Why Prospective Migrants aren't Morally Obliged to Comply with Immigration Law

BPhil in Philosophy Thesis

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Word Count: 28,098

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Abstract

Each year, hundreds of thousands of prospective migrants act in contravention of states' immigration law. Despite this, little philosophical attention has been paid to the question of whether or not prospective migrants are morally required to comply with immigration law. In this essay, I argue that prospective migrants are not morally obliged to comply with immigration law. In sections 1-3, I argue that prospective migrants are not under political obligations to comply with immigration law. In section 1, I demonstrate that the natural duty of justice does not bind prospective migrants to comply with immigration law. This is because individuals are under natural duties of justice to comply with only those just institutions which apply to them. As I demonstrate, however, while the natural duty of justice applies to prospective migrants in the sense that it is addressed to them, it does not apply to them in the sense required for grounding the natural duty of justice. In section 2, I argue that prospective migrants are not under obligations of fair play to comply with immigration law because immigration law fails to constitute a cooperative scheme. In section 3, I argue that prospective migrants do not, in general, have obligations grounded in consent to comply with immigration law as they do not consent, either tacitly or expressly, to comply with immigration law. Then, in section 4, I argue that prospective migrants do not have moral obligations to comply with immigration law grounded in either (1) Blake's argument from the right against unwanted obligations, (2) Wellman's argument from the right to freedom of association, (3) Yong's argument from the right to political independence or (4) arguments from the harms imposed by immigration on a state's members. Finally, I conclude that (a) irregular migrants are not, in virtue of their status as irregular migrants, appropriate objects of reactive attitudes such as blame and resentment and (b) members of a state are morally permitted to help prospective migrants enter the state via irregular channels when they are doing so on grounds of necessity.

Introduction

Immigration law issues commands to prospective migrants, and these commands are backed up by force. For example, nationals of over 100 countries and territories are required, by UK law, to obtain a visa before arrival in the UK (Home Office, 2024d). Those who enter the UK without authorisation risk being "detained and then promptly removed, either to their home country or a safe third country" (Home Office, 2024a). In this way, states exercise power over, and have *de facto* authority over, prospective migrants.

Each year, however, many prospective migrants act in contravention of states' immigration law. Consider, for example, that in 2023 there were approximately 380,000 irregular border crossings into the EU (Frontex, 2024). Failing to comply with a state's immigration law is, of course, legally impermissible. However, the question arises as to whether prospective migrants are morally required to comply with immigration law. This question has, thus far, received little attention in the philosophical literature on migration, and only a handful of authors have addressed it. Instead, the focus, in the philosophical literature on migration, "is usually on the *rights* of immigrants and the corresponding duties of the receiving state" (D. Miller, 2023, 836; emphasis in original). Nevertheless, as Michael Huemer states, "it is an interesting philosophical question whether it is in fact wrong to enter … a country without the authorization of the country's government" (2019, 34). The answer to this question, in turn, is of both philosophical interest and (as I will demonstrate in section 4) significant practical import.

In this essay, I argue that prospective migrants are not, in general, morally obliged to comply with immigration law. I begin, in sections 1-3, by demonstrating that prospective migrants do not, in general, have political obligations to comply with immigration law. It is the standard view in contemporary political philosophy that a state's members are under content-

independent political obligations to comply with its laws.[1] However, I demonstrate that, even granting the assumption that a state's members are under political obligations to comply with its laws, prospective migrants are not, in general, under political obligations to comply with immigration law.

In section 1, I demonstrate that the natural duty of justice does not bind prospective migrants to comply with immigration law.[2] This is because individuals are under natural duties of justice to comply with only those just institutions which apply to them. As I demonstrate, however, while the natural duty of justice applies to prospective migrants in the sense that it is addressed to them, it does not apply to them in the sense required for grounding the natural duty of justice. In section 2, I argue that prospective migrants are not under obligations of fair play to comply with immigration law. This is because individuals are under obligations of fair play to comply with those cooperative schemes from which they benefit, and immigration law fails to constitute a cooperative scheme. Finally, in section 3, I argue that prospective migrants do not, in general, have obligations grounded in consent to comply with immigration law. This is because prospective migrants do not, in general, consent, either tacitly or expressly, to comply with immigration law. Nevertheless, I demonstrate that those prospective migrants who voluntarily enter a state's territory via official channels are under obligations, grounded in tacit consent, to comply with its immigration law.

In this way, I demonstrate that prospective migrants do not, in general, have political obligations grounded in the natural duty of justice, fair play or consent, to comply with

[1] In contrast, philosophical anarchists argue that states either *necessarily* fail to have legitimate political authority, see, e.g., Robert Paul Wolff (1998), or that *in practice* all states fail to have legitimate political authority, see, e.g., A. John Simmons (2001). According to philosophical anarchists this entails that, rather than having content-independent duties to obey the commands of one's state, one is morally obligated to comply with only those commands for which the "legally required conduct is independently required or recommended by moral considerations" (Simmons, 2001, 118).

[2] Note that I discuss the distinction between duties and obligations in section 1. Nevertheless, as is standard in the literature, I refer to the natural duty of justice as a theory of political obligation.

immigration law. Of course, this conclusion does not preclude the possibility that there exists some other theory of political obligation which grounds obligations for prospective migrants to comply with immigration law. Nonetheless, the significance of my conclusion is two-fold. Consider, firstly, that those authors – Colin Grey (2015), Win-chiat Lee (2016) and David Miller (2023) – who argue that prospective migrants do have political obligations to comply with immigration law argue that these obligations are grounded in the natural duty of justice. My arguments in section 1, then, address and refute the most plausible ground of prospective migrants' political obligations to comply with immigration law. Secondly, contemporary "philosophical justifications of political obligation … usually take the form of arguments from consent, fair play, membership, or natural duty" (Dagger and Lefkowitz, 2021).[3] Thus, in sections 1-3 I demonstrate that, on the leading theories of political obligation, prospective migrants are not obligated to comply with immigration law. Furthermore, while Havier Hidalgo (2015) and Huemer (2019) also conclude that prospective migrants are not under political obligations to comply with immigration law, my arguments for this conclusion are nonetheless novel. Huemer addresses neither natural duty of justice nor consent theories of political obligation, and Hidalgo's arguments, unlike the arguments in this essay, depend on the claim that immigration law is unjust.

Following section 3, in section 4, I address the question of whether prospective migrants, despite not having political obligations to comply with immigration law, nevertheless have moral obligations to do so. I examine four arguments for the claim that prospective migrants are morally obligated to comply with immigration law. These are (1) Michael Blake's argument from the "right to be free from others imposing obligations on us without our consent" (2013, 115), (2) Christopher Heath Wellman's argument from the right to freedom of association, (3)

[3] Given that prospective migrants are, by definition, not members of the state, I do not address philosophical justifications of political obligation grounded in membership.

Caleb Yong's argument from the right to political independence and (4) arguments from the harms imposed by immigration on a state's members. For each argument, I demonstrate that it fails to entail that prospective migrants have, in general, moral obligations to comply with immigration law. Finally, having concluded that it is, in general, morally permissible for prospective migrants to act in contravention of a state's immigration law, I turn to some of the practical implications of the moral permissibility of irregular migration. I argue, firstly, that irregular migrants are not, in virtue of their status as irregular migrants, appropriate objects of reactive attitudes such as blame and resentment, and, secondly, that a state's members are morally permitted to help prospective migrants enter the state via irregular channels, provided that they are seeking to enter the state on grounds of necessity.

Before turning to section 1, and the natural duty of justice, it is instructive to first briefly outline what is meant, in this essay, by (a) prospective migrants, (b) members of a state and (c) immigration law. Firstly, prospective migrants to a state are those "would-be immigrants who have not yet been granted legal recognition by the state in the form of residence or citizenship rights" (D. Miller, 2023, 835). This includes "people who are applying to immigrate from a distance, or who have made it to the border and are asking to be admitted" (D. Miller, 2023, 835), as well as those individuals who desire to move to the state, but who have not yet started their journey.[4] Importantly, then, the arguments in this essay do not apply only to refugees and other forced migrants, but rather to all those who seek to migrate. Secondly, I use the term 'members' to refer to those individuals who are either citizens or settled noncitizen legal

[4] Note that D. Miller includes, in the category of prospective migrants, those individuals who "have entered without permission and who are now seeking leave to remain" (2023, 835). In contrast, I restrict the term 'prospective migrant' to those individuals who are located outside a state's territory. This is because those immigrants who are "physically present on a state's territory, though without permission, are partially under its jurisdiction by virtue of that fact" (D. Miller, 2023, 847fn1). It is thus plausibly the case that whether or not an individual is present on a state's territory has implications for whether or not he has political obligations to comply with its laws. While the question of whether and to what extent those who are present on a state's territory without authorisation have political obligations to comply with its laws is interesting and important in its own right, it is beyond the scope of this essay.

residents of a given state. Thirdly, in this essay 'immigration law' refers to that body of law which *regulates entry* into a state. This includes, for example, laws pertaining to visa requirements. It is important to highlight, here, that immigration law is standardly understood to include also those laws which regulate immigrants' residence in a state's territory, e.g., laws pertaining to visa extensions.[5] In this essay, however, I am concerned only with those laws which regulate entry into a state, and it is thus these laws to which the term 'immigration law' will refer. While I could, of course, have used 'immigration restrictions,' or 'entry policy,' in place of 'immigration law', I use the term 'immigration law' in order to stress the legal character of the regulations under discussion. This is particularly important in sections 1-3, in which I discuss political obligations, i.e., obligations to obey the law.

1. The Natural Duty of Justice

In this section I argue, against Grey (2015), Lee (2016) and D. Miller (2023), that prospective migrants are not under a natural duty of justice to comply with immigration law. In order to do so, I will begin by outlining the Rawlsian natural duty of justice. According to John Rawls, the natural duty of justice:

> [H]as two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves (1999a, 293-294).

I will focus on the first part of this duty - i.e., the duty to comply with just institutions that *apply* to us. While immigration law applies to prospective migrants in the sense that it is addressed to them, I will argue that it is not sufficient, for a person to be under a natural duty

[5] In some cases, immigration law is also understood to include those laws which regulate members' interactions with immigrants who are present on the state's territory, e.g., laws prohibiting the employment of irregular migrants. Yong (2018), for example, refers to such laws as 'secondary immigration law.'

of justice to comply with a just institution, for it to apply to him in the sense that it is addressed to him. I will then outline the ways in which an institution can apply to a person, such that he is thereby under a natural duty of justice to comply with it, and demonstrate that immigration law fails to apply to prospective migrants in these ways. I thus conclude that prospective migrants are not under a natural duty of justice to comply with immigration law.

First, however, note that, unsurprisingly, there is only a natural duty of justice to comply with those institutions which are *just*. Thus, those who wish to ground prospective migrant's duties to comply with immigration law in the natural duty of justice must be able to demonstrate that immigration law can be just. In other words, it must be shown that "immigration law qualifies as a 'just institution'" (D. Miller, 2023, 842). If, instead, immigration law is not a just institution, then the natural duty of justice will not ground duties to comply with it. Thus, before arguing that prospective migrants do not have a natural duty of justice to comply with immigration law because it fails to apply to them, it is interesting to first briefly note (a) the three main responses, found in the literature, to the question of whether immigration law is a just institution and (b) what they each entail for whether prospective migrants are bound by the natural duty of justice to comply with immigration law.

Whether or not immigration law qualifies as a just institution is a matter of significant debate in the philosophy of migration. I will now briefly consider the three primary responses, in the literature, to the question of whether immigration law constitutes a just institution. The first response maintains that immigration law is, in general, unjust. Consider, for example, the following argument:

> Immigration restrictions restrict important freedoms. These freedoms include freedom of association, freedom of movement, and the economic liberties. It is unjust to restrict these freedoms coercively unless there is a powerful justification for doing so. In

> general, the considerations in favour of immigration restrictions are insufficiently compelling to justify restrictions on these freedoms. Therefore, immigration restrictions are, in general, unjust (Hidalgo, 2014a, 213).

On such views, immigration law is an unjust institution, and justice instead requires open borders. If this is the case, then prospective migrants cannot be under a natural duty of justice to comply with immigration law, since it does not constitute a just institution.

The second response to the question of whether immigration law qualifies as a just institution holds that immigration law is neither just nor unjust. Rather, as Michael Walzer writes:

> The distribution of membership is not pervasively subject to the constraints of justice. Across a considerable range of the decisions that are made, states are simply free to take in strangers (or not) (1983, 61).[6]

If this is the case, prospective migrants are not under a natural duty of justice to comply with immigration law. This is because, on this account, immigration law does not constitute a just institution - it is, rather, not a matter of justice at all.

In contrast, according to the third response to the question of whether immigration law constitutes a just institution, immigration law can constitute a just institution. Note, however, that proponents of this view do not maintain that *all* immigration law constitutes a just institution. Rather, it is maintained that immigration law, *subject to certain constraints*, constitutes a just institution. This view is held by D. Miller, who argues that:

[6] Note that even if this is the case, as D. Miller points out, a state's immigration law may nevertheless be criticised as, among other things, "misguided, counter-productive, inhumane, and so forth" (n.d.).

> [I]mmigration is indeed a matter of justice, but that we should interpret this as meaning that justice places certain constraints on the regime of immigration that a state may rightfully put in place (2013a, 5).

Naturally, this view raises a second question, pertaining to what the contours of a just body of immigration law are. What, that is, are the constraints on just immigration law? Is it the case, for instance, that just immigration law is constrained by Rawls' two principles of justice? According to Rawls, his two principles of justice only apply to closed systems, "isolated from other societies" (1999a, 7), and, as Jospeh Carens points out, "questions about immigration could not arise" (1987, 255) in such a system.[7] Nevertheless, if it is the case, as cosmopolitan Rawlsians such as Charles Beitz (1979, 151) argue, that these two principles ought to apply globally, then perhaps it follows that just immigration law is constrained by Rawls' two principles of justice.[8]

In fact, the arguments in this essay do not turn on the answer to the question of what constrains just immigration law. In the interests of space, I will thus not examine in detail the nature of these constraints. Nevertheless, it is interesting, if not useful, to give a brief indication here as to the nature of the specific policies which plausibly constrain just immigration law. I will thus briefly outline two such possible constraints.

According to D. Miller, with respect to economic migrants:

> [S]tates are not under constraints of justice with respect to how many to admit; they can close their doors entirely is they choose to do so. But they may be constrained in the selection criteria they use if they choose to admit some but not others (2013a, 25).

[7] Note that Rawls' principles of international, as opposed to domestic, justice are discussed in *The Law of Peoples* (Rawls, 1999b).
[8] For an argument of this kind, see Carens (1987).

It is plausibly the case, for example, that just immigration law is constrained not to select between prospective migrants on the basis of race. Secondly, D. Miller argues that just immigration law is constrained by the principle of nonrefoulement.[9] This principle is part of the core of international refugee law, and requires that:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion (UN General Assembly, 1951, 30).

Note that, depending on how strict the conditions for just immigration law are, it may turn out that no existing state has just immigration law (D. Miller, 2023, 843). This in turn would entail that prospective migrants are not currently under a natural duty of justice to obey the immigration law of any given state. Nevertheless, the view that immigration law can constitute a just institution appears, on the face of it, to entail that prospective migrants can be bound by the natural duty of justice to comply with immigration law.

In the following, I will argue that prospective migrants are not under a natural duty of justice to comply with immigration law. I will do so, however, not by arguing that immigration law cannot be just, or that no current state has just immigration law. Rather, I will assume that immigration law can be just, and demonstrate that prospective migrants do not have a natural duty of justice to comply with even that immigration law which is just.

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[9] For a defence of the claim that just immigration law must conform to the principle of nonrefoulement, see D. Miller (2013a). (Note that he makes this argument without, in this paper, using the term "nonrefoulement.")

In order to see that the natural duty of justice does not ground obligations for prospective migrants to comply with just immigration law, recall that the Rawlsian natural duty of justice requires that we "comply with and to do our share in just institutions when they exist and *apply* to us" (Rawls, 1999a, 293; emphasis mine). Therefore, in order for the natural duty of justice to ground duties of compliance with immigration law for prospective migrants, it must be the case the immigration law *applies* to prospective migrants.

According to Rawls, an institution can apply to a person in one of two ways – he is either born into that institution, or, through his voluntary actions, brings it about that the institution applies to him. In the following, I will examine in detail these two ways in which an institution can apply to a person, and argue that immigration law fails to apply to prospective migrants in either of these two ways.

This will not, however, be sufficient to demonstrate that prospective migrants are not under a natural duty of justice to comply with immigration law. This is because it may be objected, against Rawls, that immigration law in fact applies to prospective migrants simply in virtue of the fact that it is addressed to them. Thus, before turning to the two ways in which, according to Rawls, an institution can apply to a person, I will first demonstrate that it is not the case that immigration law applies to prospective migrants simply in virtue of the fact that it is addressed to them.

Immigration law is addressed to prospective migrants. UK immigration law, for example, requires nationals and citizens of over 100 countries and territorial entities to obtain "entry clearance (a visa) in advance of travel to the UK for any purpose" (Home Office, 2024b).[10] In

[10] Note that there are certain exceptions to this requirement, e.g., for citizens of a number of states (including South Africa, Turkey and Vietnam) who hold a diplomatic passport issued by that state (Home Office, 2024b).

this way, immigration law directly addresses prospective migrants - it issues them commands regulating their entry to the state's territory.

It may appear that immigration law thus applies to prospective migrants, such that they are under a natural duty of justice to comply with it. In order to see this more clearly, consider the following passage:

> Do the immigration and border control laws of a country *apply* to people who are not its members? Presumably they do in at least one sense. In fact, one could say that the principal purpose of a country's immigration and border control laws is to regulate admission and entry of nonmembers in particular into its territory. If such laws did not apply to people who are not members of that country, then they could be said to have failed (Lee, 2016, 177-178; emphasis mine).

Lee is correct that, *in some sense*, immigration law applies to prospective migrants. It applies to them in the sense that it is addressed to them. It does not follow from this, however, that immigration law applies to prospective migrants in the sense necessary for grounding a natural duty of justice to comply with that law. It is not sufficient for a person to be under a natural duty of justice to comply with a just institution that it be addressed to him. In order to demonstrate that this is the case, I will now turn to an example from A. John Simmons.

Simmons asks us to imagine an 'Institute for the Advancement of Philosophers.' This institute is:

> [D]esigned to help philosophers by disseminating papers, creating new job opportunities, offering special unemployment benefits, etc. Moreover, these benefits are distributed strictly according to the demands of justice; and they are made possible by the philosophers who pay "dues" to the Institute (Simmons, 1979, 148).

At some point, this Institute decides to expand eastward, and sends requests to philosophers living in the East to pay their dues. In this way, just as immigration law addresses itself to prospective migrants, this Institute addresses itself to philosophers – it issues commands which are intended to regulate their behaviour, in virtue of their status (as philosophers). That this institute is just, however, is not sufficient to ground natural duties of justice for philosophers in the East to comply with its commands. As Simmons puts it:

> I have no *duty* to "do my part" by paying dues. I am not morally required to go along with any just institution which "applies to" people of descriptions which I happen to meet, even if these institutions are *just* (1979, 148; emphasis in original).

This conclusion is highly intuitive – it does not seem plausible that any reasonably just institution which addresses itself to us in virtue of our status (as philosophers, prospective migrants or otherwise) can thereby ground natural duties of justice for us to comply with that institution. Thus, just as the philosophers in the East lack moral duties to comply with the Institute for the Advancement of Philosophers, it may appear that the fact that immigration law addresses itself to prospective migrants similarly fails to entail that there is a natural duty of justice for prospective migrants to comply with just immigration law.

This, however, is too quick. This is because, as Jeremy Waldron points out, an "institution can be just in two ways: (a) it can be just in the way it operates; and (b) it can be just in the sense that it is doing something that justice requires" (1993, 29). According to Waldron, for an individual to be bound be a natural duty of justice to comply with a given institution simply in virtue of the fact that it is addressed to him, that institution must be just in sense (b) as well as in sense (a). The institute in Simmons' example, however, is just only in sense (a) – it is not doing something that is required by justice (Waldron, 1993, 29-30). Waldron thus concludes that:

> [A] philosopher may fairly resist the Institute's demands by saying, "I concede that your organization is just so far as its internal workings are concerned … But I deny that it is important from the point of view of justice to offer philosophers this assistance, so I don't see that I am doing anything wrong in refusing your request for my support, at least so far as the natural duty theory is concerned" (1993, 30).

Waldron maintains, however, that there is a natural duty of justice to comply with those institutions which address themselves to us, provided that they not only operate in accordance with justice, but are also doing something that justice requires.[11] In order to argue for this, he asks us to consider a modification of Simmons' example, in which the relevant institute is now one providing aid to the homeless. By stipulation, this institute is just in both sense (a) and sense (b). With regards to this institute, Waldron argues that:

> [I]f it really *were* a demand of *justice* that [the institute's founders] were responding to– then, assuming their institute was effective and not competing with any other organization to address this problem, the theory of natural duty *might* yield the conclusion that we are morally bound to support it (1993, 30; emphasis in original).

While Waldron makes this conclusion tentatively, he nevertheless maintains that institutions can morally impose themselves on people in this way, on account of the moral significance of justice (1993, 27). On his view, a just institution applies to a person (such that he is under a natural duty of justice to comply with it) simply in virtue of the fact that it addresses itself to him – provided, that is, that the institution not only operates in accordance with justice, but that it is also doing something that justice requires. Therefore, on Waldron's account, if a given state's immigration law both operates in accordance with justice, and is doing something that

[11] Note that, in Waldron's view, we have natural duties of justice to comply only with those institutions which are effective and legitimate, as well as just (Waldron, 1993, 21-22).

is required by justice, prospective migrants are under a natural duty of justice to comply with it simply in virtue of the fact that it is addressed to them. Following Waldron, Lee thus asserts that:

> If justice either requires or at least allows for multiple territorial states that claim some of us but not others as members, then our duty of justice will amount to a duty to support that state of affairs as a whole … Our duty of justice requires us to respect the fact that we are excluded from some states as members and to respect their national boundaries and obey their immigration and border control laws if pursuing justice in these smaller segments of humanity in smaller geographically circumscribed units is what is required (or at least allowed) by justice (2016, 186).

Therefore, granting the assumption that immigration law can be just in sense (a), there are two primary ways in which it is possible to demonstrate that prospective migrants are not under a natural duty of justice to comply with immigration law simply in virtue of the fact that it is addressed to them. The first is to argue that immigration law is not just in sense (b) – it is not, that is, doing something that justice requires. The second is to refute Waldron's claim that, provided that an institution is just in senses (a) and (b), all those to whom it is addressed have a natural duty of justice to comply with it. It is this second argument that I will make. In this way, I will demonstrate that it is not sufficient that immigration law be just, in senses (a) and (b), for those prospective migrants to whom it is addressed to be under a natural duty of justice to comply with it. First, however, I will briefly turn to the claim that immigration law is not doing something that justice requires.

On the face of it, it appears relatively straightforward to make the argument that, even if it is possible for immigration law to operate in accordance with justice, immigration law is nevertheless not doing something that justice requires. It is not difficult to imagine, in principle,

a just state which operates an open border policy. In order to imagine such a state, consider, for example, a world confederation of states, organised (similarly to the Schengen Area) as a collective of (at least reasonably) just states, with no border controls between them. This is not hard to do. The possibility of such a state, in turn, appears to demonstrate that immigration law is not required for justice.

However, from the theoretical possibility of a just state with open borders, we cannot conclude that immigration law is not necessary for justice. In order to see this more clearly, consider that we cannot conclude, from the fact that we can imagine a world in which all people own a property in which they can live (and which meets certain standards, e.g., with respect to its size), that social housing is not required for justice. This is because, in order to determine what is required for justice, we must take into consideration, at least to some extent, the so called 'facts of political life.'[12]

Thus, we must ask, instead, whether a state could, in practice rather than in principle, operate an open border policy, and yet nevertheless be just. The only contemporary example of a visa-free zone is Svalbard,[13] a Norwegian archipelago almost 1,000km off the north coast of Norway. However, while it operates an open border policy, it is far from clear that Svalbard constitutes a just society. Consider, for instance, that:

> The Norwegian Social Welfare Act does not apply on Svalbard, so residents are not entitled to financial support for living expenses or housing. Residents are therefore not entitled to practical assistance if they have special needs because of illness, disability or age ("Moving or Travelling to Svalbard," 2024).

[12] The extent to which, when doing political philosophy, we ought to take into account the so called 'facts of political life' lies beyond the scope of this essay. However, for an interesting discussion of this methodological question, see D. Miller (2013b).
[13] For Svalbard's visa policy, see ("Visas and Immigration," 2023).

The case of Svalbard, of course, does not alone entail that it is not possible for a state to have open borders and yet be just. It does, however, lend support to the argument that "some restrictions on immigration need to be imposed, in the name of social justice" (D. Miller, 2023, 842). If successful, such an argument would establish that immigration restrictions are doing something that justice requires.

Why might it be that immigration law is required for social justice? One response to this question, which Carens discusses, maintains that "restrictions on immigration are necessary to protect the liberal democratic welfare state" (1988, 208). This is because the "will to support the welfare state comes, it can be argued, from a sense of common bonds, from a mutual identification by members of the society" (Carens, 1988, 209), and from the trust fostered by this mutual identification. This sense of mutual identification, it is argued, cannot be maintained in a state with open borders. Assuming, then, that "the welfare state is essential to achieving social justice" (Stiglitz, 2018, 7), this argument implies that immigration law is doing something that justice requires.

It is not clear, however, that immigration restrictions are in fact necessary to protect the welfare state.[14] It may be possible to protect the welfare state by other means than restricting immigration. Furthermore, even if it is true that open borders tend to weaken the welfare state in a given state, this does not entail that it will necessarily be weakened to the point where there can be no justice in that state. Determining whether or not this is the case requires careful consideration of a number of empirical factors, including detailed analysis of the impact of immigration on public opinion and the economy. This research is beyond the scope of this paper. Thus, while nothing I have said precludes the possibility that immigration law is not just in sense (b), i.e., that it is not doing something that justice requires, I will not argue for that

[14] See, e.g., Ryan Penvick (2009) for an argument that casts doubt on the claim that immigration restrictions are necessary for the protection of the welfare state.

conclusion here. Note, however, that if immigration law is not doing something that justice requires, then, even on Waldron's view, prospective migrants are not under a natural duty of justice to comply with immigration law simply in virtue of the fact that it is addressed to them.

I will now argue against Waldron's claim that, if an institution is just in sense (b) as well as in sense (a), all those to whom it is addressed are thereby under a natural duty of justice to comply with it. I will thus conclude that prospective migrants are not under a natural duty of justice to comply with immigration law simply in virtue of the fact that it is addressed to them, even if it is the case that immigration law is doing something that justice requires. (This, of course, leaves open the possibility that immigration law applies to prospective migrants, such that they are under a natural duty of justice to comply with it, in virtue of some other fact – and it is to this possibility that I will subsequently turn my attention.)

Waldron argues that we are bound by the natural duty of justice to comply with those institutions which address us, provided that they are just in senses (a) and (b). Recall that he reaches this conclusion by using the example of an institute for the homeless, which, by stipulation, both operates in accordance with justice and is doing something that justice requires. He asserts that, since the institute for the homeless is just in both senses (a) and (b), all those whom it addresses are thereby bound by the natural duty of justice to comply with its demands. Waldron himself admits that this conclusion is "counterintuitive and certainly uncomfortable" (1993, 30). I will now demonstrate that it is not the case that all those who are addressed by this institute thereby come under a natural duty of justice to comply with it.

Imagine that the institute needs, in order to establish justice for the homeless in the USA, more money that it can reasonably demand from citizens and resident members of the USA. It thus begins, let us imagine, to demand dues from wealthy individuals living in far off states. Perhaps it demands dues from wealthy citizens of the UK, or Italy. The institute is, by stipulation, just

in both senses (a) and (b). It is just in sense (a) because it is just "with regard to its internal workings" (Waldron, 1993, 30) – "comparing the charges it levies with the benefits it distributes, it deals fairly with the revenues it raises" (Waldron, 1993, 30), and it is just in sense (b) because it is doing something that justice requires. It is not plausible, however, that those individuals in the UK and Italy who are addressed by the institute thereby come under a natural duty of justice to comply with its demands. The (little) plausibility of Waldron's conclusion at the domestic level is all but lost once we move to the international level. (Of course, this does not preclude the existence of other duties, e.g., duties of rescue, to aid the poor in states of which we are not members.) This example thus demonstrates that we do not have a natural duty of justice to comply with a just (in both senses) institution, simply in virtue of the fact that it addresses itself to us. Therefore, even if we grant the assumption that immigration law is just in both senses (a) and (b), it is not the case that immigration law applies to prospective migrants, such that they are under natural duty of justice to comply with it, simply in virtue of the fact that it is addressed to them.

Thus far, I have demonstrated that prospective migrants are not under a natural duty of justice to comply with immigration law simply in virtue of the fact that it is addressed to them. As Simmons' example of the Institute for the Advancement of Philosophers demonstrates, an individual is not bound by a natural duty of justice to comply with a just institution simply in virtue of the fact that it addresses itself to him. While Waldron argues that individuals do have such a duty, provided that the institution is just in both senses (a) and (b), once we examine this claim in the international context, we see that it fails. Thus, immigration law does not apply to prospective migrants, such that they are under a natural duty of justice to comply with it, simply in virtue of the fact that it is addressed to them. This leaves open, of course, the possibility that immigration law applies to prospective migrants in virtue of some other fact. It is to this possibility that I now turn.

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If it is to be shown that prospective migrants are bound by the natural duty of justice to comply with immigration law, it must be demonstrated that immigration law applies to them. In virtue of what might an institution apply to a person (other than its being addressed to him), such that he is under a natural duty of justice to comply with it? According to Rawls:

> [I]t seems appropriate to distinguish between those institutions or aspects thereof which must inevitably apply to us since we are born into them and they regulate the full scope of our activity, and those that apply to us because we have freely done things as a rational way of advancing our ends (1999a, 302).

I will now examine, in turn, each of these two ways in which an institution can apply to an individual, such that he is under a natural duty of justice to comply with it, and argue that immigration law applies to prospective migrants in neither of these ways. I thus conclude that prospective migrants are not bound by the natural duty of justice to comply with immigration law.

The first way in which an institution can apply to a person is if he is born into that institution. Thus, a given state's institutions apply to those of its members who were born and raised within its borders. Provided that the basic structure of the society is just, then, each of these members have a natural duty of justice to comply with the state's laws. This is the case "irrespective of [their] voluntary acts, performative or otherwise" (Rawls, 1999a, 294).

Thus, provided that a state's immigration law is just, native-born members of that state are under a natural duty of justice to comply with it. This typically requires, among other things, that after travelling abroad they re-enter the state's territory by presenting a valid travel document at a port of entry. According to UK immigration law, for example:

> A person must, on arrival in the United Kingdom or when seeking entry through the Channel Tunnel, produce on request by an immigration officer:
>
> (i) a valid national passport or … other document satisfactorily establishing their identity and nationality (Home Office, 2024c).

Of course, prospective migrants, unlike a given state's native-born members, are not born into the institutions of that state such that its institutions inevitably apply to them and regulate the full scope of their activity. Thus, if immigration law does apply to prospective migrants, it is not in virtue of their having been born into that institution.

It may be objected, however, that prospective migrants are born into an international immigration regime. This regime integrates the immigration law of different states, and applies to individuals in virtue of their having been born into it. On this view, then, prospective migrants are under a natural duty of justice to comply with immigration law - it applies to them in virtue of their having been born into an international institution (the international immigration regime), comprised of the immigration law of individual states. As I demonstrate in the following, however, this objection fails.

It is not the case that there is an international institution – the international immigration regime – that integrates the immigration law of individual states. Consider, firstly, that while there are international standards, e.g., international human rights law and international refugee law, that constrain the immigration law of individual states ("International Standards Governing Migration policy," 2024), this does not entail that there exists an international immigration regime. In order to see this, consider that the employment law of individual states is also constrained by international human rights law, yet there is no international institution constituting an international regime of employment law. Nevertheless, it may be argued that, since states cooperate to enforce one another's immigration law, there does exist an

international migration regime. The issue with this argument, however, is that it fails to take into account the scale of such cooperation. Such cooperation is predominantly bilateral (for example, between Australia and states including Cambodia, Nauru, Papua New Guinea, and the United States (Sherrell, 2023, 12)), and regional (for example, between EU member states). Such cooperation is not, however, currently carried out at the global level. Rather:

> While greater cooperation is sought, there has been no definitive consensus on how to act collectively to pursue international cooperation on basic goals such as reducing illegal migration ("International Cooperation," 2024).

Thus, we see that, at present, there is insufficient international cooperation between states on matters regarding immigration law and its enforcement to posit an international immigration regime that applies to individuals in virtue of their having been born into it. Thus, this objection fails to demonstrate that immigration law applies to prospective migrants in virtue of their having been born into an institution.

In order to determine, then, whether or not immigration law nevertheless applies to prospective migrants such that they are under a natural duty of justice to comply with it, let us turn to the second way in which an institution can apply to one.

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According to Rawls, institutions can also "apply to us because we have freely done things as a rational way of advancing our ends" (1999a, 302). In other words, it is possible for a person to bring it about, through his voluntary actions, that a particular institution applies to him. Given that we are under a Rawlsian natural duty of justice to comply with those just institutions that apply to us, this entails that a person can, through his voluntarily actions, bring it about that he is under a natural duty of justice to comply with a just institution. This, claim, however, that

we can voluntarily incur natural duties of justice, contradicts Rawls' own distinction between obligations and duties. In order to demonstrate that this is the case, I now turn to Rawls' distinction between obligations and duties.

According to Rawls, obligations are those moral requirements which are grounded in the principle of fairness, where:

> This principle holds that a person is required to do his part as defined by the rules of an institution when two conditions are met: first, the institution is just (or fair) … and second, one has *voluntarily* accepted the benefits of the arrangement or taken advantage of the opportunities it offers to further one's interests (1999a, 96; emphasis mine).

More specifically, obligations are those moral requirements which "arise as a result of our voluntary acts; these acts may be the giving of express or tacit undertakings, such as promises or agreements, but they need not be, as in the case of accepting benefits" (Rawls, 1999a, 97). For example, by taking up office, a public official brings himself under an obligation to fulfil the responsibilities assigned to that position (Rawls, 1999a, 97). Rawls goes on to distinguish between obligations and duties, stating that the "term "obligation" will be reserved … for moral requirements that derive from the principle of fairness, while other requirements are called "natural duties"" (1999a, 303). Here, then, Rawls stipulates that obligations and duties are distinct kinds of moral requirement, and that it is only obligations that arise as a result of a person's voluntary actions. This entails that a person cannot, through his voluntary actions, incur Rawlsian natural duties, e.g., the natural duty of justice.[15]

Thus, on this account, if a given state's just immigration law applies to a person on account of his having been born into that institution, he will be under a *natural duty of justice* to comply

[15] Other natural duties include the duty of mutual aid and the duty not to harm the innocent (Rawls, 1999a, 94).

with that law. (As I demonstrated above, however, prospective migrants do not have a natural duty of justice to comply with the just immigration law of a given state in virtue of having been born into an institution.) In contrast, if a state's just immigration law applies to a person in virtue of his voluntary actions, he will be under an *obligation* (as opposed to a duty), to comply with that law. This may be, for instance, an obligation of fair play if he has benefited from the law, or an obligation grounded in consent if he has consented to comply with the law. It would thus appear that while prospective migrants may have *obligations* (of, e.g., fair play or consent) to comply with immigration law (this much remains to be seen), they are not bound by a *natural duty of justice* to do so.

What then, are we to make of Rawls' claim that a person can voluntarily bring it about that an institution applies to him, such that he is under a natural duty of justice to comply with it. What is clear is that there is a contradiction, in Rawls, between the two following claims:

> *Claim 1*: Obligations, not duties, are incurred through voluntary action.
>
> *Claim 2*: A person can, through his voluntary action, bring it about that an institution applies to him, such that he is thereby bound by a natural duty of justice to comply with it.

These claims cannot both be true. Claim 1 is the standard reading of Rawls' distinction between obligations and duties. David Lyons, for example, writes that "Rawls distinguishes "natural duties" from obligations: natural duties are incumbent upon each of us unconditionally, whereas obligations are voluntarily incurred" (2014, 551).

Claim 2 appears later in *A Theory of Justice*, after the distinction between obligations and duties has already been drawn. (Note that some authors do not employ the distinction between obligations and duties in their writings. Grey, for example states that when he refers to 'political

obligations,' he is in fact referring to "political obligations *or* duties" (2015, 17fn6; emphasis in original). This is an acceptable choice, as some work will not benefit in any meaningful way from drawing attention to the way in which a given moral requirement has been incurred. Ignoring the distinction is different, however, from maintaining that it cannot be drawn, which is what claim 2 does.) With claim 2, Rawls muddies his previously drawn distinction between obligations and duties.

I will now argue that, though not all authors need utilise this distinction in their writings, it nevertheless exists. It is possible to distinguish between those moral requirements which are voluntarily incurred (obligations), and those which are incurred involuntarily (duties).

In order to do so, I will begin by turning to the passage in which Rawls motivates the claim that a person can voluntarily bring it about that an institution applies to him, such that he is under a natural duty of justice to comply with it. The passage is as follows:

> It may be objected that since the principles of natural duty are on hand, there is no necessity for the principle of fairness. Obligations can be accounted for by the natural duty of justice, for when a person avails himself of an institutional set up, its rules then apply to him and the natural duty of justice holds. Now this contention is, indeed, sound enough. We can, if we like, explain obligations by invoking the duty of justice. It suffices to construe the requisite voluntary acts as acts by which our natural duties are freely extended. Although previously the scheme in question did not apply to us … we have now by our deeds enlarged the bonds of natural duty (Rawls, 1999a, 302).

This passage implies that there is no clear distinction between obligations and duties, and that, by voluntarily incurring an obligation, one also becomes bound by the natural duty of justice. It is clear, however, that this is not always the case. Consider, for example, the following scenario. Frida and her flatmates are organising a picnic together. Each person assumes that

each of the others will contribute some food to the picnic, and that this food will then be freely shared amongst them all during the picnic. This assumption is well-founded – perhaps this is the manner in which the group's previous picnics have been conducted. Frida knows that if she fails to contribute any food, her friends will nevertheless share their food with her. While she has not promised to bring any food to this picnic, it nevertheless appears that she has, by voluntarily agreeing to join the picnic, incurred an obligation (of fair play) to contribute some food to the picnic (or, if she is unable to provide food, to contribute in some other way – perhaps she might bring some drinks, or a game to play). However, it is implausible that Frida thereby also brings herself under a natural duty of justice to contribute to the picnic. The picnic is not a just institution which she is now bound, by the natural duty of justice, to comply with. This is because the picnic is not an institution at all. While the precise definition of 'institution' is a matter of debate in the philosophical literature, "[r]oughly speaking, an institution … is an organisation or system of organisations [that] consists (at least) of an embodied (occupied by human persons) structure of *differentiated roles*" (S. Miller, 2019; emphasis mine). Governments, universities, hospitals, schools, shops, post offices and police forces are all examples of institutions (S. Miller, 2019). The picnic detailed above, however, is too simple a social form to constitute an institution. Unlike governments, universities, and so on, it does not consist of a structure of differentiated roles – instead, the role of each friend is simply to contribute some food to the picnic. Nevertheless, despite the fact that the picnic does not constitute a just institution, Frida is under an obligation of fair play to contribute to it. Thus, Rawls' claim, in the passage above, that we can explain obligations by invoking the natural duty of justice fails.

It may be objected that all that follows from this example is that not *all* obligations can be accounted for by the natural duty of justice. Perhaps, however, some can be. It may argued, for instance, that if a prospective migrant consents to obey the just immigration law of a given

state, thereby incurring an obligation to comply with it, he thereby also brings himself under a natural duty of justice to comply with it.

In fact, however, all that we need to do, in order to see that there is a clear distinction between obligations and duties, is turn to that which directly follows the passage in which Rawls defends claim 2. Directly after this passage, Rawls continues with the following:

> [I]t seems appropriate to distinguish between those institutions or aspects thereof which must inevitably apply to us since we are born into them and they regulate the full scope of our activity, and those which apply to us because we have freely done certain things as a rational way of advancing our ends. Thus we have a natural duty to comply with the constitution, say, or with the basic laws regulating property (assuming them to be just), whereas we have an obligation to carry out the duties of an office that we have succeeded in winning, or to follow the rules of associations or activities that we have joined. Sometimes it is reasonable to weigh obligations and duties differently when they conflict precisely because they *do not arise in the same way* (1999a, 302; emphasis mine).

Thus, we see that while Rawls momentarily endorses claim 2, he immediately reverts back to claim 1 – that obligations, not duties, are incurred through voluntary action. I will thus follow this standard reading of Rawls' distinction between obligations and duties, according to which the natural duty of justice cannot be incurred through one's voluntary action. Not only is it the view most clearly endorsed by Rawls, but it is clear that those moral requirements which are voluntarily incurred and those which are incurred involuntarily come apart, and that it is thus possible to draw a clear distinction between obligations and duties. Prospective migrants thus do not, through their voluntary action, bring themselves under a natural duty of justice to comply with immigration law.

In conclusion, prospective migrants are not bound by the natural duty of justice to comply with immigration law. This is because it fails to apply to them. As we have seen, immigration law does not apply (in the sense relevant for grounding the natural duty of justice) to prospective migrants in virtue of the fact that it addresses them. Neither are prospective migrants born into the institution of immigration law, such that it applies to them irrespective of their voluntary actions. Finally, prospective migrants do not voluntarily bring themselves under a natural duty of justice to comply with immigration law.

Of course, that prospective migrants are not under a natural duty of justice to comply with immigration law nevertheless leaves open the possibility that they have obligations (as opposed to a natural duty of justice) to do so. In sections 2 and 3 I will argue that prospective migrants do not have obligations, grounded in either fair play or consent, to comply with immigration law. (Note, then, that even if it is the case that individuals can voluntarily bring themselves under a natural duty of justice to comply with an institution (by accepting its benefits or through the giving of express or tacit undertakings), sections 2 and 3 demonstrate that prospective migrants do not have a natural duty of justice to comply with immigration law.) Before turning to fair play and consent, however, I will first refute the objection that prospective migrants are under a natural duty of justice to comply with immigration law even if it does not apply to them.

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It may be objected that prospective migrants are under a natural duty of justice to comply with immigration law even if it does not apply to them. This is because, according to Rawls, when an institution does not apply to us, we nevertheless have a natural duty of justice not to seek to undermine it (1999a, 302). According to this objection, prospective migrants are under a natural duty of justice to comply with immigration law, notwithstanding the fact that it fails to apply

to them, because the failure to comply with immigration law constitutes seeking to undermine immigration law.

It is not the case, however, that prospective migrants' failure to comply with a state's immigration law necessarily constitutes seeking to undermine it. In order to demonstrate this, it is instructive to employ Yong's distinction between the different ways in which prospective migrants can fail to act in accordance with a state's immigration law. Prospective migrants may, firstly, engage in 'revolutionary activity' which aims at "dismantling existing arrangements for the enactment, application, and enforcement of immigration law" (Yong, 2018, 460). Such action clearly does constitute seeking to undermine the state's immigration law, and is thus prohibited by the natural duty of justice, where a state's immigration law is just. This is similarly true when prospective migrants fail to comply with a state's immigration law by using "violent means to actively *repel immigration monitoring and enforcement efforts* by the receiving state's agents" (Yong, 2018, 460; emphasis in original). Such actions typically constitute seeking to undermine immigration law, and are thus impermissible where the immigration law in question constitutes a just institution.

Nevertheless, while prospective migrants are bound by the natural duty of justice not to seek to undermine just immigration law in either of two these ways, failure to comply with immigration law does not always entail seeking to undermine it. In order to see that this is the case, consider that 'mere noncompliance' with immigration law, defined by Yong as nonviolent refusal to comply with immigration law (2018, 460), does not constitute seeking to undermine immigration law. Mere noncompliance occurs when, for example, prospective migrants "enter a state's territory without authorization, nonviolently escaping monitoring and enforcement efforts by deception" (Yong, 2018, 460). Prospective migrants engaged in such activity are typically seeking simply to enter a state's territory – they are not seeking to undermine its

immigration law. Thus, unlike revolutionary activity, or violent breaches of immigration law, mere noncompliance does not constitute seeking to undermine immigration law. This objection thus fails to demonstrate that prospective migrants are under a natural duty of justice to comply with immigration law. Rather, it demonstrates only that prospective migrants are bound by the natural duty of justice not to seek to undermine just immigration law.

Note that it may be objected, against Rawls, that the natural duty of justice in fact binds individuals *not to undermine* those just institutions which do not apply to them - it does not bind them merely *not to seek to undermine* them. What is important, according to this objection, is not an individual's intentions, but rather the consequences, for just institutions, of his actions. It may be argued, then, that while a prospective migrant's failure to comply immigration law does not necessarily constitute seeking to undermine that law, prospective migrants are nevertheless bound by the natural duty of justice to comply with immigration law. This is because, it may be argued, failure to comply with immigration law necessarily undermines immigration law. It is true that it is possible for a prospective migrant's failure to comply with immigration law to undermine immigration law. This is the case when a prospective migrant engages in revolutionary activity aimed at dismantling immigration law and/or violently repels immigration monitoring and enforcement efforts. It is also the case when a prospective migrant's failure to comply with immigration law helps to encourage others not to comply with immigration law.[16] I will now demonstrate, however, that failure to comply with immigration law does not necessarily undermine immigration law.

[16] The knowledge that a large number of prospective migrants have succeeded in crossing into a given state via irregular channels may encourage other prospective migrants to attempt the journey. In this way, a prospective migrant's failure to comply with immigration law may, in some cases, help to encourage others not comply with that immigration law.

It is not the case that failure to comply with immigration law necessarily undermines immigration law. This is because 'to undermine' is to "gradually weaken or destroy something or someone" ("Undermine," 2024), and mere noncompliance with immigration law does not necessarily weaken or destroy immigration law. More generally, failure to comply with a given law need not undermine that law (or the institution of which it is a part). This is because "some forms of disobedience are unlikely to have any effects on legitimate institutions" (Hidalgo, 2016b, 181). In order see that this is the case, consider the following example. While driving home alone on a deserted road, a man breaks the speed limit, and he alone is aware of the fact that he has done so. While he fails to comply with the state's traffic laws, it is not the case that he thereby *undermines* these laws - his actions neither weaken nor destroy them. Similarly, failure to comply with immigration law does not necessarily undermine immigration law. A prospective migrant may, for example, lie on a visa application, or enter a state's territory via irregular channels, without weakening - and thereby undermining - the state's immigration law. This is the case where others are unaware of his failure to comply with the law, and his actions do not help to encourage others to disobey immigration law. Thus, even if we grant that the natural duty of justice binds prospective migrants not to undermine just immigration law, it fails to bind them, in general, to comply with immigration law.

2. Fair Play

In this section, I argue that prospective migrants do not have obligations of fair play to comply with immigration law. In order to do so, I will first outline the principle of fair play.[17] As stated by Simmons:

> In its most general form, the principle of fair play asserts that those who benefit from the good-faith sacrifices of others, made in support of a mutually beneficial cooperative

[17] Note that some authors, e.g., George Klosko (2004), refer to this principle as the principle of fairness.

> venture, have a moral obligation to their parts as well (that is, to make reciprocal sacrifices) within the venture (2001, 29).

In this way, the principle of fair play is "intended to show that the noncooperators also have obligations to cooperate" (Klosko, 2004, 34) in those cooperative schemes from which they benefit. In order to see the intuitive appeal of the principle of fair play, consider the following example. Three friends are camping in a cabin in the wilderness. The cabin has two rooms, each of which of which is large enough to sleep three people. While it has no central heating, one of the rooms can be heated by a wood burning stove. In order for the each of the friends to sleep comfortably during the night, it is necessary for him to sleep in the room with the wood burning stove, and for the fire to be kept burning throughout the night. Two of the friends agree to sleep in the room with the wood burning stove, and to take it in turns to stay awake to keep the fire burning e.g., adding logs as needed, and to sleep. In this situation, it is intuitively the case that if the third friend also decides to sleep in the room with the wood burning stove – thus benefitting from his friends' cooperative scheme – he is thereby obligated to spend his fair share of the night tending to the fire. This obligation is grounded in the principle of fair play. (In contrast, if he decided to sleep alone in the other room, he would not benefit from the scheme, and would thus not come under an obligation of fair play to contribute to it.)

According to a number of authors, e.g., George Klosko (2004), the principle of fair play also grounds political obligations, i.e., obligations to comply with the laws of one's state.[18] It is argued that those who benefit from the public goods, e.g., road infrastructure and clean water, available in a given society thereby come under an obligation of fair play to contribute to the cooperative scheme which enables the provision of such goods, by paying their "taxes and generally obeying the laws established by that government" (Huemer, 2019, 41). In this section,

[18] In contrast, for an argument the principle of fair play is "objectionable and unacceptable", see Robert Nozick (1974, 93).

I will demonstrate that, even granting that members of a state have obligations of fair play to comply with its laws, the principle of fair play nevertheless fails to ground obligations for prospective migrants to comply with immigration law.

It is interesting to note, here, that the principle of fair play has been fleshed out in a number of different ways. For example, in *Legal Obligation and the Duty of Fair Play* (1964), Rawls states that:

> The principle of fair play may be defined as follows. Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a restriction of his liberty. Suppose finally that the benefits produced by the cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating (1964, 9-10).[19]

In contrast, against this articulation of the principle of fair play, Simmons argues that there seem "to be good reasons for rejecting Rawls' "justice condition" … there is no logical difficulty, at least, in holding that we may sometimes have obligations of fair play to cooperate within unjust schemes" (2001, 9). Rawls' formulation of the principle of fairness is also rejected by Klosko. Rawls, on the one hand, stipulates that the principle of fair play only grounds obligations to contribute to cooperative schemes when "one has voluntarily accepted the

[19] As Simmons notes, Rawls is not concerned here with the distinction between obligations and duties (2001, 3).

benefits of the arrangement or taken advantage of the opportunities it offers to further one's interest" (1999a, 96).[20] (Interestingly, as Klosko points out, one implication of this view is that "because the recipients of public goods are not free to accept or to reject them … receipt of such goods does not create obligations to help provide them" (2004, 37). On this view, then, the principle of fair play does not ground political obligations.) In contrast to Rawls, Klosko argues that obligations of fair play can also be incurred when a person has involuntarily received, as opposed to voluntarily accepted, the benefits of a cooperative scheme. According to Klosko, the mere receipt of benefits grounds obligations of fair play to contribute to a cooperative scheme when the cooperative scheme (a) provides nonexcludable goods – i.e., those goods which it is difficult or impossible not to benefit from, e.g., national defence and clean air, and (b) meets the following three conditions: (1) the benefits must be worth their costs, (2) the benefits must be "presumptively beneficial,"[21] and (3) the overall distribution of benefits and burdens in the cooperative scheme must be acceptably fair (Klosko, 2004, 39).

Thus, by contrasting Rawls' articulation of the principle of fair play with those of Simmons and Klosko, we see that there are a number of different, incompatible formulations of the principle of fair play. Nevertheless, I will not seek to adjudicate between them here – it is possible to demonstrate that prospective migrants are not under obligations of fair play to comply with immigration law without doing so. In order to understand why this is the case, note that there are two ways in which it is possible to demonstrate that prospective migrants do not have obligations of fair play to comply with immigration law. The first is to argue for one particular account of the principle of fair play, and to subsequently demonstrate that, on that particular account of the principle, prospective migrants are under not under an obligation of

[20] Simmons, too, maintains that a person must have *voluntarily accepted* the benefits of a cooperative scheme if he is to have an obligation of fair play to do his part in it (2001, 27-28)
[21] Note that presumptive benefits are those benefits which are indispensable – "they are necessary for an acceptable life for all members of the community" (Klosko, 2004, 39).

fair play to comply with immigration law. Of course, this leaves open the possibility that one's conclusion is rejected on the basis of the particular account of fair play that it is grounded in. Thus, the stronger way to demonstrate that prospective migrants do not have obligations of fair play to comply with immigration law is to demonstrate that it is not the case, on *any* account of the principle of fair play, that prospective migrants have such obligations. It is in this second way that I will argue that prospective migrants do not have obligations of fair play to comply with immigration law.

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All accounts of the principle of fair play agree that, for a person to incur an obligation of fair play, it is necessary that he at least *benefit from a cooperative scheme*. Thus, in order for the principle of fair play to ground obligations for a prospective migrant to comply with a given state's immigration law, it must be the case that the state's immigration law is a cooperative scheme from which he benefits. This entails that, in order to demonstrate that prospective migrants are not under an obligation of fair play to comply with immigration law, it is sufficient to demonstrate that either of the following claims is true: (i) prospective migrants do not benefit from immigration law, (ii) immigration law does not constitute a cooperative scheme.

In the following, I will first present the argument that prospective migrants do not have obligations of fair play to comply with immigration law, as immigration law fails to benefit them. This argument is, in general, sound. However, I will then consider two objections to this argument, which maintain that some prospective migrants do (or will) benefit from immigration law. I thus concede that, while prospective migrants do not, in general, benefit from immigration law, in some cases they do benefit from it. On the face of it, this appears to entail that such prospective migrants are under obligations of fair play to comply with immigration law. Nevertheless, I go on demonstrate that even those prospective migrants who

benefit from immigration law fail to come under an obligation of fair play to comply with it. This is because immigration law cannot reasonably be construed as a cooperative scheme. In this way, I demonstrate that (i) is, in most cases, true, and (ii) is true.[22] I thus conclude that prospective migrants are not under obligations of fair play to comply with immigration law.

I will now present the argument that prospective migrants are not under obligations of fair play to comply with immigration law, on account of the fact that they do not benefit from it. Those present on a given state's territory may benefit from its immigration law (e.g., if it strengthens the state's welfare state).[23] However, those individuals, including prospective migrants, who are outside of the state's territory, do not benefit from its immigration law. Indeed, prospective migrants are often harmed by immigration law. This is the case when it prohibits them from, among other things, being able to "visit friends or family, attend a religious or education institution, express [their] ideas at a meeting or cultural event, seek employment, or pursue a love affair" (Oberman, 2016, 35) in a given state. Given that prospective migrants – individuals who are outside of a given state's territory – do not benefit from immigration law, and are in fact often harmed by it, they therefore do not have obligations of fair play to comply with immigration law.

Against this conclusion, it may be objected that it is possible for a person to benefit from the immigration law of a state which he is not a member of, such that he is under an obligation of fair play to comply with it. In order to make sense of this objection, let us consider the following example. Philip lives in State A, which is bordered only by State B. He lives very close to the border with State B, such that the air quality in State B also affects him. State B has low

[22] Of course, demonstrating that (ii) is true is sufficient to demonstrate that prospective migrants are not under obligations of fair play to comply with immigration law. Nevertheless, demonstrating that (i) is also, in general, true, is both interesting and serves to strengthen my conclusion.

[23] See. e.g., Carens (1988) for a discussion of immigration and the welfare state. Note, of course, that it is also possible for a state's members to be harmed by its immigration law. Consider, for example, that a state's immigration law can harm its members by preventing their family members from migrating to the state.

population density and very low carbon emissions. Its air quality is, as a result, very high, and Philip benefits from this. State B has very restrictive immigration law, and, by stipulation, if it were to let in more immigrants each year, its air quality would decrease, negatively impacting Philip. In this way, Philip benefits from the immigration restrictions of State B.[24, 25] It may thus seem that Philip has an obligation of fair play to comply with State B's immigration law, should he come to desire to move to State B.

This, however, is not the case. This is because, as Simmons states, the "kind of unfairness condemned by the principle [of fair play] is that involved in *taking advantage of* or *exploiting* the sacrifices of people who have freely assumed the burdens associated with maintaining mutually beneficial schemes" (2001, 30; emphasis in original). It is not the case, however, that Philip has benefitted from State B's immigration law *without doing his part* – he has not *taken advantage of* State B's immigration law, such that he now obligated to restrict his own liberty in return. When we incidentally benefit from a scheme, without failing to do our part in it, we do not incur obligations of fair play to comply with it. In order to see that this is the case, consider the following passage from Simmons:

> People who have no significant relationship at all with some cooperative scheme may receive incidental benefits from its operation. Thus, imagine yourself a member of some scheme which benefits you immensely by increasing your income. Your friends and

[24] Of course, State B is under an obligation towards residents of State A as well as State B to ensure that the air quality is above a certain threshold. This is because all individuals have a right to clean air. In this example, however, let us assume that even if State A were to open its borders, it would meet this threshold. What Philip benefits from is not that he is able to safely breathe the air around him, but rather that the quality of this air is exceptionally high, in a way that can, by stipulation, only be maintained by State B's restrictive immigration law.

[25] It is interesting to briefly mention, here, a second case in which the immigration law of one state may benefit members of another state. Consider that the immigration law of a given state, State 1, may benefit some members of a second state, State 2, if it prevents brain drain (i.e. the migration of highly skilled workers from one state to another) from State 2 to State 1. This is because brain drain often has harmful consequences (e.g., understaffed hospitals) for a state's members. (For an interesting discussion of the claim that immigration restrictions are justified as they help to prevent brain drain, see Kieran Oberman (2013).)

> relatives may benefit incidentally from the scheme as well if, say, you now become prone to send them expensive presents. But the suggestion that their benefiting in this way obligates them to do their part in the scheme is absurd (2001, 13).

This example clearly demonstrates that we are not under obligations of fair play to contribute to all those cooperative schemes from which we benefit. Instead, we are under obligations of fair play to contribute to those cooperative schemes from which we would otherwise be benefitting *unfairly* – i.e., without having done our fair share to contribute to the scheme. While it is true that Philip benefits from State B's immigration law, it is not the case that he fails to contribute his fair share to State B's immigration law. In other words, Philip does not freeride on State B's immigration law. Thus, the fact that he benefits from State B's immigration policy is insufficient to demonstrate that he is under an obligation of fair play to comply with it. In this way, we see that those migrants who benefit incidentally from a state's immigration law do not thereby come under an obligation of fair play to comply with it.

Note that it is certainly not easy to distinguish between those benefits which are incidentally incurred, such that one does not have an obligation of fair play to contribute to the cooperative schemes producing them, and those benefits which are incurred in such a way as to ground obligations of fair play to contribute to the cooperative schemes that produce them. Without a clear definition of incidental benefits, one may thus remain convinced that Philip benefits from State B's immigration law in a non-incidental manner, and thus does have an obligation of fair play to comply with it. Nevertheless, I will not seek to draw this distinction here. This is because, in the following, I will demonstrate that immigration law does not constitute a cooperative scheme. This is sufficient to demonstrate that, even if Philip benefits (non-incidentally) from State B's immigration law, he nevertheless does not have an obligation of fair play to comply with it.

First, however, it interesting to turn our attention to a second objection to the claim that prospective migrants do not benefit from immigration law and are thus not under obligations of fair play to comply with it. According to this objection, those prospective migrants who are permitted by a given state's immigration law to enter its territory have obligations of fair play to comply with its immigration law. This is because, while such prospective migrants have not yet benefited from its immigration law, they can reasonably expect to do so, in the future, should they choose to migrate to the state. Consider, for example, a Spanish citizen named Juan. He is permitted, by Italian immigration law, to migrate to Italy, and can reasonably expect to benefit from Italy's immigration law should he decide to move there (he may benefit from Italy's immigration law if, for example, it helps to protect Italy's welfare state). According to this objection, the fact such prospective migrants can reasonably expect to benefit from a state's immigration law should they chose to move there is sufficient to ground an obligation of fair play to comply with that immigration law even *before* they have benefited from it (as opposed to merely grounding an obligation to comply with the immigration law once they have begun to benefit from it as members of the state).

It is true that we often have obligations of fair play to contribute to cooperative schemes from which we have not yet benefited, yet which we can reasonably expect to benefit from in the future. Consider, for example, that if an individual's housemates are voluntarily organising a Christmas dinner which she freely plans to attend, she may be under an obligation of fair play to contribute to the preparations. This is the case even though she has not *yet* benefited from the meal, and even though there is some chance that she will not end up enjoying (or benefitting from in any other way) the dinner. It is sufficient, to ground her obligation of fair play to contribute to the preparations, that she can reasonably expect to benefit from the meal. Thus, returning to Juan, it appears that he similarly has an obligation of fair play to comply with Italian immigration law, despite the fact that he has not yet benefited from it. He may fulfil this

obligation either by refraining from migrating to Italy, or by migrating in accordance with Italian immigration law. He may not, however, immigrate to Italy via irregular channels. This purported obligation of fair play to comply with Italy's immigration law is grounded in the fact that Juan can reasonably expect to benefit from others complying with this law if he moves to Italy. Thus, according to this objection, those prospective migrants who are permitted, by a state's immigration law, to enter its territory, and who can reasonably expect to benefit from this law in the future, have obligations of fair play to immigrate (should they chose to do so) in accordance with the law. In the following, I will demonstrate that this is not the case, because immigration law fails to constitute a cooperative scheme.

First, however, it is interesting to note that even if this objection were to succeed in demonstrating that some prospective migrants have obligations of fair play to comply with immigration law, this conclusion would be of very little practical significance. This is because this objection concludes only that those who are permitted to enter a given state, and who can reasonably expect to benefit from its immigration law should they move there, have obligations of fair play to do so in accordance with the law. Such migrants in fact have little reason not to comply with immigration law. This objection does not show, however, that those prospective migrants who are permitted by a state's immigration law to enter its territory, yet who cannot reasonably expect to benefit from its immigration law once they have moved there, are under obligations of fair play to comply with its immigration law. More significantly, neither does this objection demonstrate that those prospective migrants who are *prohibited* by a state's immigration law from entering its territory are under obligations of fair play to comply with it.

I will now argue that immigration law does not constitute a cooperative scheme. A cooperative scheme is one in which those individuals who make sacrifices in order to support the scheme benefit (or can expect to benefit from) it. Thus, many of a state's institutions constitute

cooperative schemes. Consider, for example, taxation. Individuals pay taxes and this money is then used to fund public goods such as roads and hospital. In this way, those who have made sacrifices (e.g., by paying in a proportion of their income) to support the scheme, come to benefit from it. (Of course, it is not the case that *only* those who have made sacrifices will benefit from the scheme. Nevertheless, in a cooperative scheme, it is certainly the case that those who do pay in can expect to benefit from the scheme.) Immigration law, however, does not function in this way. The individuals who make sacrifices on account of a state's immigration law – i.e., those prospective migrants who are legally prohibited from entering the state's territory – do not benefit from this law. Indeed, as we have seen, they are instead typically *harmed* by it. In contrast, a state's members – those who benefit from its immigration law – do not typically make sacrifices in order for the immigration law to function.[26] In this way, we see that those who make sacrifices for a state's immigration law do not benefit from it, and those who benefit from it do not make sacrifices for it. Thus, as Grey puts it, "[i]mmigration regimes are simply not cooperative enterprises in the sense required" (2015, 123) to ground obligations of fair play. Therefore, because immigration law does not constitute a cooperative scheme, prospective migrants do not have obligations of fair play to comply with it. This entails that even those prospective migrants who benefit from a state's immigration law do not thereby come under an obligation of fair play to comply with it.

In conclusion, in this section I have demonstrated that prospective migrants are not under obligations of fair play to comply with immigration law, as it does not constitute a cooperative scheme. In the following section, I will argue that neither are prospective migrants under obligations of consent to comply with immigration law.

[26] Of course, in some instances members do incur burdens on account of their state's immigration law, e.g., when their family members are prevented from joining them in the state. Nevertheless, most of a state's members can expect to benefit from its immigration law without making sacrifices.

3. Consent

According to consent theory, "no man is obligated to support or comply with any political power unless he has personally consented to its authority over him" (Simmons, 1979, 57). Consent theorists argue that citizens have obligations to comply with the laws of their state on account of having consented to the state's authority over them. (Note that this section is concerned with actual, as opposed to hypothetical, consent.)[27] In contrast, those nonmembers of a given state who are located outside of its borders have typically not consented to that state's authority. The question, then, is whether prospective migrants, despite being nonmembers of a state who are located outside of its territory, nevertheless consent to comply with the state's immigration law, such that they are under an obligation to do so.

In this section, I will argue that prospective migrants do not, in general, have obligations, grounded in consent, to comply with immigration law. (Though, as I will go on to demonstrate, those prospective migrants who voluntarily enter via official channels are under such obligations.) There are two primary ways in which it is possible to argue that prospective migrants do not have obligations, grounded in consent, to comply with immigration law. The first is to admit that prospective migrants consent to obey immigration law, but to argue that this consent is not valid. (See Harry Beran (1987, 6-7) for a list of some of the defeating conditions of valid consent.)[28]

In contrast, one may argue that prospective migrants do not have obligations grounded in consent to obey immigration law, by arguing, not that prospective migrants' consent to immigration law is not valid, but that prospective migrants do not consent to comply with immigration law at all. It is this latter argument that I will make. In order to do so, I will examine

[27] For an overview of hypothetical consent, see Arthur Kuflik (2010).
[28] Note that, while this list refers explicitly to promises, Beran (1987) stipulates that consent is subject to the same defeating conditions as promises.

the two ways in which an individual can consent to an institution's power over him, and demonstrate that prospective migrants do not, in general, consent to immigration law in either of these two ways. The methods of consent which I will examine are tacit consent and express consent. Before turning to the ways in which consent can be given, however, I will first briefly outline what consent is. Note that there are a number of different articulations of consent.[29] Rather than outlining one such definition, and attempting to defend it, I will instead outline those characteristics of consent which are shared by these differing articulations of consent. Therefore, my arguments, if sound, will go through regardless of the precise articulation of consent that one subscribes to.

Firstly, consent changes the normative situation of another (Raz, 1986, 80-81). For example, if Flora consents to Mitso entering her house while she is on holiday, Mitso thereby acquires a (Hohfeldian liberty) right to do so. This changes the normative situation for Misto, since he previously had no right to enter Flora's house.

Promises, similarly, are a way to change the normative situation of another (the promisee). They do so by conferring onto the promisee a right that the promise be carried out. Before turning to the second feature of consent, then, it is interesting to first briefly draw attention to Joseph Raz's claim that "consent to a political authority entails a *promise* to obey it … It is the undertaking of an obligation" (1983, 83; emphasis mine). It is true that consent to a political authority constitutes the undertaking of an obligation to obey that authority (and thus confers onto the authority a corresponding (Hohfeldian claim) right to that obedience). As Leslie Green

[29] Joseph Raz, for example, defines consent in the following way:

> Consent is given by any behaviour (action or omission) undertaken in the belief that
>
> 1. it will change the normative situation of another;
> 2. it will do so because it is undertaken with such a belief;
> 3. it will be understood by its observers to be of this character (Raz, 1986, 81).

puts it, "we may regard the characteristic result of consent to the state's authority as the acquisition of an obligation on the part of the consenter" (1988, 162). For example, then, when a prospective migrant consents to a state's immigration law, he comes under an obligation to comply with it, and the state acquires a correlative (Hohfeldian claim) right that he do so (assuming that the state does not already have such a right in virtue of some other fact).[30] It is not the case, however, that consent to a political authority always takes the form of a promise.

In order to see that this is the case, let us turn to Raz's assertion that, while promises are a kind of consent, only "promises are made by acts intended to undertake obligations and confer rights" (1986, 83). The act of promising to help a friend move house, for example, is intended bring the promisor under an obligation to do so, and to confer onto his friend a correlative right that he do so. In contrast, other acts of consent (i.e., those acts of consent which are not also promises) can be undertaken for reasons other than to undertake obligations and confer rights. For example, a person may join a game with the intention of having fun, rather than the with intention to undertake obligations and confer rights. The act of joining the game, however, may constitute consent to abide by its rules, such that, by joining the game, the person thereby incurs an obligation to play by the rules and confers a right onto the other players that he do so. Thus, we see that not all consent takes the form of a promise. More specifically, not all consent to a political authority takes the form of a promise. This is clear when we consider that tourists plausibly have obligations, grounded in consent, to comply with the laws of the states that they visit. This is because it "is generally understood that by entering another country, a person is agreeing to respect its laws" (D. Miller, 2023, 838).[31] In other words, entering a given state's

[30] Note that I will not discuss here the secondary question of whether or not "having a right entails having a right to enforce fulfilment of the obligation correlative to that (former) right" (Steiner, 1981, 50). See, e.g, Nozick (1974) and Hillel Steiner (1981) for discussion of this question. It is interesting to note, however, that if having a right does not entail having a second right to enforce fulfilment of the obligation correlative to the first right, then it may (at least in principle) be the case that a state has the right to have its immigration law complied with, but no right to enforce such compliance.

[31] It may appear, on the face of it, that if tourists have obligations to comply with a state's laws, then so must prospective migrants. However, the claim that by entering a state's territory one thereby consents to comply with

territory is plausibly an act of consent to comply with its laws such that tourists are under an obligation to comply with the state's (not egregiously unjust) laws for the duration of their stay. The act of entering the state's territory, however, is not intended to undertake obligations or confer rights, and thus fails to constitute a promise. It is, rather, intended to allow the tourists to reach the site of their holiday – e.g., a particular city or town in that state. Thus, we see that it is possible for an individual to consent to a political authority without promising to do so. Therefore, while I will follow Raz's claim that consent to a political authority constitutes an obligation to obey it, I will not assume that this consent need take the form of a promise. Nevertheless, Raz is correct that, in some circumstances, consent to a political authority does take the form of a promise. Naturalised British citizens, for example, consent to the United Kingdom's political authority during their citizenship ceremony by making the following promise: "I will observe [the United Kingdom's] laws faithfully and fulfil my duties and obligations as a British citizen" (Home Office, 2023).

Interestingly, we may note here that it may be objected, against Raz, that promises do not constitute consent. Simmons, for example, attempts to draw a distinction between promises and consent (although he admits of their strong similarities and does "not wish to appear to be making too much of this distinction" (1979, 76)). He states that promises, on the one hand, are concerned with the actions of the promisor, and their primary purpose is to generate obligations for him. Consent, on the other hand, is concerned with the actions of another, and primarily confers special rights onto him (Simmons, 1979, 76). Consider, however, that promises also

its laws (such that, e.g., tourists have obligations to do so), does not entail that prospective migrants have obligations to comply with immigration law. This is because prospective migrants (by definition) have not yet performed the act of entering the state's territory. The question I am concerned with in this section is not whether migrants who have already entered a state's territory have thereby consented to obey its laws, but whether *prospective* migrants, who have not yet entered the state's territory, have nevertheless consented to a state's immigration law such that they are under an obligation to comply with it.

confer a right onto the promisee (that the promise be fulfilled), and the right conferred by consent invokes a correlative obligation in the consenter "not to interfere with the exercise of the right accorded" (Simmons, 1979, 77). Thus, we see that both promises and consent each create both obligations (in the promisor/consenter) and rights (in the promisee/consentee), and there is no sharp distinction between the two. It is thus plausibly the case that some promises also constitute consent. Consider, for example, that promising to let someone stay in your house while you are away plausibly also constitutes consent to their doing so. (In contrast, promising someone that you will buy her a horse is, intuitively, not an instance of consent. As Raz puts it, consent and promises are "overlapping" (82, 1986) – it is not the case that *all* promises constitute consent.) Nevertheless, while it is plausibly the case that some promises constitute consent, I will not seek to either establish or refute this claim here. Rather, I will assume that promises can constitute consent, and demonstrate that, *even if this is the case*, prospective migrants do not, in general, consent to comply with immigration law. I will thus conclude that prospective migrants do not, in general, have obligations grounded in consent to comply with immigration law.

The second feature of consent is that, in order for someone to consent to something, he must perform some act. (Note that, as we shall see, in the case of tacit consent this act may be, e.g., remaining silent or inactive.) In contrast, merely "having an attitude of approval or dedication" (Simmons, 1979, 93) is not sufficient for consent.

Finally, consent must be given knowingly and voluntarily (Simmons, 1979, 77).[32] That consent must be given voluntarily entails that one cannot be forced into giving consent. Agreeing to give a person your phone while he holds you at gunpoint, for example, does not constitute valid

[32] While Simmons also stipulates that consent must be given intentionally (Simmons, 1979, 77), this condition is not common to all accounts of consent. See, e.g., Raz's (1986, 81) definition of consent. I will thus not rely here on the assumption that consent must be given intentionally. That consent must be given knowingly, however, is maintained by Raz as well as Simmons.

consent to his taking your phone. That consent must be given knowingly entails that a person can only consent to something if he is aware of the fact that he is, through his action or inaction, doing so. Consider, for example, the following case. A person, Alex, drives into a car park and leaves his car there for two hours. It was previously the case that it was free to leave one's car in this car park. However, since the last time that Alex visited the car park, it has become the case that people must pay, on exiting the car park, for having parked their car there. Alex is unaware of this change. His driving into the car park and parking his car there thus do not constitute consent to pay for using the car park. Note that this does not entail that the car park's owner does not have a right to be paid if Alex parks his car there, or that Alex is not under an obligation to make this payment. It is the case, however, that this right, and its corresponding obligation, are not grounded in consent.

It may be objected that one can in fact consent unknowingly. According to this objection, this is what occurs when a person agrees to comply with the terms and conditions of a service without having read the terms and conditions in full. It is true that, in this way, a person may consent to the terms and conditions of a service without knowing that she is thereby bound to, e.g., pay a given company 10% of her income. It is thus tempting to conclude that one can consent unknowingly. This, however, is too quick. This is because, when a person agrees to the terms and conditions of a service without having read them, she is nevertheless aware that agreeing to the terms and conditions of a service constitutes consent to comply with whatever it is that those terms and conditions in fact turn out to be.[33] In this way, while she is unaware of the details of what she has consented to, her consent to the terms and conditions is nevertheless given knowingly. Similarly, a person may knowingly consent, e.g., through a verbal agreement, to be taken on holiday to whichever destination her partner has chosen, while

[33] Although note that there are, arguably, some restrictions on what one can consent to. For example, as Beran points out, some authors claim that one cannot consent to do something morally wrong (1987, 7).

being unaware that she has thereby agreed to be taken to Peru. Unlike in the carpark case outlined above, in each of these two examples, the relevant individual knows that her actions constitute consent, despite the fact that she is unaware of exactly what is entailed by that consent. Thus, this objection fails to demonstrate that consent can be given unknowingly.

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Having outlined the characteristic features of consent, I will now argue that prospective migrants do not, in general, consent to immigration law. Before arguing that prospective migrants do not, in general, tacitly consent to immigration law, I will first demonstrate that they do not expressly consent to immigration law.

Express consent is, broadly speaking, that consent which is "directly and distinctly expressed by action" (Simmons, 1979, 80). Express consent is most commonly constituted by verbal or written agreements. For example, a person expressly consents to his neighbour entering his house when he voluntarily directs the following utterance at his neighbour: "I permit you to come into my house."

Of course, it is important to note, at the outset, that it is certainly *possible* for a prospective migrant to expressly consent to comply with immigration law. He may do so, for example, by voluntarily uttering the following: "I promise to comply with France's immigration law." Nevertheless, such utterances are extremely rare, and prospective migrants do not, in general, expressly consent to comply with immigration law.

It may be argued, however, that individuals expressly consent to comply with immigration law when they complete a visa application for a given state. This is because the giving of such consent appears to be required by the form itself. In order to better understand this claim, let

us examine the following statements from the US Department of State's *Application for Immigrant Visa and Alien Registration*:

> I understand that I am required to surrender my visa to the United States Immigration Officer at the place where I apply to enter the United States, and that the possession of a visa does not entitle me to enter the United States if at that time I am found to be inadmissible by immigration laws.
>
> I understand that any willfully false or misleading statement or willful concealment of a material fact made by me herein may subject me to permanent exclusion from the United States and, if I am admitted to the United States, may subject me to criminal prosecution and/or deportation.
>
> I, the undersigned applicant for a United States immigrant visa, do solemnly swear (or affirm) that all statements which appear in this application … have been made by me … and that they are true and complete to the best of my knowledge and belief. I do further swear (or affirm) that, if admitted into the United States, I will not engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States; in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activities subversive to the national security; in any activity a purpose of which is the opposition to or the control, or the overthrow of, the Government of the United States, by force, violence, or other unconstitutional means ("Application for Immigrant Visa and Alien Registration," 2007).

While the above is addressed to applicants for a US immigrant visa, I will treat its content as indicative of visa forms more generally. Is there anything in this statement, then, which entails

that prospective migrants who have completed a visa application for a given state have thereby consented to comply with its immigration law?

Part one of the *Application for Immigrant Visa and Alien Registration* does not constitute consent to comply with immigration law. That someone consents to show his visa at the place where he *applies* to enter does not entail that he must 'apply to enter.' Instead, all that he has consented to is that, *if* he applies to enter at a legal port of entry, he is obligated to show his visa. He has not, however, consented to refrain from immigrating (irregularly) at a place where no immigration officers are present. This first part thus fails to constitute consent to comply with immigration law.

Part two clearly does not constitute consent to comply with immigration law. It demonstrates, rather, that the undersigned understands the consequences he will face should he fail to comply with immigration law.

The first sentence of part three constitutes consent to fill in the application form in a true and complete manner, to the best of one's knowledge and belief. (Note, however, that this consent is plausibly invalid when the voluntary condition for valid consent is not met, e.g., for those refugees who have no choice but to lie on their visa application form.) Nevertheless, this sentence does not obligate one not to immigrate illegally, without the use of a visa, and thus does not constitute consent to comply with a state's immigration law more generally.

The second part of part three (which begins "I do further swear…") does not commit prospective migrants to comply with immigration law, but rather concerns how they are required to behave once they have migrated. Note that being an irregular migrant itself is not prohibited by this section – being an irregular migrant does not, e.g., endanger the welfare, safety or security of a state. In order to see that this is the case consider, for example, that:

> It is common for countries' immigration laws to provide avenues - written into statue or established through the exercise of administrative discretion – for unauthorized migrants to remain when the harm to them, their family, and community significantly outweighs the harm of illegal entry and where there are no other strong grounds warranting removal (such as the commission of a serious criminal offense) (Aleinikoff, 2010, 107-108).

States would not choose to regularise the status of irregular migrants if they necessarily posed a threat to national security.

I thus conclude that prospective migrants do not expressly consent to comply with immigration law. This is because, firstly, prospective migrants do not typically make utterances of the form: "I promise to comply with France's immigration law." Secondly, completing a visa application fails to constitute express consent to comply with immigration law (though those prospective migrants who (voluntarily) fill in a visa application do expressly consent to do so honestly and to the best of their knowledge). Having demonstrated that prospective migrants do not expressly consent to comply with immigration law, I will now argue that neither do prospective migrants, in general, tacitly consent to comply with immigration law. I nevertheless admit that, in some cases, prospective migrants do have obligations grounded in consent to comply with immigration law. This is because voluntarily entering (or attempting to enter) a state via regular channels constitutes tacit (as opposed to express) consent to comply with its immigration law.

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Tacit consent is, broadly speaking, that consent which is *implied* by a person's actions. Recall, for example, that when a person joins his friends in a game, he thereby consents to play by the rules. In this case, his consent is implied by, rather than explicitly expressed by, his actions. We may thus understand his joining the game as an act of tacit, as opposed to express, consent to

play by the rules. Interestingly, while express consent can only be given through action, tacit consent can be given through either action or inaction. In the following, I will first demonstrate that prospective migrants do not, through their inaction, tacitly consent to comply with immigration law. I will then turn to the question of whether prospective migrants, through their action, tacitly consent to comply with immigration law.

As is stated by Simmons, tacit consent can be given "by remaining silent and inactive" (1979, 80). Consider, as an example of this kind of tacit consent, the following scenario. A mother, Martha, and her adult child are sitting in a living room with the curtains open. Martha says, "Unless you mind, I'm going to close the curtains now." Her child remains silent and still. In this way, through his inaction, he tacitly consents to Martha closing the curtains.

However, if Martha had instead said "Unless you cut off your hand, I'm going to close the curtains now," the child's silence and action would clearly no longer constitute tacit consent to her closing the curtains. It is not enough, then, for a person's silence be given knowingly and voluntarily for it to constitute tacit consent. Rather, there are five additional conditions, specified by Simmons, which must be met if an individual's silence and inaction are to constitute tacit consent. I will not outline all of these conditions here, but rather conditions (4) and (5), which Simmons deems particularly "important to the political applications of theory of tacit consent" (1979, 81). Conditions (4) and (5) are as follows:

(4) the means acceptable for indicating dissent must be reasonable and reasonably easily performed; and
(5) the consequences of dissent cannot be extremely detrimental to the potential consentor (Simmons, 1979, 81).

(Note that it is now easy to see why, in the second example, Martha's child's silence and inaction does not constitute tacit consent to her closing the curtains. Neither condition (4) nor

(5) is fulfilled. This is because cutting off one's hand - the method which Martha stipulates is acceptable for indicating dissent to her closing the curtains – is not reasonable, nor reasonably easily performed, and the consequences of this dissent would be extremely detrimental to her child.)

Having outlined what it means to tacitly consent through silence and inaction, I will now demonstrate that prospective migrants do not, through their silence and inaction, tacitly consent to comply with immigration law. In order to see this, consider, for example, a resident citizen of Greece, Kostas, who is silent and inactive with regards to Australia's immigration law. While he desires to move to Australia, and perhaps even plans to move there in the future, he has so far made no attempt to do so. Nor has he made any oral or written statements pertaining to Australia's immigration law. In this case, Kostas' silence and inaction cannot be understood as tacit consent to comply with Australia's immigration law. This is because, as D. Miller states, in order for a particular act (or, in the case of tacit consent, a particular abstention from action) to amount to obligation-creating consent, it must be the case that "the act is generally understood to involve the giving of consent, and the actor knows this, or at least ought to know it" (2023, 838). It is not the case, however, that going about one's own life and failing to interact in any way with the immigration law of a particular state is generally understood to constitute (tacit) consent to comply with that state's immigration law. Thus, it is not the case that prospective migrants tacitly consent, through their silence and inaction, to comply with immigration law.

The more pressing question, however, is not whether those prospective migrants who are silent and inactive with regards to a state's immigration law thereby tacitly consent to it, but whether those prospective migrants who are actively taking steps towards moving to a particular state thereby tacitly consent to its immigration law. The question is, in other words, whether "by

approaching the state in their attempt to be admitted, immigrants are also giving consent to the immigration laws that apply to them" (D. Miller, 2023, 838).[34] The question to which I now turn, then, is whether prospective migrants, by attempting to move to a given state, thereby tacitly consent through their actions to its immigration law. I will now consider three ways in which it may be argued that prospective migrants, through their actions, tacitly consent to comply with immigration law.

Let us consider, first, the "unpromising suggestion … that individuals have somehow, through their transnational relationships or transactions, consented to border control by individual states" (Grey, 2015, 120). Grey himself dismisses this suggestion as unpromising, stating that it "seems to be a highly implausible tacit consent argument" (2015, 120), and I will thus give it little attention. Note, however, that engaging in transnational relationships or transactions fails to constitute consent to comply with immigration law. In order to demonstrate that this is the case, it is sufficient to highlight the fact that individuals who engage in such relationships or transactions do not typically think that they are thereby consenting to immigration law. While Grey fails to provide an account of what it is that constitutes transnational relationships or transactions, he refers to 'globalised commerce' as an example of such interactions (2015, 120). Let us consider, then, a businessman in Japan, who sells products to his clients in China on a daily basis. In this way, the businessman is engaged in globalised commerce. However, one would not expect him to agree that, through these transnational relationships and transactions, he has thereby brought himself under an obligation to comply with immigration law. Given that consent must be given knowingly, it is thus not the case that individuals who engage in transnational relationships or transactions have thereby consented to immigration law.

[34] Note that, in this context, 'apply to' may be understood as 'are addressed to.'

The second suggestion is that "the physical act of moving to, or across, a state border might be interpreted as conveying consent to that state's immigration rules" (D. Miller, 2023, 838). It is not difficult to demonstrate that the act of physically crossing into a state's territory does not, in itself, constitute consent to comply with its immigration law. In order to see that this is the case, let us turn our attention to irregular migrants.[35] It is clear that by crossing into a state without legal authorisation, irregular migrants do not thereby bring themselves under an obligation, grounded in consent, to comply with its immigration law. This is because there is no shared understanding that by entering a state's territory without authorisation one thereby consents to comply with its immigration law. (In fact, on the contrary, the act of irregularly crossing into a state's territory is typically understood to demonstrate that the irregular migrant in question does *not* consent to the state's immigration law.) Given that consent must be given knowingly, it is thus not the case that irregular migrants, by crossing into a state's territory, thereby consent to comply with its immigration law. In this way, then, the example of irregular migration demonstrates that crossing into a state's territory alone is not sufficient to constitute consent to its immigration law. This is the case not only for irregular migrants, but for all those who cross into a state's territory. In contrast, however, immigrating to a state through official channels (as opposed to merely crossing its border) can constitute tacit consent to comply with its immigration law. I will now outline why this is the case.

As D. Miller states, "the act of filling in a visa form might be understood as signalling consent to the process whereby these applications are decided" (2023, 838). (Note that, because visa applications themselves do not stipulate that one must comply with immigration law, the act of filling in a visa application constitutes tacit, as opposed to express, consent to comply with

[35] A brief note here on terminology. There are a number of terms, e.g., 'illegal immigrants' and 'undocumented migrants,' for those who are present on (or in this who case who are attempting to enter) a state's territory without legal authorisation. Following Carens, however, I use the term 'irregular migrants' as it is "less tied to established positions in the debate" (Carens, 2013, 129-130).

immigration law.) This is because there is a shared understanding that, when one voluntarily participates in a rule-governed practice, one thereby agrees to comply with the rules of that practice. Furthermore, while not all international travel requires a visa, we may plausibly extend D. Miller's claim so that it applies also to that travel which occurs through official channels, but which does not require a visa. For example, presenting oneself at a legal port of entry constitutes consent to the process whereby it is decided whether or not one is to be granted entry. Therefore, we may conclude, along with Grey, that is "plausible to take the decision to immigrate through official channels as tacit consent to comply with … immigration law" (2015, 119).

Nevertheless, this does not entail that all those prospective migrants who immigrate via legal channels are thereby bound by an obligation, grounded in consent, to comply with the state's immigration law. This is because, for consent to be valid, it must be given voluntarily. However, a great number of migrants who immigrate via official channels do so involuntarily. As D. Miller states, for an action to be "voluntary in the sense that is needed to express consent" (2023, 839), there must be an alternative action that the relevant individual could have performed, without incurring significant costs. However, for many:

> Migrants, the costs of *not* migrating will be relatively high, given how much they stand to gain if they succeed in entering the country of their choice (this applies not just to refugees and other forced migrants but also to many who are moving for economic reasons) (D. Miller, 2023, 839; emphasis in original).

Consider, for example, that it is hard to say of those economic migrants who move in order to be able to afford to feed their family that this decision is made voluntarily.[36] Thus, as D. Miller

[36] I will not seek to offer a definition, here, of involuntary as opposed to voluntary migration – it is not easy to draw a sharp line between the two phenomena. Nevertheless, for my arguments here to go through, it is sufficient to acknowledge that at least some migration is involuntary.

states, the condition that consent must be voluntary is not "fulfilled for many, perhaps most, of the people who are attempting to immigrate to rich Western states" (2023, 839). In this way, we see that immigrating through official channels often fails to constitute valid consent to comply with immigration law, and such prospective migrants are thus not bound by obligations, grounded in consent, to comply with immigration law.

It may be objected, however, that even those prospective migrants who are forced into migrating make the decision to migrate *through official channels* voluntarily. According to this objection, such migrants, though forced to migrate, might have done so through irregular channels, and their decision to do so instead via regular channels is voluntary and thus constitutes valid consent to comply with immigration law. This, however, is not the case. The decision to migrate via regular, as opposed to irregular channels, is not typically "voluntary in the sense that is needed to express consent" (D. Miller, 2023, 839). This is because of the high level of risk typically involved in irregular migration - in the Mediterranean alone, over 29,000 migrant deaths and disappearances have been recorded since 2014 ("Migration Within the Mediterranean," 2024). Consider, then, a refugee who has made his way to Libya, and who is seeking refuge in Europe. Given the extremely high level of risk he would face if he attempted to enter, e.g., Italy or Greece, via an irregular route, his decision to migrate to Europe through official channels cannot reasonably be deemed to be voluntarily. Thus, we see that, for those prospective migrants who are forced into migrating, the decision to do so via official channels is typically not voluntary, and thus fails to constitute valid consent to comply with immigration law. This objection thus fails to demonstrate that migration via regular channels is always voluntary.

It is important to highlight, however, that where prospective migrants' migration via official channels is involuntary, this is because of both the risks involved in irregular migration, and

the dire circumstances that such prospective migrants face in their home countries. In contrast, for those prospective migrants with a good quality of life in their home country - e.g., "professionals moving from one rich country to another, for whom the costs of being refused entry are relatively small" (D. Miller, 2023, 839) – the decision to migrate through official channels is voluntary, and thus does constitute valid consent to comply with immigration law. Nevertheless, those migrants who involuntarily migrate through official channels do not thereby tacitly consent to comply with immigration law.

I will now respond to one objection to this conclusion. According to this objection, "even the kind of involuntariness associated with the plight of refugees and seriously disadvantaged migrants does not invalidate consent to comply with immigration law" (Grey, 2015, 119). This objection maintains that we ought to "distinguish between situations where duress was aimed at extorting consent and situations where consent was given under general duress caused by a third party or external situation" (Grey, 2015, 119). Duress is aimed at extorting consent when, for example, a robber threatens a passerby with a knife, and demands payment in return for letting him continue on his way unharmed. Here, the duress the passerby experiences is aimed at extorting his consent to pay the robber - it is the robber himself "who has attached dire consequences to the act of refusing to" (D. Miller, 2023, 839) pay him. In contrast, duress is caused by a third party or external situation in the following case. A woman, swimming alone in the ocean, gets a cramp, and is in danger of drowning. A man passes by in a boat and offers to save her if she pays him a large sum of money. In this case, the woman's duress is caused by an external situation – i.e., the fact that she got a cramp while swimming – it is not aimed at extorting her consent. According to the objection under consideration, only the former kind of duress, i.e., duress aimed at extorting consent, can invalidate consent. This is because, it is argued, "the undesirable aspect of duress is not in the absence of choice, but in the fact that it is engineered in order to extract the consent" (Raz, 1986, 89). Of course, states do not force

people into migrating in order to extort consent to their immigration law. It is thus concluded that consent to comply with immigration law remains valid even when it is given involuntarily.

I will now demonstrate that this objection fails. This is because it is not the case that involuntary consent is valid where the duress that renders it involuntary is not aimed at extorting this consent. In order to see that this is the case, consider the following example. Imagine an isolated, walled village in a desert. One of the rules of the village is that all those who enter its walls must shave their heads before leaving. This rule is made clear on a sign at the entrance to the village. Those travellers who voluntarily enter the village thereby tacitly consent to shave their heads before leaving the village. If, however, the residents of the village were to point their guns at a passerby and demand that he enter the village in order to force him to shave him head upon leaving, his entering the village would fail to constitute valid consent to this rule. This much is clear, and is not in dispute. Let us now imagine, however, that a severely dehydrated traveller is passing the village. If he does not enter the village in order to find some water, he will surely die within hours. The man therefore enters the village in search of water. In this case, it is clear that the man's duress is not intended to extort consent to the village rules. Nevertheless, upon leaving the village (which he does just after obtaining a drink of water), it is certainly reasonable for the man to reply to the villagers' demands that he shave his head that he never consented to comply with this rule. Given that he was forced, albeit by external circumstances, to enter the village, his entering the village fails to constitute valid consent to comply with its head-shaving rule. He is therefore not under an obligation, grounded in consent, to comply with this rule.[37] (Note that this conclusion stands even if he is under some other

[37] It is interesting to note that if, instead, there were a jug of water at the entrance to the village and a sign stating: "if you drink from this jug, you must then refill it from the village well," the man would be under an obligation, if he drank from the jug, to subsequently refill it from the village well. This obligation, however, is not grounded in consent. It is, rather, an obligation of fair play - the man has benefited from a cooperative scheme, and is thereby obligated to contribute to the scheme by refilling the jug.

obligation, not grounded in consent, to comply with this rule. Furthermore, this conclusion does not preclude the possibility that the man is under moral obligations to comply with many of the village's other rules, e.g., its rules prohibiting assault.) As this example demonstrates, it is not the case that only duress which is intended to extort consent can render consent invalid – rather, duress caused by a third party or external situation can also render consent invalid. Thus, this objection fails to demonstrate that involuntary migration through official channels constitutes valid consent to comply with immigration law. On the contrary, only those prospective migrants who voluntarily migrate through official channels thereby come under obligations, grounded in (tacit) consent, to comply with immigration law.

In this section, I have argued that prospective migrants do not, in general, consent to comply with immigration law. After outlining the characteristic features of consent, I demonstrated that prospective migrants do not expressly consent to comply with immigration law. I then demonstrated that neither do prospective migrants tacitly consent to immigration law by either (a) remaining silent and inactive, (b) engaging in transnational relationships or transactions, or (c) crossing the border into a state. I nevertheless went on to demonstrate that those prospective migrants who voluntarily migrate via official channels tacitly consent to comply with immigration law. Thus, while prospective migrants do not, in general, have obligations grounded in consent to comply with immigration law, this is not the case for those who voluntarily migrate via official channels. Nevertheless, I have demonstrated that prospective migrants, in general, are under no obligations, grounded in consent, to refrain from entering a state's territory via irregular channels.

4. Implications

Thus far, I have argued that prospective migrants do not, in general, have political obligations, grounded in the natural duty of justice, fair play or consent, to comply with immigration law.

Of course, this conclusion does not preclude the possibility that there exists "some other theory of political obligation or legitimacy that successfully shows that foreigners do have obligations to respect the immigration laws of other states" (Hidalgo, 2015, 470). Nevertheless, by demonstrating that none of the three most promising grounds of prospective migrants' political obligations to comply with immigration law in fact ground such obligations, my conclusion lends significant weight to the claim that prospective migrants are not under political obligations to comply with immigration law.

In this final section, rather than examine whether a fourth theory of political obligation might ground obligations for prospective migrants to comply with immigration law, I will instead examine some of the implications of the claim that prospective migrants are not obligated to comply with immigration law. This is because, while a number of other theories of political obligation have been dismissed, in the existing literature, as the grounds of prospective migrants' obligations to comply with immigration law,[38] the implications of the claim that prospective migrants do not have obligations to comply with immigration law has received significantly less attention.[39] Nevertheless, it is a claim with significant implications. Whether or not irregular migration is morally permissible supervenes on whether or not prospective migrants have obligations to comply with immigration law - if prospective migrants do not have obligations to comply with immigration law, then irregular migration is morally permissible.

Before turning, however, to the implications of the claim that prospective migrants are not obligated to comply with immigration law, it is important to note that the claim that prospective migrants are not under political obligations to comply with immigration law does not entail that prospective migrants do not have any moral obligations to comply with immigration law.

[38] See Hidalgo (2015), Huemer (2019) and D. Miller (2023).
[39] Huemer (2019) is an exception.

A prospective migrant may, in principle, have a moral obligation to comply with immigration law despite being under no political obligation to do so. In order to see that this is the case, consider that philosophical anarchists, who maintain that "[s]ubjects have no political obligation … to obey the law because it is the law" (Simmons, 2001, 107) nevertheless acknowledge that individuals often have nonpolitical moral obligations to do that which the law requires of them. Consider, for example, that even if an individual has no political obligations to comply with his state's laws prohibiting murder, he may nevertheless be under a moral obligation to do so. Thus, demonstrating that prospective migrants are not under political obligations to comply with immigration law is not sufficient to demonstrate that they have no obligations to do so.

The question thus arises as to whether prospective migrants have moral obligations to comply with immigration law, even granting that they are not under a political obligation to do so. I will now demonstrate that prospective migrants do not, in general, have moral obligations to comply with immigration law, and that irregular migration is therefore, in general, morally permissible. I concede, however, that under some specific circumstances prospective migrants do have moral obligations to comply with a given state's immigration law. In such cases, irregular migration is morally impermissible.

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In the following, I will outline four arguments for the claim that prospective migrants are, in general, morally obligated to comply with immigration law, and that irregular migration is thus morally impermissible. These are (1) Blake's argument from the "right to be free from others imposing obligations on us without our consent" (Blake, 2013, 115), (2) Wellman's argument from the right to freedom of association, (3) Yong's argument from the right to political independence and (4) arguments from the harms imposed by immigration on a state's members.

In each case, I will demonstrate that the relevant argument fails to entail that prospective migrants are, in general, morally obligated to comply with immigration law.

According to Blake, "we have a presumptive right to be free from others imposing obligations on us without our consent" (Blake, 2013, 115). Since migrants impose obligations on a state's members, prospective migrants are therefore under a moral obligation to refrain from entering a state via irregular channels – i.e., without the consent of the state's members. On this view, then, irregular migration is, in general, morally impermissible.[40] Blake is correct in his assertion that migrants impose obligations on a state's members. When an individual enters a given state's territory, its existing members are thereby:

> [O]bligated to act in particular ways, so that her rights are effectively protected and fulfilled: they are obligated to help pay for the police that will defend her national security, they are obligated to serve on juries that will serve to convict those who attack her, and indeed, they are obligated to help create and sustain institutions sufficient to protect her basic human rights. This obligation, it should be noted, emerges from the simple fact of presence; no particular legal status within the jurisdiction is required (Blake, 2013, 113).

In this way, then, irregular migration imposes obligations on a state's members without their consent. However, it does not follow from this that irregular migration is morally impermissible. This is because, as Hidalgo argues, it is not the case that individuals "have moral rights against the nonconsensual imposition of new obligations" (2014b, 2).

[40] Note, however, that Blake admits that for many migrants fleeing oppressive nations, the state does not have a moral right to "exclude the unwanted migrant, because the story we would have to tell – namely, that we have no obligation to become obligated to protect that migrant's rights – is inaccurate" (2013, 125). Thus, even on Blake's view, irregular migration is, under some circumstances, morally permissible – the state does not have a right to exclude the migrant and, accordingly, the prospective migrant has no obligation to refrain from entering the state.

In order to see that this is the case, let us consider the highly implausible entailments of the claim that individuals have a right to be free from the nonconsensual imposition of new obligations. Consider, firstly, that when an individual has a child, members of her state will thereby come under "positive obligations to protect the human rights of her child" (Hidalgo, 2014b, 2). Secondly as Blake admits, when an individual, A, walks past another individual, B, in a public space, A thereby comes under a moral obligation to help B should B be, e.g., attacked or in need of urgent medical attention (and vice versa) (Blake, 2013, 118). Thus, Blake's argument entails the highly implausible conclusion that we have a right against members of our state having children, or walking past us on the street without our consent.

In response to such examples, Blake concedes that people are, all things considered, morally permitted to have children and to walk near others on the street without their consent. This is because, he asserts, we sometimes have:

> [A]n existing obligation to acquire … new obligations; there can be, and likely are, many cases in which we are not morally free to refuse to become so obliged. Take the case of reproduction, for example; the rights of my friends and colleagues to control their own bodies is more central than my right to avoid unwanted obligations towards their children (2013, 119).

While this line of response successfully renders having children or walking past a person on the street without his consent, *all things considered*, morally permissible, it nevertheless maintains that such actions are presumptively rights-violating. In fact, however, as Hidalgo argues, "we should deny that reproduction is even presumptively rights-violating" (2014b, 5fn4). The same can be said of walking past others on the street – this action is not even presumptively a rights violation. Thus, we see that it is not the case that there is even a presumptive right to be free from nonconsensual obligations. This, in turn, entails that the fact

that irregular migration imposes nonconsensual obligations on a state's members is not sufficient to render it morally impermissible.

Perhaps, however, irregular migration is morally impermissible because it violates a state's right to freedom of association. According to Wellman, states have a right to freedom of association, which grounds their moral right to restrict immigration. In order to make this argument, Wellman first draws attention to the fact that "freedom of association includes a right to reject a potential association and (often) a right to disassociate" (2008, 110). Consider, for example, that freedom of association grounds the right to refuse to marry a prospective spouse. From this right to reject potential associations, Wellman concludes that the state has a moral right to exclude prospective migrants. If this is the case, then prospective migrants have a correlative moral obligation to comply with immigration law, and refrain from immigrating via irregular channels. This entails, then, that irregular migration is morally impermissible.

Against Wellman, Huemer demonstrates that irregular migration fails to violate the right to freedom of association. This is because the right to freedom of association grounds "the right (with the agreement of other party or parties) to enter into, or (unilaterally) to eschew, certain relatively *robust* sorts of associations" (Huemer, 2019, 46; emphasis in original). This is clear, for example, in the case of marriage. The right to freedom of association does not, however, ground "the right to demand that others avoid very *tenuous* sorts of "associations" with you" (Huemer, 2019, 46; emphasis in original). It does not, for example, ground the right to prevent others from moving into your neighbourhood, or taking up a job at your workplace. With regards to immigrants, this entails that:

> If you dislike associating with certain foreign-born people, you have the right, under freedom of association, to refuse to work for them, befriend them, marry them, or trade with them … You do not, however, have a right to demand that these people not *be in*

> *the same country* as you – that is far too tenuous of an "association" for you to claim it as an infringement on your freedom (Huemer, 2019, 47; emphasis in original).

Thus, irregular migration does not violate the right to freedom of association, and prospective migrants do not have a moral obligation, grounded in the right to freedom of association, not enter a state via irregular channels.

It may be objected that, while irregular migration does not violate individual members' right to freedom of association, it nevertheless violates the *state's* right to freedom of association, and is, on this account, morally impermissible. However, while it is true that Wellman's argument is concerned with the collective right of the state to freedom of association, this objection nevertheless fails. This is because, as Blake points out, the state's right to freedom of association is "derivable from a right on the part of the citizens" (2013, 106). Thus, given that irregular migration does not violate the right to freedom of association of a state's members, neither does it violate the state's right to freedom of association. In this way, Wellman's argument fails to entail the moral impermissibility of irregular migration.

According to Yong, irregular migration (to internationally legitimate states) is morally impermissible on account of the fact that it violates the state's right to political independence, or noninterference in internal affairs. This right "protects the rightholder state's capacity to independently formulate and implement laws and policies in central and morally acceptable domains of domestic policymaking" (Yong, 2018, 467). There is a correlative obligation, then, not to interfere in a state's internal affairs, i.e., not to interfere with its capacity to independently formulate and implement laws and policies. According to Yong, this obligation renders irregular migration impermissible. This is because:

> Immigration, especially on a large scale, will typically have a substantial impact on various aspects of the receiving state's economy and society that the state's domestic

> policies might reasonably seek to regulate. For example, the rate of immigration and the skill composition of the entering pool tends to affect outcomes in the domestic labor market, the rate of labor productivity, levels of expenditure on social services and the welfare state … and other outcomes of concern to domestic economic and fiscal policy (Yong, 2018, 467).

From this, Yong concludes that large-scale irregular migration constitutes interference in a state's internal affairs, and is thus morally impermissible, as it violates the state's right to political independence. On the face of it, this appears to entail that, in order to discharge the obligation not to interfere in a state's internal affairs, one is morally required not to immigrate without the state's authorisation.

Even if we grant, however, that states have a right to political independence, this is insufficient to render irregular migration, in general, morally impermissible. This is because, in practice, irregular migrants typically have little to no impact on the state's capacity to "pursue its chosen domestic policy goals and implement its preferred policies" (Yong, 2018, 468). An individual in Canada, for example, who crosses the border into the US without authorisation does not thereby damage the US's capacity to pursue and implement its preferred domestic policies. Thus, the right to political independence does not render irregular migration morally impermissible (except in those rare cases in which an individual, by crossing into a given state without legal authorisation, would thereby harm the state's capacity to pursue and implement its preferred domestic policies).

Note that it might be objected, here, that the right to political independence renders irregular migration morally impermissible, even where it does not interfere with the state's capacity to independently formulate and implement laws and policies. Consider that it is plausibly the case that an individual is under an obligation to pay his taxes, even if his failing to do so will not

have any negative consequences. According to this objection, then, a prospective migrant is similarly under an obligation not to migrate to a state without authorisation even if his doing so will not interfere with the state's political independence. This objection fails, however, as the two cases are relevantly dissimilar. The individual's obligation to pay his taxes is grounded in the principle of fair play. In contrast, however, as I argue in section 2, prospective migrants are not under obligations of fair play to comply with immigration law.

Yong is aware that it is only *large-scale* noncompliance with immigration law that interferes with a state's internal affairs. He maintains, however, that irregular migration is, in general, morally impermissible. In order to do so, he argues that:

> Assuming that a given state's capacity to regulate immigration would be significantly undermined if there was widespread noncompliance by would-be migrants with its regime of primary immigration law, I argue that other states and their members - including and especially would-be migrants – are *collectively* required to prevent this level of noncompliance if the state satisfies the criteria for international legitimacy. Each individual migrant to that state is then required to do her fair share in discharging this *collective duty*" (Yong, 2018, 468; emphasis mine).

In other words, prospective migrants are under a *collective obligation* (or duty),[41] grounded in a state's right to political independence, to prevent widespread noncompliance with immigration law. As is stated by Moritz Schulz, "which varieties of apparently collective duties exist in fact and under which conditions they obtain [is] an issue hotly contested in the collective morality literature" (2023, 320fn1). I will not, however, seek to determine, here, whether or not prospective migrants are in fact under a collective obligation, grounded in the

[41] While Yong and Moritz Schulz use the term 'collective duty,' I use the term 'collective obligation,' in line with the distinction between duties and obligations outlined in section 1. In this discussion, however, nothing turns on which term is used.

state's right to political independence, to prevent widespread noncompliance with immigration law. This is because, even if prospective migrants are under such a collective obligation, this fails to entail that each individual prospective migrant is thereby under a moral obligation to comply with immigration law. This is because:

> [K]nowing what we ought to do *collectively*, we still need to ask what it is that *any one of us* ought to do in virtue of it. Yet answering this latter question is not trivial … as we must allocate contributory duties to individuals, such that they jointly lead to the collective duty being fulfilled (Schulz, 2023, 321; emphasis in original).

Thus, that prospective migrants are under a collective obligation to prevent widespread noncompliance with immigration law does not entail that each individual prospective migrant is thereby obliged to comply with immigration law. In order to see this more clearly, consider the following example. A group of students promise their teacher that they will not damage the grass in the school playground. By stipulation, the students are thereby under a collective obligation not to damage this grass. Furthermore, if all of the students walk on the grass each day, the grass will become damaged. This, however, does not entail that no students may walk on the grass. If not all of the students want to walk on the grass each day, then those who wish to are morally permitted to do so. (Note that the obligation not to walk on the grass is not an obligation of fair play – those who walk on the grass are thus not freeriding on the actions of those who do not walk on the grass.) Similarly, provided that the level of irregular migration to a state is not interfering with the state's capacity to pursue and implement its preferred policy choices, irregular migration to that state is not morally impermissible, even granting that there is a collective obligation to prevent *widespread* noncompliance with immigration law. Thus, a state's right to political independence fails to render irregular migration to its territory, in general, morally impermissible. It is only where there is, or is close to, *widespread*

noncompliance with a state's immigration law, that the state's right to political independence renders irregular migration to its territory morally impermissible.[42]

According to the fourth argument against the moral permissibility of irregular migration, prospective migrants are morally obligated to refrain from immigrating to a given state because their immigration would impose significant harms on existing members of the state. This is because we have moral reason to refrain from imposing significant harms on others (where we can avoid doing so at little cost to ourselves).[43] Note that the harms imposed on a state's members include, for example, "economic disadvantage for low-skilled workers, fiscal burdens for government, undesired cultural change, and harmful political change" (Huemer, 2019, 39). Of course, this argument is not sufficient to demonstrate that irregular migration is, in general, morally impermissible. This is because, firstly, "[m]uch cross-border movement is harmless" (Stilz, 2019, 188). Furthermore, in many cases irregular migrants benefit, as opposed to harm, members of the receiving state. Thus, given that irregular migration does not *necessarily* impose significant harms on the receiving state's members, the argument from the harms of migration fails to entail that irregular migration is, in general, morally impermissible.

Nevertheless, in some cases, migration to a state (whether regular or irregular) does impose significant harms on that state's existing members. Consider, for example, the following case. There is a small island state, which has approximately 200 residents, and next to no visitors. The island has a limited supply of fresh water, and insufficient funds to either import water from abroad or desalinate seawater. The available freshwater on the island is not quite sufficient to adequately fulfil each of the state's members' needs (drinking water, showers, washing

[42] Although note that, even in this case, the state's right to political independence may plausibly be overridden by the claims of some irregular migrants, e.g, those refugees who are in desperate need of a safe state in which to live.

[43] Note that this argument thus plausibly does not apply to refugees and other migrants in urgent need of a safe state – it is often not the case that such prospective migrants can refrain from migrating at little cost to themselves.

machines and so on). Accordingly, the available water is rationed among the members. In this case, even one or two new immigrants to the state would have a strong negative impact on the state's existing members' access to clean water. In this case, then, prospective migrants are under a moral obligation to refrain from migrating to the state and imposing such harm on its members. This example demonstrates that, in some cases, irregular (and plausibly also regular) migration to a state is morally impermissible. (Interestingly, note that the obligation to refrain from migrating to a state in order to avoid imposing significant harms on others can come apart from, and be more demanding than, the obligation to comply with immigration law. This is the case where prospective migrants are legally permitted to enter a state, yet their doing so would impose significant harms on others, which they could avoid at little cost to themselves.)

In the preceding paragraphs, I have demonstrated that prospective migrants do not, in general, have moral obligations to comply with immigration law. More specifically, while irregular migration is morally impermissible when it imposes significant harms on members of the receiving state, it is, in general, morally permissible. I will now proceed by examining some of the implications of the moral permissibility of irregular migration.

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First, a brief note on the scope of the following arguments. The discussion in the following pertains only to those irregular migrants who have crossed into a state's territory irregularly – i.e., without legal authorisation to do so. There are a number of ways in which an individual may become an irregular migrant. He may, for example, enter a state regularly and subsequently "breach the conditions upon which entry or stay was granted, such as by visa overstaying, doing work that is not permitted, or due to a criminal conviction" ("Irregular

Migration in the UK," 2020).[44] It is plausibly the case, however, that such individuals, in virtue of having resided in the state for an extended period of time, have thereby acquired political obligations, e.g., of fair play or consent, to abide by its laws. Plausibly, furthermore, the act of entering a state on a visa constitutes consent to have left the state by the time the visa runs out. It is thus not clear that such forms of irregular migration are morally permissible – whether or not this is the case is beyond the scope of this essay. The discussion in the following is thus limited to those irregular migrants who become irregular migrants by *entering* a state in contravention of its immigration law (as opposed to by *remaining* in the state in contravention of its law).

The discussion is limited, secondly, to those irregular migrants who were under no moral obligation not to enter the state's territory. It does not apply, then, to, e.g., those irregular migrants who, by migrating, thereby impose significant harms (which they could avoid at little cost to themselves) on others. Rather, the arguments in the following pertain only to those prospective migrants whose irregular migration is morally permissible. (While the arguments thus do not apply to *all* irregular migrants, it is nevertheless worthwhile to explore the practical implications of the moral permissibility of irregular migration. This is because, as I have demonstrated thus far, prospective migrants are, in general, morally permitted to cross into a state's territory in contravention of its immigration law.)

There are a number of implications of the moral permissibility of irregular migration. We might consider, for example, the implications of the moral permissibility of irregular migration for the state, and its treatment of those irregular migrants who are present on its territory. According to Huemer, for example:

[44] He may also be born "to parents who are irregular migrants", or fail to "leave the country after an application for asylum has been rejected and all rights of appeal exhausted" ("Irregular Migration in the UK," 2020).

> Since illegal immigration is perfectly ethically defensible, it seems that it would be on its face unjust to punish a person for immigrating illegally. … [W]e should not deny undocumented migrants a pathway to citizenship (if they would otherwise have had such a pathway) simply because they broke the law, since a person should not in general be punished for doing something that is perfectly ethically permissible. In short, illegal immigrants have not done anything wrong … and should not be punished in any way (2019, 48).

In a similar vein, whether or not prospective migrants have obligations, grounded in consent, to comply with immigration law may have implications for whether irregular migrants can legitimately be subject to a state's criminal law. This possibility is highlighted in the following passage:

> [S]ince the state prerogative to inflict punishment relies on the consent by citizens to that sovereign authority, the imposition of criminal liability on unauthorized non-members is illegitimate given that they have no say in the law-making process and no stake in the compliance of those laws. … [I]n response … it may be argued that consent theories of punishment are based on the idea of an implicit or tacit consent. Accordingly, by entering and residing in the host state, non-members can be said to tacitly consent to the infliction of punishment upon the establishment of their criminal liability (Aliverti, 2017, 280).

In the following, however, rather than examine the implications for states of the moral permissibility of irregular migration, I will instead examine its implications for the behaviour of individuals. This is because questions of individual ethics have been largely ignored in the philosophical literature on migration. As Hidalgo points out, "[m]ost philosophers who work on the ethics of immigration write about public policy, not questions about individual ethics"

(2019, 2). Such questions are nevertheless highly important, and merit attention. This is because the answers to such questions can both help to guide decision-making and impact individuals' policy preferences (Hidalgo, 2019, 2). Consider, for example, that "people's judgments about the "innocence" of unauthorized immigrants affect their views about whether to extend them public benefits and entitlements" (Hidalgo, 2019, 8fn1).

When considering the implications of the moral permissibility of irregular migration for individual ethics, one may examine its implications for prospective migrants themselves. According to Huemer, for example, while the moral permissibility of irregular migration does not entail that it is either "wise or feasible" (48, 2019), its permissibility is nonetheless "of practical import to individuals who are considering migrating illegally" (Huemer, 48, 2019). In this section, however, I will examine what the moral permissibility of irregular migration entails for a state's existing members. More specifically, I will examine what it entails for (a) members' attitudes toward irregular migrants and (b) the moral permissibility of members helping irregular migrants to enter the state's territory.

With regards to what it is that the moral permissibility of irregular migration entails for a state's members' attitudes towards irregular migrants, Huemer states that, having "learned that illegal immigration is not wrong, we should eschew negative reactive attitudes, such as blame or resentment, directed at illegal immigrants" (2019, 48). He does not detail why this is the case. Nevertheless, attitudes such as blame and resentment are most aptly directed at moral wrongdoing. Thus, if it is the case that irregular migration does not constitute moral wrongdoing, irregular migrants are not – simply in virtue of their status as irregular migrants – appropriate objects of such attitudes.

I now turn to the implications of the moral permissibility of irregular migration for the moral permissibility of members helping irregular migrants to enter the state's territory. I will

demonstrate that helping irregular migrants to enter a given state is not, in itself, morally wrong. This, however, does not entail that doing so is, all-things-considered, morally permissible. This is because members typically have political obligations not to help irregular migrants enter the state. Nevertheless, I will demonstrate that these political obligations are defeated where the irregular migrant in question is seeking to enter the state on grounds of necessity. I will thus conclude that it is morally permissible for members of a given state to help those prospective migrants who are seeking to enter the state via irregular channels on grounds of necessity to do so.

As is stated by Gregory Mellema, when a person becomes complicit in wrongdoing by "willingly [participating] in wrong initiated by another, the person almost certainly becomes responsible for the end result" (2008, 96). For example, if a person helps his wealthy friend to steal money from a stranger's house (perhaps he drives his friend to and from the scene of the crime) he thereby not only helps his friend to commit moral wrongdoing, but he commits a moral wrong himself. Therefore, if irregular migration constituted a moral wrong, it would be morally impermissible for members of a given state to help irregular migrants enter the state. Given, however, that irregular migration is morally permissible (i.e., prospective migrants are not morally required to refrain from entering a state without legal authorisation), it is also morally permissible for members to help them enter the state. This is because, while it is morally impermissible to aid another in his wrongdoing, it is, in contrast, morally permissible to aid another in his morally permitted or justified actions. Of course, the moral permissibility of helping others to perform morally permitted actions can be overridden, e.g. where one has promised not to do so. Nevertheless, it is at least presumptively morally permissible to help others perform morally permissible actions.

Nevertheless, the fact that it is not, in itself, morally wrong to help irregular migrants to enter the state via irregular channels does not entail that it is, all-things-considered, morally permissible. This is because members typically have political obligations to obey the laws of their own state. Note, however, that if it is not the case that members have political obligations,[45] then it is, all-things-considered, morally permissible for them to help irregular migrants enter the state via irregular channels. Nevertheless, it is the standard view in political philosophy that a state's members have content-independent political obligations to comply with its (not egregiously unjust) laws. (Though the ground of such obligations, e.g., consent, fair play or the natural duty of justice, is a matter of significant debate.) What, then, does the claim that a state's members have political obligations to comply with its laws entail for the moral permissibility of helping irregular migrants to enter the state?

It is true that members of a state are, in general, legally prohibited from helping irregular migrants to enter the state. For example, Section 25 of the UK's Immigration Act 1971, which pertains to the assistance of irregular migration to the UK, states that:

> A person commits an offence if he … does an act which facilitates the commission of a breach or attempted breach of immigration law by an individual who is not a national of the United Kingdom (Immigration Act 1971, 1971).

However, even granting that members do, in general, have political obligations to obey the law, it is not the case that these obligations are absolute. One's presumptive political obligation to obey the law is defeated, for one, when disobeying the law is required on grounds of necessity. An individual is morally permitted to break the law, that is, provided that he is "immediately threatened with harm, that the harm in question is sufficiently serious to count as necessity and that there is no reasonable alternative means" (D. Miller, 2023, 845) of avoiding the danger

[45] This argument is made by philosophical anarchists. See, e.g., Simmons (2001).

other than to break the law. For example, as Joel Feinberg (1978) states, it is morally permissible to break and enter an unoccupied cabin in the mountains when doing so is necessary to survive an incoming winter storm. Of course, many migrants (including but not limited to refugees) cross into a state's territory via irregular channels on grounds of necessity.[46] (Interestingly, D. Miller thus concludes that, while prospective migrants are generally under a natural duty of justice to comply with immigration law, those seeking to enter on grounds of necessity are not bound by this duty (D. Miller, 2023, 844-846).)

In fact, it is not only morally permissible to break the law in cases in which you yourself face an imminent threat of danger. It is also morally permissible to break the law in order to aid others who are threatened by imminent harm. In order to see this, is instructive to extend Feinberg's example in the following way. Imagine that, while attempting to enter the cabin, a second backpacker, Lorenzo, appears. He is younger and fitter than the first, and, unlike the first backpacker, he is capable of hiking out of the area to safety. He is thus not in need of the shelter provided by the cabin. Nevertheless, it is morally permissible for Lorenzo to aid the first backpacker in breaking into the cabin, so that he can survive the storm. Similarly, it is morally permissible for members of a state to break the law in order to help prospective migrants enter the state irregularly, when the prospective migrants are doing so on grounds of necessity. In contrast, while it is morally permissible for prospective migrants to enter a state on grounds other than necessity, it is not, all-things-considered, morally permissible for members to help them to do so.

In order to highlight the practical implications of this conclusion, I will now discuss some of the ways in which members may help prospective migrants enter the state, when they are doing so on grounds of necessity. Members may, firstly, offer to transport migrants across borders,

[46] While it is difficult to determine exactly where the boundary lies between entering on grounds of necessity, and other grounds, it is clear that at least some migrants have grounds of necessity to enter a state's territory.

without asking for anything in return. It is morally permissible, for example, for lorry drivers crossing from Mexico into the US to allow prospective migrants to the US to conceal themselves in their vehicle, in order to enter the US undetected by the authorities. The prospective migrant is performing a morally permissible action in crossing into the US without legal authorisation, and lorry drivers are thus morally permitted to help him to do so, provided that the prospective migrant is entering on grounds of necessity.

Furthermore, it is sometimes morally permissible to help migrants enter a state on grounds of necessity by engaging in migrant smuggling (also commonly referred to as 'people smuggling,' or 'human smuggling').[47] It may be objected that this is necessarily morally impermissible because migrant smuggling is inherently exploitative. This, however, is to confuse human trafficking and migrant smuggling. According to the United Nations Office on Drugs and Crime (UNODC), human trafficking:

> [I]nvolves the recruitment, movement or harbouring of people for the purpose of exploitation - such as sexual exploitation, forced labour, slavery or organ removal. Victims can be children or adults, boys, girls, men or women, and are trafficked by the use of improper means such as the threat or use of force, fraudulent schemes, deception, or abuse of power ("Human Trafficking and Migrant Smuggling," 2024).

Human trafficking, then, is by definition exploitative and is thus morally impermissible. In contrast, migrant smuggling consists in assisting "migrants in crossing international borders without official authorisation and in return for compensation" (Hidalgo, 2016a, 311). Of course, some migrant smugglers are engaged in serious moral wrongdoing. This is the case when they "deceive migrants, negligently expose them to risks, kidnap them, and abuse them

[47] For an argument that "people smuggling that assists refugees in escaping threats to their rights can be morally justified", see Hidalgo (2016a).

in other ways" (Hidalgo, 2016a, 316). As Hidalgo (2016a) argues, however, people smuggling is not necessarily exploitative. Consider, for example, that is possible for a wealthy family fleeing Iran to pay a smuggler a (not unreasonably high) sum of money for him to drive them across the border into Turkey, without thereby being exploited by him. Interestingly, in fact "for purely economic reasons, smugglers rely heavily on their reputation. Therefore, it is mostly in their interest to successfully process smuggling operations and not to deceive their clients" (Bilger, Hofmann and Jandl, 2006, 87). Thus, we see that migrant smuggling is not inherently a moral wrong. In conclusion, then, it is morally permissible to help prospective migrants to enter a state on grounds of necessity via irregular channels, and also to accept a (reasonable) payment in return for the service.

In this section, I first argued that migrants do not have moral obligations to comply with immigration law grounded in either (1) Blake's argument from the "right to be free from others imposing obligations on us without our consent" (Blake, 2013, 115), (2) Wellman's argument from the right to freedom of association, (3) Yong's argument from the right to political independence or (4) arguments from the harms imposed by immigration on a state's members. I then examined the implications of the moral permissibility of irregular migration for a state's members. I concluded, firstly, that irregular migrants are not, in virtue of their status as irregular migrants, appropriate objects of reactive attitudes such as blame and resentment. I subsequently concluded that, while aiding irregular migrants to enter the state is not inherently morally impermissible, in light of their political obligations not to do so, members are only morally permitted to help prospective migrants enter the state via irregular channels when they are doing so on grounds of necessity.

Conclusion

In conclusion, in this essay I have argued that prospective migrants are not, in general, morally obliged to comply with immigration law. I demonstrated, in sections 1-3, that prospective migrants are not, in general, under political obligations, grounded in the natural duty of justice, fair play or consent, to comply with immigration law. Then, in section 4, I demonstrated that neither do prospective migrants have, in general, moral obligations to comply with immigration law. Finally, I examined the practical implications of the moral permissibility of irregular migration. I concluded, firstly, that irregular migrants are not, in virtue of their status as irregular migrants, appropriate objects of reactive attitudes such as blame and resentment and, secondly, that members are morally permitted to help prospective migrants enter the state via irregular channels when they are doing so on grounds of necessity.

Across the globe, states are strengthening their border controls. In the UK, on 20 July 2023, the Illegal Migration Act 2023 came into effect, changing "the law so that those who arrive in the UK illegally will not be able to stay here and will instead be detained and then promptly removed, either to their home country or a safe third country" (Home Office, 2024a). In the US, on 4 June 2024, Joe Biden issued an executive order "under which … officials can quickly remove migrants entering the US illegally without processing their asylum requests" (Debusmann, 2024). Public support for such measures is, to a large extent, underpinned by the implicit assumption that crossing into a state's territory without authorisation is morally impermissible. Consider, for example, Rishi Sunak's assertion that "illegal immigration undermines not just our border controls … it undermines the very fairness that is so central to our national character. We play by the rules. We put in our fair share. We wait our turn" ("PM's remarks on illegal migration: 7 December 2023," 2023). The implication, here, is that failing to comply with a state's immigration law is morally wrong. It is important that political philosophers carefully examine the implicit assumptions that are present in political discourse,

and, in this essay, I have demonstrated that prospective migrants are not, in general, morally obliged to comply with immigration law.

Bibliography

Aleinikoff, T. Alexander. 2010. “T. Alexander Aleinikoff.” In *Immigrants and the Right to Stay*, edited by Joseph Carens, 103–11. Cambridge, Massachusetts: The MIT Press.

Aliverti, Ana. 2015. “The Wrongs of Unlawful Immigration.” *Criminal Law and Philosophy* 11 (2): 375–91.

“Application for Immigrant Visa and Alien Registration.” 2007. *US Department of State*. Accessed June 9. https://japan2.usembassy.gov/pdfs/wwwf-ds0230-all.pdf

Beitz, Charles R. 1979. *Political Theory and International Relations*. Princeton, New Jersey: Princeton University Press.

Beran, Harry. 1987. *The Consent Theory of Political Obligation*. London: Croom Helm.

Bilger, Veronika, Martin Hofmann, and Michael Jandl. 2006. “Human Smuggling as a Transnational Service Industry: Evidence from Austria.” *International Migration* 44 (4): 59–93.

Blake, Michael. 2013. “Immigration, Jurisdiction, and Exclusion.” *Philosophy & Public Affairs* 41 (2): 103–30.

Carens, Joseph. 1987. “Aliens and Citizens: The Case for Open Borders.” *The Review of Politics* 49 (2): 251–73.

———. 1988. “Immigration and the Welfare State.” In *Democracy and the Welfare State*, edited by Amy Gutmann, 207–30. Princeton, New Jersey: Princeton University Press.

———. 2013. *The Ethics of Immigration.* Oxford: Oxford University Press.

Dagger, Richard and David Lefkowitz. 2021. "Political Obligation." *The Stanford Encyclopedia of Philosophy*. Stanford University. Accessed 5 June 2024. https://plato.stanford.edu/entries/political-obligation/Fstan

Debusmann, Bernd, Jr. 2024. “Biden announces asylum restrictions to ‘control border’.” *BBC News.* June 5. Accessed June 9. https://www.bbc.co.uk/news/articles/c7227y6nqzmo

Feinberg, Joel. 1978. “Voluntary Euthanasia and the Inalienable Right to Life.” *Philosophy & Public Affairs* 7 (2): 93–123.

Frontex. 2024. “Significant Rise in Irregular Border Crossings in 2023, Highest since 2016.” *www.frontex.europa.eu*. January 26. Accessed June 05. https://www.frontex.europa.eu/media-centre/news/news-release/significant-rise-in-irregular-border-crossings-in-2023-highest-since-2016-C0gGpm#:~:text=The number of irregular border.

Green, Leslie. 1988. *The Authority of the State*. Oxford: Clarendon Press.

Grey, Colin. 2015. *Justice and Authority in Immigration Law.* Oxford: Hart Publishing.

Hidalgo, Javier. 2014a. “Freedom, Immigration, and Adequate Options.” *Critical Review of International Social and Political Philosophy* 17 (2): 212–34.

———. 2014b. “Immigration Restrictions and the Right to Avoid Unwanted Obligations.” *Journal of Ethics and Social Philosophy* 8 (2): 1–8.

———. 2015. “Resistance to Unjust Immigration Restrictions.” *Journal of Political Philosophy* 23 (4): 450–70.

———. 2016a. “The Ethics of People Smuggling.” *Journal of Global Ethics* 12 (3): 311-32.

———. 2016b. “The Duty to Disobey Immigration Law.” *Moral Philosophy and Politics* 3 (2): 165-186.

———. 2019. “The Ethics of Resisting Immigration Law.” *Philosophy Compass* 14 (12): 1–10.

Home Office. 2023. “Citizenship Ceremonies: Guidance Notes (English and Welsh). *www.gov.uk*. May 11. Accessed May 25. https://www.gov.uk/government/publications/british-citizenship-successful-applicants/citizenship-ceremonies-guidance-notes-english-and-welsh.

———. 2024a. “Illegal Migration Act 2023.” *www.gov.uk*. April 22. Accessed May 25. https://www.gov.uk/government/collections/illegal-migration-bill.

———. 2024b. “Immigration Rules - Immigration Rules Appendix Visitor: Visa National List.” *www.gov.uk.* May 16. Accessed May 25. https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-visitor-visa-national-list.

———. 2024c. “Immigration Rules - Immigration Rules Part 1: Leave to Enter or Stay in the UK.” *www.gov.uk*. May 16. Accessed May 25. https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-1-leave-to-enter-or-stay-in-the-uk.

———. 2024d. “UK Visa Requirements (Accessible Version).” *www.gov.uk*. February 22. Accessed May 25. https://www.gov.uk/government/publications/uk-visa-requirements-list-for-carriers/uk-visa-requirements-for-international-carriers.

Huemer, Michael. 2019. “In Defense of Illegal Immigration.” In *Open Borders: In Defense of Free Movement*, edited by Reece Jones, 34–50. Athens, Georgia: University of Georgia Press.

“Human Trafficking and Migrant Smuggling.” 2024. *United Nations Office on Drugs and Crime.* Accessed May 25. https://www.unodc.org/e4j/en/secondary/human-trafficking-and-migrant-smuggling.html.

“International Cooperation.” 2024. *Migration Policy Institute*. Accessed June 9. https://www.migrationpolicy.org/topics/international-cooperation

“International Standards Governing Migration policy.” 2024. *Office of the United Nations High Commissioner for Human Rights*. Accessed June 5. https://www.ohchr.org/en/migration/international-standards-governing-migration-policy

“Immigration Act 1971.” 1971, c.77. Accessed 10 June. https://www.legislation.gov.uk/ukpga/1971/77/data.xht?view=snippet&wrap=true#commentary-key-831fad3af90a46a1cc0d4d088c70717b

“Irregular Migration in the UK.” 2020. *The Migration Observatory*. September 11. Accessed May 25. https://migrationobservatory.ox.ac.uk/resources/briefings/irregular-migration-in-the-uk/.

Klosko, George. 2004. *The Principle of Fairness and Political Obligation*. New Edition. Oxford, UK: Rowman & Littlefield.

Kuflik, Arthur. 2010. “Hypothetical Consent.” In *The Ethics of Consent: Theory and Practice*, edited by Franklin Miller and Alan Wertheimer, 131–62. Oxford: Oxford University Press.

Lee, Win-chiat. 2016. “On Nonmembers’ Duty to Obey Immigration Law: A Problem of Political Obligation.” Essay. In *Citizenship and Immigration: Borders, Migration and Political Membership in a Global Age*, edited by Ann E. Cudd and Win-chiat Lee, 177–89. Cham, Switzerland: Springer.

Lyons, David. 2014. “Natural Duty of Justice.” In *The Cambridge Rawls Lexicon*, edited by Jon Mandle and David A. Reidy, 551–52. Cambridge: Cambridge University Press.

Mellema, Gregory. 2008. “Professional Ethics and Complicity in Wrongdoing.” *Journal of Markets & Morality* 11 (1): 93–100.

“Migration Within the Mediterranean.” 2024. *Missing Migrants Project*. Accessed May 25. https://missingmigrants.iom.int/region/mediterranean.

Miller, David. 2013a. “Justice in Immigration.” *Nuffield College Working Paper Series in Politics*, 1–40.

———. 2013b. “Political Philosophy for Earthlings.” In *Justice for Earthlings: Essays in Political Philosophy,* 16–39. Cambridge: Cambridge University Press.

———. 2023. “Authority and Immigration.” *Political Studies* 71 (3): 835–50.

———. n.d. “Michael Walzer on Immigration: A Critical Analysis.” *Unpublished manuscript*, 1–22.

Miller, Seumas. 2019. "Social Institutions." *The Stanford Encyclopedia of Philosophy*. Stanford University. Accessed 5 June 2024. https://plato.stanford.edu/archives/sum2019/entries/social-institutions/

“Moving or Travelling to Svalbard.” 2024. *Nordic Co-Operation*. Accessed May 25. https://www.norden.org/en/info-norden/moving-or-travelling-svalbard#:~:text=The%20Norwegian%20Social%20Welfare%20Act,of%20illness%2C%20disability%20or%20age.

Oberman, Kieran. 2013. “Can Brain Drain Justify Immigration Restrictions?” *Ethics* 123 (3): 427-455.

———. 2016. “Immigration as a Human Right” In *Migration In Political Theory: The Ethics Of Movement And Membership*, edited by Sarah Fine and Lea Ypi, 32-56. Oxford: Oxford University Press.

Penvick, Ryan. 2009. “Social Trust and the Ethics of Immigration Policy.” *The Journal of Political Philosophy* 17 (2): 146-167.

“PM's remarks on illegal migration: 7 December 2023.” 2023. *Prime Minister's Office, 10 Downing Street* and *The Rt Hon Rishi Sunak.* Accessed June 9. https://www.gov.uk/government/speeches/pms-remarks-on-illegal-migration-7-december-2023

Rawls, John. 1964. “Legal Obligation and the Duty of Fair Play.” In *Law and Philosophy: A Symposium*, edited by Sidney Hook, 3–18. New York: New York University Press.

———. 1999a. *A Theory of Justice*. Revised Edition. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.

———. 1999b. *The Law of Peoples: With the Idea of Public Reason Revisited*. Cambridge, Massachusetts: Harvard University Press.

Raz, Joseph. 1986. *The Morality of Freedom*. Oxford: Clarendon.

Robert, Nozick. 1974. *Anarchy, State and Utopia*. New York: Basic Books.

Schulz, Moritz A. 2023. “So What’s My Part? Collective Duties, Individual Contributions, and Distributive Justice.” *Historical Social Research* 48 (3): 320-349.

Sherrell, Henry. 2022. “The Central Role of Cooperation in Australia’s Immigration Enforcement Strategy.” *Migration Policy Institute*: 1-28.

Simmons, A. John. 1979. *Moral Principles and Political Obligations*. Princeton: Princeton University Press.

———. 2001. *Justification and Legitimacy: Essays on Rights and Obligations*. Cambridge: Cambridge University Press.

Steiner, Hillel. 1981. “Nozick on Hart on the Right to Enforce.” *Analysis* 41 (1): 50.

Stiglitz, Joseph E. 2018. “The Welfare State in the Twenty-First Century.” In *The Welfare State Revisited*, edited by José Antonio Ocampo and Joseph E. Stiglitz, 3-37. New York: Columbia University Press.

Stilz, Anna. 2019. *Territorial Sovereignty: A Philosophical Exploration.* Oxford: Oxford University Press.

“Undermine.” 2024. *Cambridge Dictionary*. Accessed June 9. https://dictionary.cambridge.org/dictionary/english/undermine

UN General Assembly. 1951. *Convention Relating to the Status of Refugees*. July 28. United Nations.

“Visas and Immigration.” 2023. *Governor of Svalbard*. June 19. Accessed May 25. https://www.sysselmesteren.no/en/visas-and-immigration/.

Waldron, Jeremy. 1993. “Special Ties and Natural Duties.” *Philosophy & Public Affairs* 22 (1): 3–30.

Walzer, Michael. 1983. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books.

Wellman, Christopher Heath. 2008. “Immigration and Freedom of Association.” *Ethics* 119 (1): 109–41.

Wolff, Robert Paul. 1998. *In Defense of Anarchism*. Berkeley, California: University of California Press.

Yong, Caleb. 2018. “Justifying Resistance to Immigration Law: The Case of Mere Noncompliance.” *Canadian Journal of Law & Jurisprudence* XXXI (2): 459–81.