted in Section 2, many refugees are unable to immigrate to another state legally and it is implausible that Anas has another way of averting the threat to Moutassem. Anas also lacks any responsibility for the threat of violence against Moutassem. Anas has a strong necessity defense for violating the law. If the necessity defense is valid, then Anas' actions may still be permissible despite the fact that he violates the law.

An objector might argue that Anas is unable to appeal to a necessity defense because Anas receives compensation for his services. This objector could argue that, while smuggling Moutassem out of Syria is necessary to protect Moutassem from harm, it is false that Anas needs to charge for his services in order to aid Moutassem. So, Anas' actions are not in fact necessary to protect Moutassem from the threat of harm. But we can imagine version of the case in which Anas must charge for his services in order to continue to rescue people like Moutassem from harm. Imagine that, unless Anas charges for smuggling, he will be unable to pay for the expenses of smuggling Moutassem and other refugees out of Syria. Smuggling can be expensive. Smugglers may need to pay for transportation, food and shelter for migrants, false documents, and so on. If Anas must receive compensation in order to finance his smuggling operations, then compensation is necessary to avert harm to Moutassem and other refugees that Anas assists.

The law-breaking objection fails to condemn people smuggling in general. On any reasonable view, it is morally permissible or even morally required to violate the law in certain cases. It seems to me that we need only weak moral reasons to justify violating laws that prohibit actions that are not intrinsically wrong. If that's true and the rest of my arguments in this paper are correct, then people smuggling can often be permissible despite its illegality. But, even if we need strong moral reasons to justify illegal behavior, people smuggling can meet this justificatory burden in certain instances, as people smuggling may be necessary to prevent grave harm.

6. Conclusion

According to a common view, people smuggling is an evil trade. But my argument in this paper suggests that an indiscriminate condemnation of people smuggling is mistaken. People smuggling can be a permissible means of assisting migrants. There is also some reason to believe that many smugglers actually act in a permissible way in practice, especially when these smugglers aid refugees in crossing borders. Some smugglers help compel rich states to bear their fair share of the world's refugee population and assist refugees in evading threats to their human rights. People smuggling can be a weapon of the weak against immigration restrictions that prevent refugees and other migrants from escaping threats to their lives and liberties.

Notes

1. For a description of the different activities that people smugglers engage in, see Sanchez (2015, 69).
2. Few philosophers or political theorists have considered the ethics of people smuggling. Gerhard Øverland (2007) and Kukathas (2013) briefly discusses the ethics of people smuggling

- in arguing that the smuggling of refugees should be decriminalized. But, apart from these exceptions, I am unaware of a sustained treatment of the ethics of people smuggling.
3. For a description of an actual, similar case, see Yeginsu (2015).
 4. For defenses of the claim that general positive duties are sensitive to costs, see Wellman and Simmons (2005), Fabre (2006), and Barry and Øverland (2013).
 5. Zwolinski (2008) and Wertheimer (2011, chap. 6) argue in favor of a related principle that they call the 'nonworseness claim.' The nonworseness claim says that it cannot be worse for person A to interact with person B than to refrain from interacting with B if this interaction is mutually beneficial, A and B consent to the interaction, and this interaction has no negative effects on third parties. If the nonworseness claim is true, then it follows that Ibrahim acts permissibly in assisting Khaled in return for payment, as it was permissible for Ibrahim to refrain from aiding Khaled for free. However, I will take no stand here on whether the nonworseness claim is always true. As I will discuss in Section 3, it seems at least possible to me that it can be worse to interact with people than to abstain from interacting with them if these interactions are exploitative.
 6. This aspect of the case is realistic. Many migrants incur substantial risks of harm in order to immigrate successfully and believe the benefits are worth the risks (Mbay 2014).
 7. For an analysis of how black markets can generate violence, see Miron (1999).
 8. I have argued that people smuggling is sometimes permissible. But might people smuggling also be obligatory? The answer to this question seems to be 'yes.' Suppose that a person, A, faces a dire and imminent threat to A's human rights and that another person, B, can only avert this threat by smuggling A to another country. Assume also that B can smuggle A without bearing excessive costs or risks and there is no other viable way of aiding A. It is plausible to me that B is required to smuggle A across borders in this case. But the conditions under which people smuggling is obligatory are probably much rarer and exacting than the conditions under which it is permissible. For this reason, I focus on permissible rather than required people smuggling in this paper.
 9. It is unclear whether Øverland actually endorses this objection to smuggling or is merely entertaining it for the sake of argument.
 10. In fact, people smuggling is not particularly lucrative. According to Sanchez, most smugglers engage in smuggling on the side in order to supplement their incomes and few of them experience upward economic mobility (2014, 74–75).

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References

- Avrampoulos, Dimitris. 2015. "Recent Smuggling Incidents in the Mediterranean." The European Commission Press Release Database. http://europa.eu/rapid/press-release_SPEECH-15-3262_en.htm.
- Barry, Christian, and Gerhard Øverland. 2013. "How Much for the Child?" *Ethical Theory and Moral Practice* 16 (1): 189–204.
- Betts, Alexander. 2015. "The Normative Terrain of the International Refugee Regime." *Ethics & International Affairs* 29 (4): 363–375.

- Bilger, Veronika, Martin Hofman, and Michael Jandl. 2006. "Human Smuggling as a Transnational Service Industry: Evidence from Austria." *International Migration* 44 (4): 59–93.
- Fabre, Cecile. 2006. *Whose Body Is It Anyway?* New York: Oxford University Press.
- Ferracioli, Luara. 2014. "The Appeal and Danger of a New Refugee Convention." *Social Theory and Practice* 40 (1): 123–44.
- Gibney, Matthew. 2004. *The Ethics and Politics of Asylum*. New York: Cambridge University Press.
- Gibney, Matthew. 2005. "Beyond the Bounds of Responsibility: Western States and Measures to Prevent the Arrival of Refugees." *Global Migration Perspectives* 22: 1–23.
- Koser, Khalid. 2011. "The Smuggling of Refugees." In *Global Human Smuggling: Comparative Perspectives*, edited by David Kyle and Rey Koslowski, 256–272. Baltimore, MD: John Hopkins University Press.
- Kukathas, Chandra. 2013. "In Praise of the Strange Virtue of People Smuggling." *Global Policy*. <http://www.globalpolicyjournal.com/blog/03/05/2013/praise-strange-virtue-people-smuggling>.
- Kyle, David, and Rey Koslowski. 2011. "Introduction." In *Global Human Smuggling: Comparative Perspectives*, edited by D. Kyle and R. Koslowski, 1–32. Baltimore, MD: John Hopkins University Press.
- Leeson, Peter. 2014. *Anarchy Unbound: Why Self-governance Works Better Than You Think*. New York: Cambridge University Press.
- Mancilla, Alexandra. *Forthcoming*. "What the Old Right of Necessity Can Do for the Contemporary Global Poor." *Journal of Applied Philosophy*. doi:10.1111/japp.12170.
- Mbay, Linguère. 2014. "Barcelona or Die: Understanding Illegal Migration from Senegal." *IZA Journal of Migration* 3 (21): 2–19.
- Mill, John Stuart. 1998. *Utilitarianism*. Ed. Roger Crisp. New York: Oxford University Press.
- Miller, David. 2013. "Border Regimes and Human Rights." *The Law & Ethics of Human Rights* 7 (1): 1–23.
- Miron, J. A. 1999. "Violence and the U.S. Prohibition of Drugs and Alcohol." *American Law and Economics Review* 1 (1): 78–114.
- Missbach, Antje, and Frieda Sinanu. 2011. "'The Scum of the Earth'? Foreign People Smugglers and Their Local Counterparts in Indonesia." *Journal of Current Southeast Asian Affairs* 30 (4): 57–87.
- Øverland, Gerhard. 2007. "The Illegal Way In and the Moral Way Out." *European Journal of Philosophy* 15 (2): 186–203.
- Palacios, Simón. 2015. "Coyotaje and Drugs: Two Different Businesses." *Bulletin of Latin American Research* 34 (3): 324–339.
- Sanchez, Gabriella. 2014. *Human Smuggling and Border Crossings*. New York: Routledge.
- Sanchez, Gabriella. 2015. "Human Smuggling Facilitators in the US Southwest." In *The Routledge Handbook on Crime and International Migration*, edited by Sharon Pickering and Julie Ham, 275–286. New York: Routledge.
- Scanlon, Thomas. 2008. *Moral Dimensions*. Cambridge, MA: Harvard University Press.
- Spener, David. 2009. *Clandestine Crossings: Migrants and Coyotes on the Texas–Mexico Border*. Ithaca, NY: Cornell University Press.
- Stringham, Edward. 2015. *Private Governance: Creating Order in Economic and Social Life*. New York: Oxford University Press.
- United Nations. 2011. *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*. https://www.unodc.org/documents/southeastasiaandpacific/2011/04/som-indonesia/convention_smug_eng.pdf.
- UNHCR. 2014. *Syrian Refugees in Europe*. Geneva: United Nations.
- UNHCR. 2015. *The 2014 Statistical Yearbook*. Geneva: United Nations.
- Valdman, Mikhail. 2009. "A Theory of Wrongful Exploitation." *Philosophers' Imprint* 9 (6): 1–14.
- Van Liempt, Isle. 2007. *Navigating Borders: Inside Perspectives on the Process of Human Smuggling INTO the Netherlands*. Amsterdam: University of Amsterdam Press.
- Walzer, Michael. 1984. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.
- Wellman, Christopher Heath, and Phillip Cole. 2011. *Debating the Ethics of Immigration: Is There a Right to Exclude?* New York: Oxford University Press.
- Wellman, Christopher, and John Simmons. 2005. *Is There a Duty to Obey the Law?* New York: Cambridge University Press.

- Wertheimer, Alan. 2011. *Rethinking the Ethics of Clinical Research*. New York: Oxford University Press.
- Yeginsu, Ceylan. 2015. "The Promise of Europe Lures Syrians and Smugglers." *The New York Times*.
http://www.nytimes.com/2015/02/06/world/europe/promise-of-europe-lures-syrian-refugees-and-smugglers-to-turkish-coast.html?_r=0.
- Zwolinski, Matt. 2008. "The Ethics of Price Gouging." *Business Ethics Quarterly* 18 (3): 347–378.