



## Permissible People Smuggling and the Duty of Rescue: Insights from Backstreet Abortion

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Migrant smugglers are portrayed as pure evil, driven only by greed, as they are blamed for the death and suffering of thousands of migrants. Similarly, backstreet abortionists have been the object of universal condemnation. Yet they are the only hope and means for refugees and women when border crossing and voluntary interruptions of pregnancy are not legally available. Drawing on the analogy with backstreet abortion, in the first part of this article I argue that migrant smuggling is justified in the context of a systemic violation of the human right to seek refuge (e.g. criminalisation of border crossing and SAR operations), provided that a number of procedural constraints are met. In the second part of this article, I go one step further and argue that under the extremely non-ideal conditions outlined above, smuggling becomes a humanitarian, and therefore cost-related, duty which binds organisations, whereas it only indirectly applies to individuals.

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Imagine being in the 1960s in France, where voluntary interruption of pregnancy is illegal. There is a girl, who is studying at university and one day she discovers she is pregnant. She does not want a baby, desperately so. Thus, she starts the complicated and dangerous journey of backstreet abortion: she needs to find someone who practices it, to find the money to pay this person, and to hide the fact that she had a voluntary interruption of pregnancy. She takes her chance on a kitchen table and eventually recovers. This girl is Annie Ernaux, the 2022 Nobel Prize Laureate in Literature.<sup>1</sup> In 2000 she published *L'événement*.<sup>2</sup> There she recalls the facts around her abortion but also offers a powerful analogy, one that this article will develop and explore:

As I am writing this, I learn that a bunch of Kosovan refugees are trying to enter Britain illegally via Calais. The smugglers are charging vast sums of money [...] Yet nothing will stop the Kosovans or any other emigrants from fleeing their native country: it's their sole means of survival. Today smugglers are vilified and pursued like abortionists were thirty years ago. No one questions the laws and world order they condone their existence. Yet surely, among those who trade in refugees, as among those who once traded in foetuses, there must be some sense of honour.<sup>3</sup>

In this passage, Ernaux compares abortionists to smugglers and envisages the possibility of the existence of 'good' smugglers, just as there were 'good' abortionists in France when ending an unwanted pregnancy was illegal. Of course, the claim that backstreet abortionists with 'a sense of honour' do exist (and have existed) is all to be proven, and smuggling and backstreet abortion are evidently different phenomena. However, I find this parallel intriguing,<sup>4</sup> since there are various points of contact

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<sup>1</sup> For 'the courage and clinical acuity with which she uncovers the roots, estrangements and collective restraints of personal memory'; see <https://www.nobelprize.org/prizes/literature/2022/summary/>.

<sup>2</sup> Translated into English as *Happening* (Ernaux 2001).

<sup>3</sup> Ernaux 2001, p. 68.

<sup>4</sup> Ottonelli and Torresi (2022, p. 76) also mention this parallel in their latest book, although they use this analogy to make a different point – namely to assess the voluntariness of migra-

between the two phenomena of backstreet abortion and migrant smuggling.<sup>5</sup> They both seem to arise as a way of redressing an injustice, although they may employ questionable means to do so. In both cases, there is a systemic violation of a human right (to safely interrupt an unwanted pregnancy and to find refuge) that *prima facie* justifies these practices. Significantly, when abortion is prohibited by law women rely on backstreet abortionists. Similarly, when seeking refuge in safe European countries is obstructed by law and policy, asylum seekers rely on smugglers.<sup>6</sup> A report by the European Commission estimated that all the million plus undocumented migrants who crossed European borders in 2015 relied on smugglers at some point of their journey.<sup>7</sup>

We are used to thinking of smugglers as pure evil. Together (and sometimes confused) with trafficking, smuggling is a widely condemned practice, both considered transnational crimes and punished severely by the law. However, smuggling – unlike trafficking – does not necessarily entail the use of force and violence, nor a violation of the human rights of the migrants involved, even though there are many reported cases of violence by the hand of smugglers. Indeed, according to the UNHCR,

The smuggling of migrants, as defined in Article 3(a) of the Smuggling of Migrants Protocol, involves the facilitation of a person’s illegal entry into a State, for a financial or other material benefit. Although it is a crime against a State, smugglers can also violate the human rights of those they smuggle, ranging from physical abuse to withholding food and water.<sup>8</sup>

The news is (almost daily) full of political statements and accusations against smugglers, who are represented as bearing the main responsibility for the many deaths

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tion rather than the permissibility of smuggling activity.

<sup>5</sup> Illegal abortions are voluntary interruptions of pregnancies that are performed mainly in countries where abortion is banned or not regulated, but not only. It is in fact reported that cases of backstreet abortion are still performed and are actually rising in Italy, where interruption of pregnancy is legal and regulated, but where regulations accept conscience clause; see Pappagallo 2008. There is generally an exchange of money for this practice, which is widely recognised as unsafe. According to the World Health Organisation (2024) it is a ‘leading cause of maternal deaths and morbidities. It can lead to physical and mental health complications’.

<sup>6</sup> Parekh 2020a.

<sup>7</sup> European Commission 2015.

<sup>8</sup> UNHCR 2024b. This argument only considers this classic definition of smuggling rather than cases where states or courts have accused someone of smuggling regardless of the profits. For example, the EU Facilitators Package in 2002 did not include the profit requirement, ‘thus obliging the Member States to criminalise even assistance provided free of charge’ (Costello and Zirulia 2024).

and tragedies occurring in the Mediterranean.<sup>9</sup> At the same time, Italian political elites have also initiated a process of criminalisation of those NGOs engaged in SAR (Search & Rescue) operations in the Mediterranean.<sup>10</sup> As Cusumano and Villa notice, '[i]nitially praised as "angels", maritime humanitarian workers have eventually been stigmatized as "sea taxis" and "vice smugglers"'.<sup>11</sup> This has led both to increasingly restrictive policies and criminal investigations, which have resulted in a major trial that started in Trapani, Italy, in May 2022, of some NGOs operating in the Mediterranean.<sup>12</sup> The accusations were that the NGOs and individuals involved (a) treat with Libyan traffickers and (b) act for economic and promotional motives which go beyond the mere saving of lives. What is interesting for the purposes of this paper is the second accusation, which, following the legal definition given above, refers to the transnational crime of smuggling. This was a huge and historically significant inquiry: it is the first judicial proceeding of this kind to reach a preliminary hearing (all the previous ones had resulted in acquittals at an earlier stage). According to Allison West, who is following the trial for the ECCHR (European Centre for Constitutional and Human Rights), this accusation was nothing but an attempt to criminalise civil resistance.<sup>13</sup>

However, rather than treating the charges simply as a cynical political performance by the Italian state, my aim in this article is to take this issue seriously. In the first part of the paper, I ask whether it would settle the question of the moral justification of the NGOs' action if the charge were true? In the second part of this article, I take a further step. It emerges from the study directed by Eugenio Cusumano that the people who work or volunteer for SAR organisations operating in the Mediterranean see themselves as fulfilling a duty that can be conceptualised as a *duty of rescue*.<sup>14</sup> Scholars of refugees and migration ethics have worked on this notion and its normative implications,<sup>15</sup> but what still needs to be clarified is whether a part

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<sup>9</sup> Although this is especially true of the media and (mainly right-wing) politicians, also international organisations (UNODC 2010) and a significant part of the academic literature primarily blames smugglers for profiting out of migrants' needs. See, for example, Papadopoulou (2004, p. 180) who, while acknowledging the role of Western states in creating smuggling opportunities, also claims that '[b]y no means does this explanation legitimize smuggling operations, or approve of those who make money out of people's desperation to leave their country'.

<sup>10</sup> Cusumano and Villa 2021; Lloyd-Damnjanovic 2020.

<sup>11</sup> Cusumano and Villa 2021, p. 24.

<sup>12</sup> Predictably, by the time that this article is being finalised, nearly all the charges are falling (Casula 2024).

<sup>13</sup> Misculin 2022.

<sup>14</sup> Cusumano 2021.

<sup>15</sup> Gibney 2004; Miller 2016; Owen 2016; Parekh 2020b.

of this duty falls on the smugglers themselves and whether there may be a duty of smuggling.<sup>16</sup> In the second part of my argument I ask whether smuggling becomes a duty if countries do not allow asylum seekers to enter a country under conditions in which a just international refugee regime is not in place?<sup>17</sup> If so, what kind of duty is this, and to whom would this duty apply?

To develop this argument, I use some insights from the case of backstreet abortion,<sup>18</sup> considering smugglers and abortionists as examples of citizens fulfilling a duty to compensate for, or redress, an injustice. Indeed, smuggling and backstreet abortion are necessary where there is a systemic violation of a human right (to find refuge<sup>19</sup> and to safely interrupt an unwanted pregnancy) by the states, and these violations *prima facie* justify these practices. I will argue that there can be a permissible form of smuggling (and, less controversially, backstreet abortion), which must meet a range of procedural constraints to be legitimate. Finally, I will claim that the duty of rescue can, under certain conditions, take the form of a duty of smuggling.

## I. MORALLY PERMISSIBLE HUMAN SMUGGLING

The central claim of this section is that refugee smuggling is not impermissible *per se*, what matters is *the way* it is carried out. More specifically, I argue that there can be morally permissible forms of smuggling, and that the smuggler's financial gains do not invalidate this permissibility. This permissibility, which nonetheless comes with procedural constraints, is justified by the fact that we, as members of states that have a duty to support refugee protection, contribute to a systemic violation of the right to seek refuge, through the system of border externalisation and remote control that we have created.<sup>20</sup> This system places would-be asylum seekers in danger

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<sup>16</sup> As suggested by Hidalgo (2019).

<sup>17</sup> I put it this way because it is possible to envisage a world in which there is a just international refugee regime in place and this regime entitles a particular state to refuse entry to asylum seekers (for example, it discharges its fair contribution to the protection system in other ways).

<sup>18</sup> I assume that legal and safe voluntary interruption of pregnancy is a human right. So, I consider criminalisation or lack of regulation of abortion a violation of women's rights and, ultimately, of human rights. I will not provide arguments here, but merely presume that such a right exists.

<sup>19</sup> Seeking asylum from persecution is a fundamental human right in the Universal Declaration of Human Rights (UN 1948, Article 14).

<sup>20</sup> Parekh 2020a.

when exercising their right to seek asylum by forcing them to undertake illegal and dangerous journeys.

To support this claim, let us turn back to the case of backstreet abortion which can also be seen as a way to redress an injustice. The concept of clandestine abortion<sup>21</sup> carries a whole series of negative connotations. There is no doubt that abortion bans or limitations have important negative health implications for women and all others who can get pregnant, due to access to unsafe and illegal abortion procedures. Indeed, these are extremely dangerous as they are usually carried out in a non-hospital setting and often by people without relevant medical or surgical knowledge and/or experience. The dangerousness of backstreet abortion is itself a grounding argument against abortion bans and lack of regulation: regulating voluntary interruption of pregnancy, making it accessible for all women eliminates the need of recourse to dangerous illegal practices. I do not intend to deny the validity of this point. A similar argument can be made regarding the issue of smuggling. It is evident that the implementation of regulated and secure routes, such as humanitarian corridors or effective resettlement programmes, would eliminate the necessity for individuals to resort to dangerous and illicit routes, thereby reducing the occurrence of fatalities during transit. But it is also undeniable that where abortion is illegal or not guaranteed for all, backstreet abortionists are often the only way to terminate an unwanted pregnancy, and in the context of the increasing securitisation and externalisation of borders by Western states, which employ illegitimate means to keep refugees out of their borders, smugglers have emerged as the only viable option for individuals seeking to cross borders and reach destination countries. That is why backstreet abortionists and smugglers both did and still do play an important role in compensating for unjust situations. What is morally relevant, in the case of backstreet abortion, is how it is carried out, that is, whether it meets basic standard of hygiene and safety. What, though, about the request for money in exchange of this service? Shouldn't it be free of charge? There are good reasons to argue that this should not be considered a necessary requirement. It is very costly for people to practice illegal abortion. It is costly both in terms of money,<sup>22</sup> and in terms of the risks of being prosecuted for committing a crime.

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<sup>21</sup> I refer, in particular, to surgical abortion, which was the only available way to interrupt a pregnancy when the book I cited earlier is set. For what regard pharmacological abortion, it is often sufficient to buy the pills online. We can consider backstreet abortionists nonetheless those who provide the pills to patients. Both these practices carry many dangers when done illegally – from infections and sepsis to important side effects.

<sup>22</sup> E.g., to buy the pills and the surgical tools, to maintain a sanitary space, to eventually hire a lawyer in case it is needed.

Now consider the smuggling of migrants across borders. We are accustomed to thinking of smugglers exclusively driven by greed.<sup>23</sup> It is undeniable that smugglers have been (at least partly) responsible for many tragedies that have occurred in the Mediterranean and elsewhere. There are, however, scholars who have problematised the empirical equation ‘smugglers = greedy villains’. Accordingly, two different (but interconnected) main arguments against the moral impermissibility of smuggling have been advanced in the literature:

- a) The first argues that smuggling is *not inherently wrong* and that there can be *morally permissible* forms of people smuggling;<sup>24</sup>
- b) The second argument defends the idea that smuggling is *morally and politically justified on grounds of necessity*, as it is the only way to ensure safety to refugees in a global refugee regime which is structurally unjust.<sup>25</sup>

My argument builds on both positions,<sup>26</sup> with all the relevant distinctions, as it will become clearer in the following sections.

### A. Smuggling and the International Refugee Regime

It is a shared view<sup>27</sup> that the way the global refugee regime is structured combined with States’ attitude to border securitisation are actively designing a system that requires smuggling: ‘New barriers are forcing migrants to pursue more dangerous journeys and seek the services of more established mafias and criminal organisations’.<sup>28</sup> The point, they say, is that European Member States force migrants who want to claim asylum to cross borders illegally.<sup>29</sup> Smuggling becomes necessary, since it is often migrants’ only possibility for crossing borders in order to be able to fully exercise their right to seek asylum.

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<sup>23</sup> Hidalgo 2019; Müller 2021; Tinti and Reitano 2017.

<sup>24</sup> Aloyo and Cusumano 2021; Hidalgo 2019; Müller 2021.

<sup>25</sup> Achilli 2018; Hidalgo 2019; Müller 2021; Tinti and Reitano 2017.

<sup>26</sup> In the literature there is a third argument focusing on the cooperation and mutual support that would often characterise the relationship between migrants and smugglers (Achilli 2018; Tinti and Reitano 2017). This seems to me far too optimistic, as most of the news and migrants’ testimonies tell us another story (Baird 2016; İçli et al. 2015).

<sup>27</sup> Achilli 2018; Hidalgo 2019; Müller 2021; Tinti and Reitano 2017.

<sup>28</sup> Tinti and Reitano 2017, p. 5.

<sup>29</sup> See also Costello and Zirulia 2024.



The asylum system operates in a way that is structurally unjust due to the externalisation of borders, remote-control policies, and the failure of resettlement schemes.<sup>30</sup> Parekh refers to this as to ‘the harms we have created’. The claim is that the (mainly Western) states that have been involved in setting up and funding the refugee protection system ‘have created a situation in which the vast majority of refugees are effectively unable to get refuge in any meaningful sense; that is, they are not able to access the minimum conditions of human dignity’.<sup>31</sup> This situation, the author claims, is unjust.

Refugees around the world face what has been called an ‘impossible choice’ between three options: prolonged encampment, urban destitution, or dangerous journeys<sup>32</sup> to be able to seek asylum in Western states.<sup>33</sup> For many, the answer is the third option: asylum in the Global North.<sup>34</sup> The increasing securitisation and externalisation of borders, which prevents would-be asylum seekers and would-be refugees from exercising their right to ask for protection in the Global North, is the relevant proximate source of injustice. While it is true that would-be refugees can still seek protection in neighbouring countries and the right to seek asylum is generally understood to be a right to seek protection in any suitable location, rather than in a country of one’s own choosing,<sup>35</sup> it is also commonly understood that the conditions of refugees in the Global South do not meet the minimum requirements for genuine asylum.<sup>36</sup> This situation is, to a significant extent, the result of the actions of Western states, both in terms of structural factors and direct injustices.<sup>37</sup> Furthermore, it is evident that states in the Global North are actively preventing individuals from seeking asylum in their own territories,<sup>38</sup> a practice that is both

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<sup>30</sup> Kapelner 2022; Owen 2020a; Parekh 2020a. Hillier-Smith (2022) also considers the international refugee regime as unjust for similar reasons, however he is sceptical of seeing these injustices as ‘structural’ and argues that they ought to be considered direct injustices.

<sup>31</sup> Parekh 2020a, p. 159.

<sup>32</sup> Betts and Collier 2017; Parekh 2020a; Owen 2020a.

<sup>33</sup> Resettlement is not a real option, as ‘less than 1 per cent of the world’s refugees will be lucky enough to get that lottery ticket’ (Betts and Collier 2017, p. 8).

<sup>34</sup> This article primarily considers forced migration and smuggling from the Global South to the Global North.

<sup>35</sup> Miller 2016; Owen 2020a.

<sup>36</sup> Parekh 2020a.

<sup>37</sup> Betts and Collier 2017; Kapelner 2022; Hillier-Smith 2022; Owen 2020a, 2020b; Parekh 2020a.

<sup>38</sup> Note, for example, externalisation schemes such as the Rwanda scheme in the UK (BBC 2024), the Italy-Libya agreements, and the latest Italy-Albania agreement which is being developed as this article is being written (Loguercio 2024).



unjustifiable and illegitimate, and that also contributes to and reinforces prolonged encampment and urban destitution in the Global South.<sup>39</sup> As Parekh points out, Western states are ‘in part responsible for the inability of refugees to access refuge’.<sup>40</sup> In order to claim asylum via legal routes, refugees would generally need to be granted a visa to be allowed to reach the country in which they want to claim asylum. The point is precisely that they cannot obtain visas. Presumptive receiving countries do not issue visas because they are aware of the fact that if people from refugee-producing countries were allowed to legally cross borders, they would likely ask for asylum in their territories.<sup>41</sup> The result is that would-be asylum seekers undertake illegal routes which put them at risk of harm.<sup>42</sup> Desperate people do not stop crossing borders, rather they engage in dangerous journeys, risking ending up in the hands of traffickers or exploitative smugglers. Western states are directly responsible for this. As cogently pointed out by Tinti and Reitano,

[T]he EU bloc offers no possibilities for asylum seekers to apply for asylum outside the EU. Thus, in order to begin the process, an individual wanting to seek protection within the EU must reach and cross EU borders illegally. This paradox, in which the EU at once guarantees asylum seekers the right to protection, while systematically trying to prevent them from reaching the EU in the first place, is at the heart of why refugees seek the services of migrant smugglers. *If one wanted to create a system that was designed to enrich the migrant smuggling industry, it would be this one.*<sup>43</sup>

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<sup>39</sup> In this regard, there is an important disanalogy with the case of backstreet abortion that ought to be disclosed. As previously stated, although asylum seekers are not permitted to choose their country of destination, and therefore a country in the Global North, this does not in principle prevent them from seeking refuge elsewhere. Conversely, in case of abortion bans, women and in general all those who can get pregnant are prevented a right *tout court*. See, for example, the contemporary case of the US abortion bans: even though they can generally travel and cross borders to interrupt the pregnancy in states where it is still permitted, without being prosecuted (Sasani 2022), there are significant attempts to criminalise traveling for abortion (Donegan 2023). Furthermore, the state prevents them from exercising their right to choose, despite the fact that they are still able to travel abroad to do so. Nevertheless, the fact that the protection that refugees find in the Global South leads to situations that are incompatible with the minimum conditions of human dignity (Parekh 2020a) serves to reconcile us with the analogy, as *de facto* Western states deny meaningful protection to would-be refugees.

<sup>40</sup> Parekh 2020a, p. 18.

<sup>41</sup> Parekh 2020a.

<sup>42</sup> Aleinikoff and Owen 2021; Aleinikoff and Zamore 2019; Betts and Collier 2017; De Bono 2019; Owen 2020; Parekh 2020a.

<sup>43</sup> Tinti and Reitano 2017, p. 28, my italics.

Smugglers are often the only available means to reach safe countries to ask for protection. In a constellation of policies and application of regulations of questionable legitimacy, they are necessary. If thousands of migrants have died in the Mediterranean or while crossing other dangerous borders, the blame falls to a significant degree on Western governments that choose and enforce the restrictions on legal entry.<sup>44</sup>

Consider, once again, some relevant insights from the case of abortion bans or restrictions. When governments outlaw voluntary interruptions of pregnancy (in all its forms and for whatever reason) with no safe and legal options to deal with unwanted pregnancies, women and all those who can get pregnant rely on black market abortionists. Given the lack of access to healthcare facilities and appropriate equipment, a significant number of women die. This may be attributable to the failure of abortionists to adhere to the requisite standards in some, if not many, instances. However, it seems evident that the governments of states that prohibit abortion and implement restrictive policies bear responsibility for the resulting consequences and must be held accountable.<sup>45</sup> Therefore, we can think about migrant smugglers as, on the one hand, dangerous service providers,<sup>46</sup> and, on the other hand purveyors of a service that is needed to remedy an unjust situation.<sup>47</sup>

In this scenario, smuggling cannot be considered wrong *per se*, even if it means breaking the law. It can be considered an act of resistance to unjust border practices and regulations relative to asylum seekers, or, at the least, a refusal to comply with unjust demands. What makes smuggling a wrongdoing, when it is one, is not the mere act of helping refugees to cross borders illegally in exchange of monetary gain, but rather the way in which this service is provided. What I intend to do now is to consider whether we can give a more precise account of morally permissible smuggling in terms of what conditions need to be met and how these conditions can be ensured.

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<sup>44</sup> Achilli 2018; Hidalgo 2019; Müller 2021; Tinti and Reitano 2017.

<sup>45</sup> In June 2022, the US Supreme Court overturned the historic judgment *Roe vs. Wade* (1973), which *de facto* recognized a federal right to interrupt unwanted pregnancies. With the overturning of this judgement, the Supreme Court delegated to each state the regulation of the interruption of pregnancy. Some republican states enforced restrictions in this sense (McCann and Walker 2024). Other recent events – such as abortion restrictions in Poland, Malta, and Hungary – led a large share of activists to the idea that abortion rights are now under attack in Western countries. France makes a notable exception as it recently made abortion a constitutional right (Reynolds 2020; Porter 2024).

<sup>46</sup> Tinti and Reitano 2017.

<sup>47</sup> Hidalgo 2019.

## B. Permissible smuggling

To argue that the primary responsibility falls on governments implementing unjust border policies or sustaining an unfair refugee regime does not mean claiming that smugglers bear no responsibility at all. They are still blameworthy for the unnecessary deaths and suffering they cause as they often operate impermissibly, by exploiting migrants and imposing unnecessary risks and dangers on them. For example, thousands of migrants have died in the Mediterranean because smugglers put them on unseaworthy, damaged, and overcrowded boats.<sup>48</sup> Another example of how smugglers wrong migrants is through sexual violence and transactional sex, for which (mostly) women are forced to swap sexual intercourses in exchange of help on their journey to Europe.<sup>49</sup> Another way for smugglers to wrong migrants is by exploiting them. There may appear to be two different ways in which smuggling can be wrongfully exploitative. The first is by extracting excessive benefits from the migrant, for example asking an excessively high price for the service. The second is by using the force and/or coercion. However, the latter is not smuggling, but trafficking.<sup>50</sup> Since it is no part of this argument to defend trafficking, we will need only to concern ourselves with the case of price exploitation.

Müller challenges the idea that commercial human smuggling is inherently morally wrong, even if it implies a very high price, for two reasons.<sup>51</sup> First, we have here a win-win situation – both migrants and smugglers are better off because of this transaction. Second, it is not morally worse ‘for Anna to ferry Bert to A for a very high price than not to interact with him at all, given that (1) the exchange is better for Bert, (2) Bert has consented to the exchange, and (3) the exchange has no serious negative effects on others’.<sup>52</sup> Accordingly, Hidalgo maintains that people smuggling is in principle permissible insofar this service benefits the migrants involved, who also consent to this service.<sup>53</sup>

Instead of focusing on the benefits of smuggling services, I will only consider how these services are provided – which I argue should be the starting point of a moral and political evaluation of smuggling. Indeed, the condition of ‘benefit’ is ambiguous

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<sup>48</sup> Hidalgo 2019; Pickering 2011; Freedman 2016.

<sup>49</sup> Freedman 2016.

<sup>50</sup> As stated by UNHCR (2024a), ‘the critical factor that distinguishes trafficking from smuggling is the use of force, coercion and/or deception in order to exploit the victims’.

<sup>51</sup> Miller 2021.

<sup>52</sup> *Ibid.*, p. 145.

<sup>53</sup> Hidalgo 2019.

and arbitrary. For it considers the consequences of an action rather than the action itself, and these are difficult to evaluate objectively *a posteriori* and may leave room for violations and abuses. I would therefore prefer to focus primarily on the way in which this interaction is conducted, from a non-consequentialist point of view.<sup>54</sup> Aloyo and Cusumano go in this direction and list four conditions under which human smuggling can be considered morally permissible: clear consent to a smuggling agreement; no violation of human rights (by the smugglers or their clients); presence of benefits if the client reaches the destination; the smuggler informs the client about risks and attempts to mitigate them, at reasonable costs.<sup>55</sup> However, these requirements are not convincing for two reasons. First, the requirement of benefits at arrival tells us nothing about the way smuggling is conducted. Instead of focusing on the procedure of this service, they evaluate its permissibility on the outcomes which are often out of the control of the smuggler. Whether a smuggling process meets this requirement would be a matter of moral luck. Secondly, we ought not to concentrate on human rights violations by clients, unless these arise as a result of the actions or omissions of smugglers who are the focus of evaluation. In evaluating the permissibility of a service, the relevant objects of evaluation are the service and provision of the service by a provider, not the clients. Think again about the case of backstreet abortion: if we are trying to decide whether it is morally permissible, we should not care of whether clients in need meet certain conditions (or if they act morally), but only if abortionists do.

I argue that we can envisage a list of necessary and desirable (non-exhaustive) conditions that would qualify refugee smuggling as morally permissible. According to this account, there would be different degrees of moral permissibility, depending on the range of desirability conditions that the activity meets in addition to its satisfaction of the necessary conditions. For it to be justified and morally permissible, smuggling should meet the *absence-of-intentional-harm* requirement. This requirement would include the following individually necessary and jointly sufficient procedural constraints: a) no human rights violation by the smugglers; b) no exploitation; c) clear anticipated price negotiation; d) as complete information as possible on the steps of the journey, which includes route and destination.<sup>56</sup> We can also identify a range

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<sup>54</sup> Pummer 2023.

<sup>55</sup> Aloyo and Cusumano 2021.

<sup>56</sup> Negligence easily falls under the violation of one of the four constraints. For example, if a smuggler is negligent in providing clients relevant information to trick them into decisions that result in earning more money, then this is impermissible under conditions c) and d) of the list.

of desirable features that would increase the quality and standing of permissible smuggling. Among these desiderata, we can specify: enough knowledge (from the side of the smugglers) of the global refugee regime and related states' policies; adequate information regarding the asylum systems of destination countries that is shared with asylum-seekers; assistance on (preparation for) asylum applications; training on sexual and gender-based violence, trauma, and post-traumatic stress disorder; the provision of psychological counselling; cultural and linguistic mediation services; special consideration to children's needs, to women's sexual and reproductive healthcare needs, and sensitivity to LGBTQ+ instances.

Similarly, we can think of several requirements that would make backstreet abortion permissible: being practiced by a surgeon and/or gynaecologist, ensuring good hygienic conditions so as to avoid undue risks of infections and sepsis, and attentive postoperative care would be among the necessary conditions. As for pharmacological abortion, it would be best if only doctors and pharmacists provided the pills, ensuring that the patient does not have any critical medical conditions that would make such treatment dangerous.

What I am arguing here is that the *absence-of-intentional-harm* requirement is necessary and sufficient to consider smuggling justified and permissible, while the list of desiderata would meet Hidalgo's *benefit* requirement.<sup>57</sup> Obviously the more desirable conditions a specific smuggling service meets, the more ethical it ends up being. Of course, it seems unavoidable that the more ethical smuggling activity is, the more expensive it would be. This might be problematic as it is likely to price some people out of the smuggling market by preventing them from accessing the service. However, we can imagine smugglers differentiating first, second and third-class tickets – as already happens with transport services<sup>58</sup> – to provide the service with different price options for the desirable but not necessary requirements. Smugglers who seek only a fair return (e.g., non-exploitative) and not to maximise profit could use the revenue from first class to keep the price of economy class tickets lower than it would otherwise be – just as airlines do. Tickets would then be available at a lower price, and therefore to a larger number of people. To maximise the chance for refugees to access smuggling services and to subsidise the more expensive services, we can then envisage a system of international donations from private individuals to smugglers who meet the requirements for permissible smuggling.

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<sup>57</sup> Hidalgo 2019.

<sup>58</sup> Thanks to David Owen for the valuable suggestion.

The point is that we can imagine different cases of smuggling, from unjustified forms of smuggling to the non-ideal cases of permissible smuggling, to the most ideal circumstances of ethical smuggling, where smugglers benefit refugees both *ex ante* and *ex post*.<sup>59</sup>

Having clarified the requirements for permissible smuggling, it is worth going back to the issue of monetary exploitation. The point is that, as with the case of backstreet abortion, the exchange of money (or other material benefits) and even profit do not make smuggling wrongful *per se*.<sup>60</sup> In many other cases, we consider it morally permissible to earn money from assisting people in need. It is worth noting that medical professionals, such as doctors, nurses, and elderly care workers, as well as NGO workers, are typically compensated fairly for their services. So, although non-for-profit smugglers<sup>61</sup> would be morally preferable, for-profit smuggling is not impermissible on this account. However, as with the aforementioned services, permissible smuggling (and backstreet abortion) ought not be exploitative, since this does not meet the *absence-of-intentional-harm* requirement. So, along with Øverland and unlike Müller, I argue that smuggling, to be permissible, cannot take advantage of desperate migrants who lack reasonable alternatives by extracting excessive benefits from them.<sup>62</sup> Even though it is reasonable to recognise that this happens more than would be desirable, we should be cautious in asserting that this is the entirety of the narrative. First, 'it seems dubious that human smugglers are able to secure a monopoly

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<sup>59</sup> The points 'Do these forms of smuggling really exist?' and 'This is so ideal that we might as well hope that states begin acting justly towards refugees' matter significantly at this point – as one anonymous reviewer suggested. Even though it is likely the case that the overwhelming majority of cases fall under the class of exploitative and non-permissible smuggling (Baird 2016; İçli et al. 2015) and, at best, of permissible non-ideal smuggling (Achilli 2018), nothing prevents us from imagining new forms of ethical smuggling that might or will exist. Furthermore, the second point can be reversed: as far as what we are witnessing now is concerned, there is so little room to think that states will start to take responsibility for the wrongs they do to refugees and be held accountable for the illegitimate ways in which they manage migration flows, that we might as well hope that smuggling will turn out to be more 'ethical' and therefore provide guidance towards it.

<sup>60</sup> Acts of pure (and free of charge) solidarity are excluded from the present argumentation because, by definition, they would not count as smuggling – despite facing criminalisation.

<sup>61</sup> That is, those who charge migrants, or any other source, only enough to cover their costs.

<sup>62</sup> Øverland 2007; cf. Müller 2021. '[W]hat is objectionable is not that they require a certain amount of money to help people cross borders, but that they are unscrupulously engaged in turning maximum profit from desperate people' (Øverland 2007, p. 192).



and thus charge monopoly prices'.<sup>63</sup> Second, 'smuggling markets are sometimes fairly competitive [...] Competition reduces the bargaining power of smugglers'.<sup>64</sup>

I am not arguing that people cannot act out of solidarity. My point is that smugglers can also be considered to be acting permissibly if they operate under the constraints that I have specified. So let us return to the trial against the NGOs operating in the Mediterranean. If they turned out to be engaging in smuggling, they could still be considered as justified in doing so, as acting in morally permissible ways – and even exhibiting ethical virtues, the more desirable conditions they meet. Notice though that this argument only holds under extremely non-ideal conditions. If Western states were to provide safe passages and walk the talk when implementing resettlement policies, then smuggling would be morally wrongful *tout court* just as would be backstreet abortion in contexts where voluntary interruption of pregnancy is legal, safe, and guaranteed by the state.

## II. A DUTY OF REFUGEE SMUGGLING?

Having argued that smuggling can be permissible, justified, and even ethically admirable, I now take one further step to claim that there is a conditional duty to smuggle refugees and that this duty is best conceptualised as condition-dependent form of the duty of rescue. Scholars have included the duty of rescue among the obligations that states owe to refugees.<sup>65</sup> According to this idea, states have a humanitarian duty to assist refugees. However, as Miller argues, humanitarian obligations to refugees depend on and are limited by considerations of costs.<sup>66</sup>

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<sup>63</sup> Müller 2021, p. 144.

<sup>64</sup> Hidalgo 2019, p. 153.

<sup>65</sup> Miller 2016; 2020; Gibney 2004.

<sup>66</sup> Miller 2016. Owen (2016) is sceptical about the validity of humanitarian arguments that prescribe to states duties of rescue towards refugees and argues for a state system legitimacy account rather than a duty of rescue account. The point is that a humanitarian account is likely to set limits on states duties towards refugees, since it sets conditional obligations that can be outcompeted by the (arbitrary) idea of unreasonable costs. Rather, an idea of legitimacy repair mechanism generates duties to all refugees, since, within this framework, protection gaps would also produce legitimacy gaps. Therefore, the state system legitimacy account is a superior approach when applied to investigate what obligations states have towards refugees. This seems to me very reasonable. However, the duty of rescue principle might still come into play when wondering what kinds of obligations individuals as private citizens (that is, not acting on behalf of the state) have towards refugees.



In the case of smuggling, the relevant subject of this duty is not represented by states, but non-state actors. Thus, it is worth investigating whether and how the duty to rescue refugees falls on them. My basic claim here is that when states act unjustly or reinforce unjust structures, this calls for action by those who are reasonably capable of redressing such injustice at reasonable costs.

Müller, however, argues that ‘we do not think that private persons have a duty to help refugees in need’ or that ‘in cases like the European refugee crisis, individuals have an obligation to rent a ship or any other vehicle to help refugees to escape their dire situation’.<sup>67</sup> If we think about Singer’s<sup>68</sup> famous shallow pond and drowning child example, Müller’s claim seems fairly intuitive. European citizens’ obligation to help refugees to cross borders is countered since it would unreasonably require sacrificing too much: it would be costly in terms of money and in terms of personal liberties. Whether it qualifies as smuggling or as pure solidarity, helping someone to illegally cross a border is increasingly considered a crime. However, let’s take inspiration from Müller’s example mentioned above and consider different scenarios.<sup>69</sup>

- A) If Clara, on her free weekend sailing the Mediterranean on a boat, sees a refugee drowning she would have a duty to rescue her. Not because she is a refugee, but simply because she is a human being drowning and it would not be too costly for her to rescue her: the only consequence would be having her relaxing weekend ruined. It is clear that Clara’s damage of one weekend ruined does not equal the damage of the refugee losing her life.<sup>70</sup>
- B) Clara is on the boat and sees an overcrowded sinking raft/boat with dozens or hundreds of people at risk of drowning. What would her duty be? Intuitively, her primary duty is to call for (professional) rescue and coastguards. In this scenario, her direct intervention would be significantly more costly than in the previous case, since trying to save those already in distress in the water, with all means available to her at that time, might put her own life at risk.

We can say that Clara has a duty to rescue the single refugee, and to help to facilitate the rescue of the group of refugees. What is equally intuitive, however, is that Clara on her free days does not have an obligation to take her boat (or to rent one), go sailing

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<sup>67</sup> 2021, p. 144.

<sup>68</sup> 1972.

<sup>69</sup> Müller 2021.

<sup>70</sup> As for this scenario, both customary and treaty law of the sea would require rescue (Papanicolopulu 2016).

in the Mediterranean and wait for refugees to drown so that she can save them. Yet, this is what NGOs involved in SAR operations in the Mediterranean have been doing for years, despite increasingly facing criminalisation processes, culminating in some ships confiscation and in the trial mentioned earlier.<sup>71</sup> Cusumano has analysed SAR operations and interviewed volunteers, concluding that ‘the Mediterranean Sea has not only become a new humanitarian space, but also a discursive battlefield over the meaning of humanitarianism’.<sup>72</sup> What emerges from this study is that while each humanitarian actor interprets their role differently, they all agree in interpreting these operations as a way of fulfilling a humanitarian duty towards refugees.<sup>73</sup>

So, unlike Clara, NGOs involved in SAR believe that they have a duty to go out to sea, search and wait for refugees in distress to be rescued. Is there really a duty of this kind? If so, where does this duty arise from? And does the accusation of smuggling jeopardise the fulfilment of this duty? Hidalgo argues that people smuggling can be morally required.<sup>74</sup> Recalling Peter Singer’s principle and the shallow pond example, he maintains that people are ‘morally required to take actions to aid another person if these actions are necessary to provide benefits to this person, the benefits are crucial for his or her well-being, and providing these benefits avoids imposing unreasonable costs or risks on you’.<sup>75</sup> Thinking of the case of a refugee who needs help in reaching safety in another country, Hidalgo claims that the suitably positioned agents are morally required to engage in people smuggling if the costs they are bearing in doing so are reasonable given profits that reasonably compensate them for the risks and costs of their activity.

On this basis, I will argue that, given the injustice which characterises the global refugee regime, NGOs and other types of civil society organisations can be understood to have a humanitarian duty towards refugees, conceptualised as a duty of rescue, and its fulfilment is not jeopardised by monetary gain.

Let us proceed by steps. The fact that the fulfilment of a duty might also pass through monetary exchange might seem surprising. Intuitively, one might think that ‘[i]f you have an obligation to rescue someone, then you have an obligation to rescue

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<sup>71</sup> Cusumano 2021; Cusumano and Villa 2021; Gordon and Larsen 2020.

<sup>72</sup> 2021, p. 547–548.

<sup>73</sup> Esperti 2019.

<sup>74</sup> Hidalgo 2019.

<sup>75</sup> *Ibid.*, p. 146. Singer’s (1972) principle is that, if one is able to prevent something bad from happening without sacrificing too much, then one ought to do it.

this person for free',<sup>76</sup> and it is wrong to save a person in need only if compensated for doing so. It might strike us that the moral character of Clara's fulfilment of her humanitarian duty to rescue the single drowning refugee would be impugned if she demanded compensation for doing so. It would follow that smuggling cannot be considered a humanitarian duty, given that, by definition, it involves compensation. However, this objection may not be sound:

There is a difference between two claims:

1. It is wrong for you to demand compensation for satisfying an obligation to aid someone if you already have this obligation to save her.
2. In certain cases, you only have an obligation to aid a person if this person compensates you.<sup>77</sup>

So, option (1) fits well the case of Singer's drowning child and Clara saving the single refugee. Option (2) describes better the situation of smugglers. Indeed, it would be unreasonable for smugglers to bear the full costs of smuggling migrants if they would not gain any financial or material benefit, so their humanitarian duty is bound to and conditional on gaining these benefits.

Let's pick up the abortion analogy again. Consider Clara, who in her spare time likes sailing, but in her professional life is an esteemed gynaecologist, working in a hospital in a country where abortion is illegal in some or most cases except when the mother's life is in danger. Imagine now different scenarios. If a woman comes into the hospital risking bleeding to death because she tried to perform an abortion herself. It is clear that Clara has here a duty to rescue this woman. However, it is also straightforwardly the case that Clara does not have a duty to seek out women that want to interrupt the pregnancy and perform illegally the abortion in order to prevent these women from performing abortions on themselves. Indeed, the costs to Clara's of any such putative humanitarian duty would be too high in terms of money and in terms of the risks involved (loss of employment, imprisonment, and loss of personal liberties) for it to qualify as such. Suppose though there are foreign, or non-governmental, associations that organise in order to help women that want an abortion. In this case, their costs would be significantly lower than Clara's, since associations and NGOs have different resources available to them than an individual citizen, at least in terms of legal instruments, the possibility of avoiding imprisonment, and appealing to their states of origin. Nonetheless, costs are still very high, and a fair rate of profit

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<sup>76</sup> Hidalgo 2019, p. 147. See also Tinti and Reitano 2017.

<sup>77</sup> Hidalgo 2019, p. 147.

is fundamental to lowering the costs sufficiently for this to qualify as humanitarian duty. So, under these circumstances, NGOs and different kinds of associations bear humanitarian duties to help women that want an abortion<sup>78</sup> only if they gain financial or other material benefits from performing this activity (e.g., donations or payments from those involved) that reduce their costs to a level such that the performance of the act will not be unduly burdensome on them.

By analogy, those involved in SAR operations in the Mediterranean and smugglers would not be considered as duty-bearers unless they gain financial and/or material benefits (for example, donations) that are sufficient to reduce their costs to a level that triggers the bindingness of the humanitarian duty. If the costs are too high, their act would be supererogatory rather than the compliance with a duty. Under the specified conditions, the gain of financial and/or material benefits are a condition of the humanitarian duty to smuggle migrants.

More precisely, what I am arguing is that the duty of smuggling is a conditional humanitarian obligation. It is humanitarian in the sense that it refers to ‘a duty that one human being owes to another regardless of any pre-existing social or political relationship’.<sup>79</sup> It is conditional in two ways. On the one hand, being a humanitarian duty, it is conditional on an assessment of costs. If the costs are too high, the obligation is not binding. On the other hand, and consequently, it is linked to the gain of financial/material benefits. Without financial gain, the activity would not qualify as smuggling (given the definition I gave at the beginning, recognised by the UNHCR), and even if we were to consider another definition, the costs would be too high and therefore the act of smuggling would not be the performance of a duty but a supererogatory act.

Furthermore, unlike Hidalgo, I argue that this also explains why individual citizens cannot be considered to be bound by this duty.<sup>80</sup> By that I mean that they do not have an obligation to smuggle refugees because the profits that individuals would gain from refugee smuggling cannot be high enough to compensate for the costs and risks of this activity – imprisonment, healthcare risks, risk of falling into the hands of criminals, etc. What about the ‘super rich’? *Prima facie*, they would seem to have enough capital to offset the costs of this activity and trigger this duty. However, even though they would be able to cover the financial (and perhaps even legal) costs, it would still be

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<sup>78</sup> Again, duty justified by the fact that safe and regulated voluntary interruption of pregnancy is considered here a human right. Therefore, where this is not guaranteed, the state commits an injustice which calls for action all those who are reasonably able to redress such injustice.

<sup>79</sup> Miller 2020, p. 326.

<sup>80</sup> Hidalgo 2019.

too dangerous for them (they would easily fall into the hands of common criminals or organised crime, traffickers, etc.). Consequently, in the case of individuals, the performance of smuggling is supererogatory unless they are able to discharge it in a manner that does not impose an undue and unreasonable burden on them.<sup>81</sup>

Nevertheless, the claim that they do not have an obligation to smuggle migrants, grounded on consideration of costs, does not preclude the possibility of other forms of obligations that would allow for the creation of the conditions for which this duty is binding (in a way that is only fairly costly). In particular, individuals might have a duty to finance smuggling NGOs or other kinds of associations that engage in smuggling so that they can keep prices down – while at the same time profiting enough to reduce the burden of the activity. Furthermore, they may even have a duty to facilitate the establishment of smuggling operations and/or associations, or to provide financial, material, and free legal assistance to smugglers, thereby reducing the costs and burdens of smuggling for all citizens. In other words, citizens of states that provide the structural conditions that prevent refugees from receiving meaningful protection, and even more so those of states that directly support or set up illegitimate and unjust practices (such as externalisation of borders, condoning violence at borders, etc.), would hold a humanitarian duty to create conditions that reduce the (monetary, legal, and personal) costs of smuggling.<sup>82</sup>

In conclusion, I should make clear that the obligations associated with these roles would not fall equally upon all citizens. Once more, the binding of these obligations is contingent upon a consideration of the costs that the individual would bear. It can be reasonably assumed that the so-called ‘super rich’, having greater financial resources than the average at their disposal, would therefore be better equipped to defend themselves against criminalisation and to cover the start-up costs of operations. Consequently, it can be argued that they bear a greater responsibility for the establishment of smuggling associations than other citizens. Conversely, women intuitively may be more vulnerable to harm in actively participating into smuggling operations, so their duty would be less clear-cut here, but nonetheless binding in other respect, such as in the creation of smuggling operations/associations.

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<sup>81</sup> For this argument, I have adopted Pummer’s (2023, p. 11) requirements for permissibility and obligations: ‘[T]here are (strong) requiring reasons to rescue strangers from (large) harms and ... there are cost-based and autonomy-based permitting reasons not to rescue’.

<sup>82</sup> Similarly, citizens of states that enforce abortion bans or highly restrictive regulations (or a lack of effective discharge of the service) would have a duty to reduce the costs of assisting women and those who are capable of getting pregnant to a level that is not unduly burdensome.

### III. OBJECTIONS

Finally, I want to address three objections that can be made to the main claims of this article.

#### A. Real Motives Objection

First is the *Real Motives Objection*. Smugglers do not act for the right reasons and do not care about refugees' wellbeing and safety.<sup>83</sup> They are just greedy individuals who want to take advantage of other people's misery and desperation.<sup>84</sup> Therefore, people smuggling is impermissible.

*Reply.* The answer to this objection is twofold. On the one hand, this is not entirely true: '[m]any of the smugglers we spoke with were proud to be part of networks that save people from war and persecution'.<sup>85</sup> Some smugglers are indeed motivated by ethical considerations, although many smugglers report providing this kind of service because they have a family to support, and they lack employment options.<sup>86</sup> The same applies for the case of backstreet abortion. Even though it is certainly true that some backstreet abortionists did and do provide this kind of service out of self-interests, it would be a mistake to argue that they all act only for selfish reasons.<sup>87</sup> Yet, even if it were true that smugglers all only act out of selfish personal motives, this does not invalidate the argument. Hidalgo<sup>88</sup> notes that even if your motives are defective, your actions can still be morally permissible and justified; there is a substantial difference between action and motives, and we should not mix them up.

#### B. Non-deserving Migrant Objection

Second is the *Non-deserving Migrant Objection*.<sup>89</sup> Smugglers help cross international borders not only would-be refugees, but also economic migrants and, potentially, criminals and terrorists. So, smugglers should have *prima facie* reasons to believe that a client holds an asylum claim (e.g., in virtue of coming from a state at war, or

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<sup>83</sup> As many migrants' testimonies attest (Baird 2016; İçli et al. 2015).

<sup>84</sup> Papadopoulou 2004.

<sup>85</sup> Tinti and Reitano 2017, p. 278.

<sup>86</sup> Hidalgo 2019.

<sup>87</sup> Ernaux 2001; Reagan 2000.

<sup>88</sup> 2019.

<sup>89</sup> I thank David Owen for pushing me on this.

where persecution of various kinds happens), and should not provide their service indiscriminately.<sup>90</sup>

*Reply.* It is not smugglers' responsibility to assess claims of asylum and enforce controlling systems. If they did so, they would act impermissibly because they would not meet the procedural requirements: they are not state actors and cannot operate as such. Furthermore, refugees' journeys are not linear from A (their state of origin) to B (safe countries where they would ask protection), but usually involve more than one smuggler, and many route breaks and resumptions, which makes this assessment requirement unfeasible. Moreover, what if the migrants are too afraid, or traumatised, to tell their stories to smugglers (think of victims of sexual and gender-based violence, for example)? This would be an impermissible way to proceed. As for the risk of unknowingly assisting criminals and terrorists, this risk exists, although it is minimal.<sup>91</sup> However, the primary responsibility does not fall on smugglers, but on those who create the conditions for this risk in the first place – namely the states enforcing the unjust structures that prevent safe passage for asylum seekers.

### C. Open Border Objection

Third is the *Open Border Objection*.<sup>92</sup> Smugglers cannot know for sure whether they are providing their services to economic migrants or refugees: they cannot be sure that, once their clients have arrived in their chosen destination country, they will apply for asylum nor is it guaranteed that they would obtain international protection. So, in the end, this seems like an argument for the permissibility of smuggling of all migrants, which is only consistent in an open border framework in which it is assumed immigration restrictions of any kind are unjustified.

*Reply.* My argument does not presuppose an open border framework. Given the injustice of the international refugee regime as it currently operates, migrant smuggling is permissible and justified because, among the migrants that are smuggled, it is very likely that there are also refugees. Will this involve smuggling of economic migrants? Yes, of course, since smugglers ought not be entitled to check the validity of migrants' claims. If the international refugee regime was structured in a way that makes it easy for refugees to reach safe countries legally, then smuggling would not be permissible anymore, nor would organised citizens bear any kind of obligations to

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<sup>90</sup> Øverland 2007.

<sup>91</sup> Funk and Parkers 2016.

<sup>92</sup> Thanks to Laura Santi Amantini for raising this point, and one anonymous reviewer for encouraging me to address this objection further.



support smuggling operations. Supporters of open borders may claim that the smuggling of economic migrants is also permissible and that it constitutes a duty on similar grounds since immigration restrictions are inherently unjust. The objection might be further developed to argue that the argument is directed only at Convention refugees and that it therefore excludes all those who, although not recognisable as Convention refugees, are nonetheless forced migrants. These individuals would be smuggled as a collateral effect, just as economic migrants are. However, this discussion does not address the question of whether and to what extent borders are legitimate, nor does it address the question of who should be recognised as a refugee and whether we should change the definition of refugeehood. This would require a controversial extension of the argument, whereas my claim depends only on a commitment that states already acknowledge, namely, that individuals have a right to seek asylum when they have a Convention or, at least, a humanitarian claim. According to my argument, states' actions are illegitimate and unjust precisely because they do not comply with the agreements and conventions they already recognise. Moreover, it is very plausible that those compelled to flee their homes who are not Convention refugees may be granted at least some form of humanitarian protection in Western states.

#### IV. CONCLUSIONS

Since the beginning of the first of the many recent refugee crises in 2015, millions of refugees and would-be asylum seekers have relied on smugglers to cross international borders and find sanctuary in Western states.<sup>93</sup> Numerous scholars, NGOs, and international organisations have acknowledged that human smuggling is a necessity created by the international refugee regime and by European migration policies focused on keeping migrants out.<sup>94</sup>

Nonetheless, as reported elsewhere in this paper, smugglers are seen as evil greedy people only driven by profits. Drawing on news events and leveraging cues provided by the case of backstreet abortion, the aim of this article is to challenge this belief in two ways. Firstly, by arguing that, under current non-ideal conditions, there can be permissible and justified smuggling, provided that certain procedural requirements are met. Secondly, by showing that, under some circumstances, the humanitarian duty of rescue takes the form of a conditional duty to smuggle. I have argued that

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<sup>93</sup> There were at least 2.5 million worldwide in 2016 alone (UNODC 2018).

<sup>94</sup> Achilli 2018; Crawly et al. 2016; Cusumano 2021; Hildago 2019; Müller 2021; Tinti and Reitano 2017.

individuals can provide a morally permissible smuggling service, but that they do not have a binding duty to do so, as the costs they would bear would be too high. Rather, I maintained that this duty falls on organised groups like NGOs and other similar organisations when the costs can be effectively compensated. Nevertheless, I hold that individual citizens bear a conditional responsibility to reduce the costs and burdens associated with smuggling. This could be achieved, for instance, by financing or providing material and/or logistical assistance for the establishment of smuggling associations. The permissibility of refugee smuggling and the conditional duty to smuggle refugees are grounded in the fact that the way the global refugee regime functions is unjust and Western states' immigration policies that prevent would-be refugees from seeking asylum in their territories are illegitimate.

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### COMPETING INTERESTS

The author declares that she has no competing interests.

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