

In Defense of Commercial Human Smuggling

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Abstract:

In the wake of the European refugee crisis, not one day passes by, without a high-ranking politician condemning commercial human smuggling. The goal of this paper is to discuss the morality of commercial human smuggling. The first part of the paper discusses whether (commercial) human smuggling is inherently wrong. In particular, I want to analyze four properties that commercial human smuggling is usually identified with that might explain the apparent moral wrongness of commercial human smuggling: violation of immigration laws, the commercial aspect, exploitation and a risk to life. My analysis, however, will conclude that – contrary to what many believe – there is nothing inherently wrong with human smuggling. The second part asks whether the practice of commercial human smuggling in Europe can be morally condemned for contingent reasons. Here, I will make an argument that relies on two claims: (a) that there is a minimal consensus that the destitute and persecuted have *a right to apply* for sanctuary and (b) that the only way to apply for asylum in the EU is actually by applying from within the EU. Building on these claims, I argue that the current practice of commercial human smuggling is morally permissible, since it is the only viable option for the destitute to secure their right of applying for sanctuary. In the third part, I will discuss some of the real world ramifications of my results. In particular, I will make the argument that by respecting the right to apply for sanctuary the European Union could dry up the practice of *morally permissible* commercial human smuggling and in that (re)-legitimize its border protection measures.

In Defense of Commercial Human Smuggling

In the wake of the European refugee crisis, not one day passes by, without a high-ranking politician condemning human smuggling. They demand that “Europe must take even more decisive action against human smugglers”, celebrate military operations against smugglers as an “impressive symbol of determination and solidarity” (Gebauer et al. 2014) and call out

commercial human smuggling for being a “disgusting crime” (ARD 2015). Even international organizations are quick to morally condemn organized human smuggling. The United Nations Office on Drugs and Crime (2010b: 29) recently has published a 300 page long ‘Toolkit to Combat Smuggling of Migrants’, despite the fact the United Nations and its various organizations explicitly recognize that human smugglers are often the only way for refugees and the destitute to get to a safe place. We find ourselves in a situation then, as van Liempt and Sersli (2013: 2) point out, in which we are constantly confronted with the “[d]iscursive associations between smugglers and crime [...] by politicians, the media and academics.”

At the same time, from a purely moral point of view, it does not seem obvious that this round-about way of morally condemning human smugglers is justified. Human smuggling rings are often the only way for refugees and other people in desperate need to escape unjust states and find sanctuary. Under the current refugee system in place in the EU furthermore, the only way to apply for asylum – with very few exceptions – is from within a member state of the European Union. Without relying on the help of human smugglers, refugees therefore have almost no chance to apply for asylum. Against this background, shouldn't we rather praise human smugglers for helping the worst off to secure their rights? It is important, furthermore, to distinguish human smuggling from human trafficking. While human trafficking, according to the standard definition of the United Nations Office on Drugs and Crime (2004: 42), concerns “the recruitment, transportation, transfer, harbouring or receipt of persons, *by means of threat or use of force*”¹, commercial human smuggling on the other hand, or as the UN calls it “migrant smuggling”, is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” (United Nations Office on Drugs and Crime 2004: 54)

The main goal of this paper is to ascertain under which conditions human smuggling is morally permissible and what makes human smuggling morally blameworthy. More specifically, I want to analyze whether commercial human smuggling is inherently or just contingently wrong. Since human smuggling is a phenomenologically very rich subject, I will discuss this first question by relying on a simple thought experiment. Although the thought experiment is simple, I submit that it can capture the variables that are most important when talking about the moral status of commercial human smuggling. The result of my thought experiment, as we will see, is that there is nothing inherently wrong with commercial human smuggling. Against the background of the European refugee crisis then, I want to discuss whether the practice of commercial human smuggling nevertheless is morally wrong for *contingent reasons*. It might for instance be the case that in the wake of the European refugee crisis human smugglers across the board mistreat their passengers, exploit them, or in others ways conduct moral wrongs so that – even though not every single case of human smuggling is morally wrong – the heads of the European Union, the spokespersons of the UN and many media outlets are justified in their blanket moral condemnation of commercial human smuggling. My core argument in the second chapter will be that there is a normative minimal consensus that the destitute and persecuted have *a right to apply* for sanctuary as an outgrowth of a more general right for sanctuary. Furthermore, as it stands, the only way to apply for asylum (and thus sanctuary) in the EU is actually by applying from within the EU. As long as this is the case, I argue, the current practice of commercial human smuggling is morally permissible, since it is the only viable option for the destitute to secure their right of applying for sanctuary. The result of my first two chapters then will be that there is nothing inherently wrong with commercial human smuggling and that the current practice of human smuggling in the European context by and large is morally permissible. This leads me to the conclusion that the current crack-down on human smugglers – as long as they ferry the destitute and persecuted – is actually

morally wrong. The goal of the third chapter is to discuss some of the empirical implications of my results. In particular, I will be concerned with the question of how Europe could respect the right of the destitute and persecuted to apply for sanctuary, given real-world feasibility constraints.

Part 1: Is commercial human smuggling inherently wrong?

From a philosophical point of view, the problem with talking about human smuggling is that it is a phenomenologically very rich field. To make phenomenological rich problems manageable philosophy employs thought experiments. This is also what I will do here. What I am trying to capture with the thought experiment are in particular the normative issues that have arisen in the discussion about human smuggling in the wake of the refugee crisis in Europe. I will design our thought experiment then to capture what might be called the paradigmatic case of commercial human smuggling.

Let us then set the stage for the thought experiment. Imagine that there are two islands. The first island, island A, is generally known to be a failing state that is very poor and unjustifiably persecutes people. Its political and economic institutions are dysfunctional, so that the basic needs of a large part of society are not met. Imagine further there is an island B. Island B is a wealthy modern democracy. At the shore of country A there is Bert, who is unjustly persecuted and whose minimal needs are not satisfied by his home country. Bert seeks to apply for sanctuary in B. Let us further imagine that Bert has a certain amount of cash, maybe he has just sold his apartment, so he is able to pay an agent to ferry him over the sea to island B. Now imagine there is Anna. Anna is an average person, neither rich nor poor, she has a boat and for some reason she can travel freely between A and B.²

The main goal of the first part is now to ascertain whether commercial human smuggling is inherently wrong. In general we can distinguish between acts that are inherently wrong and acts that are contingently wrong. Acts that are inherently wrong go down as a minus in the

moral balance sheet regardless of the circumstances. Paradigmatic cases of inherently wrong acts are rape and murder.³ The very act of raping or murdering goes down as a negative in the moral balance sheet regardless of what other values could be secured by these acts. That is not to say that there is no situation in which there would be a trumping reason so that killing could be justified – say in cases of self-defense – but nevertheless the very act of murdering goes down as a minus in the moral balance sheet.⁴ In contrast there are acts that are only wrong for contingent reasons. Imagine for instance that Anna plays a fast-paced video game. Usually there is nothing wrong with playing such computer games. Now imagine however that her friend Lucy, who suffers from epilepsies, is with her. In this case we might be justified in blaming Anna for starting that very computer game, given that she knows of her friend's condition. An act that is only contingently wrong is then an act that does not necessarily go down as a negative in the moral balance sheet, but only for contingent reasons.

Case 1: Anna ferries Bert from island A to island B for free.

Let us first discuss the case of non-commercial human smuggling to get a better understanding of the thought experiment and the issues at stake. Imagine Anna ferries Bert from island A, where his human rights are severely threatened to island B, where he is safe and he is able to exercise his basic human rights. Let us further imagine that Bert is legally permitted to enter into B. For our example it is not important whether Bert might be able to provide for himself by taking a job in B or whether B will endow him with the basic goods he needs to exercise his rights. Furthermore given that Anna in this example has bent no law and provided free passage for Bert who was in desperate need for help, it seems quite obvious that Anna's act of ferrying Bert to island B seems to be morally permissible. Since Anna has no particular responsibility to help Bert, her behavior even must be judged morally praiseworthy. How praiseworthy Anna's action are, seems to depend on contingent facts. If Anna for instance put herself in great danger by landing in A to take Bert on board,

or if she incurred great monetary costs for ferrying Bert from A to B – she may have needed to rent an ocean-going ship – we would judge her action morally praiseworthy. If on the other hand, Anna would have just landed her private yacht in A to spend a few sunny days on the gorgeous beaches of A and planned to go to B anyhow, than her act of ferrying Bert to B might still seem praiseworthy but surely not to the same extent as in the first case.

Case 2: Anna illegally ferries Bert from island A to island B for free.

Now let us assume that by crossing the border of B, Bert is actually breaking the law of island B. I take it that we usually understand human smuggling as involving an illegal entry on the side of the smuggler. Now the question is whether breaking the law makes human smuggling inherently bad.

To approach this question, we might ask, whether every type of action that involves breaking codified law is wrong. It is easy to come up with a lot of actions like stealing, killing, scamming that at the first glance seem to be pro tanto wrongs, because they involve breaking the law. If we look a little bit closer, though, we notice that we would judge these actions morally wrong, even in case that country's set of laws would permit stealing, killing and scamming. What is the reason for that? The reason seems to be that these types of actions are not wrong, because they are against the law strictly speaking, but because they are against morality. It seems to me that whether we are obliged to follow the law or – on the contrast – obliged to break the law is dependent on the moral status of the law (or a body of laws). We might thus say that a type of action is inherently wrong if it necessarily involves breaking morally justified law.⁵ The question then becomes whether human smuggling necessarily involves breaking justified law. Here, the answer seems to be straight-forward. While human smuggling might contingently involve breaking justified law, it does not do so necessarily.

Imagine for instance the case that Bert has a morally legitimate claim to obtain sanctuary in B, but at the same time a morally unjustified legislation prevents him from crossing the border to B and claim asylum. Since in that case, the law that prevents him to enter the country would be by definition unjustified, he would be at liberty to cross the border to B. This case is particularly interesting since it seems to adequately model the situation of a great many refugees in the current European crisis.⁶ As things stand the only way to apply for asylum in the European Union is from within one of the nation states. There is no way to apply for asylum from outside the European Union. As Morrison and Crosland (2001: 27-8) explain “[t]here is no such thing as a ‘refugee visa’ to gain entry into the European Union explicitly for the purpose of claiming asylum. Although occasional ‘diplomatic protection’ is offered by specific national embassies abroad, the only regular channels for refugee migration are those requiring a ‘tourist’, ‘business’, ‘student’ or some other category of visa. If any applicant is suspected of being a potential asylum-seeker then they will almost always be declined any type of entry clearance.” The current visa regime then essentially “denies most refugees the opportunity for legal migration.”⁷

It is interesting here to draw attention one of the central documents of the United Nation’s Office of Drugs and Crime. In their “Toolkit to Combat Smuggling of Migrants”, they take great pains to point out that “The Smuggling of Migrants Protocol [...] does not intend to criminalize migration as such.” In that sense, even the UNOCD, might judge the actions of both Anna and Bert morally permissible. The UNOCD only criminalizes commercial human smuggling:

“It is important to underline the fact that the criminalization of smuggling of migrants and related conduct covers only those who profit from smuggling of migrants through financial or other material gain. The Smuggling of Migrants Protocol highlights the fact that such criminalization is not to cover person and

entities, such as family members and non-governmental or religious groups, who facilitate the illegal entry of migrants for non-profit reasons.”

This of course raises the question, what is inherently wrong with commercial human smuggling.

Case 3: Anna illegally ferries Bert from island A to island B for a fair fee.

Let us then consider the next case. It is similar to the second case but for one difference: the commercial aspect which is another feature that we commonly associate with human smuggling. Remember that Anna in our example is not particularly rich but an average earner that happens to have a boat suitable for ferrying refugees. Further, remember that Bert has some amount of money. The question is now whether our moral judgment of the smuggling case changes if we inject money into the equation. Since our judgment surely is in parts depending on the amount of money Anna charges, I want to distinguish the case in which she takes a fair fee from the case that she engages in price gouging. Let's take on first the case in which Anna just charges a fair fee. This raises the question what we mean by a fair fee. As is generally acknowledged the question of what a fair price amounts to is a very difficult one. For the purpose of this argument we can just assume that Anna charges a fee that both parties judge as fair and an impartial spectator would judge as reasonable.

Now, does her taking a fair fee for her services somehow transform her action into a morally blameworthy one? To put it differently: Is it the commodification of assisting Bert that makes the act of Anna blameworthy? There are a few things to consider here: In ferrying Bert from A to B, Anna incurs considerable costs. She might need to pay back a loan for her boat; also she might have to provide food for herself and Bert during the passage. Furthermore she needs to account for the natural wear and tear of her boat. Then there are the opportunity costs she accrues by ferrying Bert across the sea instead of working a full

time job. Keeping in mind that Bert actually disposes over funds, there seems nothing wrong with Anna charging Bert a fair fee.

However, it seems to me that it makes a difference to our intuitive moral response whether Anna is ferrying Bert across the sea for free or for money. Putting the two cases next to each other, it seems to me that the natural response to the first case is moral praise while in the second case we still think that Anna's acts morally good, but we might not want to praise her. This contrast then should lead us to rethink our moral judgment about the first two cases. We can see now that in the second case Anna's actual course of conduct was not obligatory but actually supererogatory. Obligatory acts are usually defined as acts that are good to do, but bad not to do. Supererogation on the other hand is an inherently difficult concept and raises deep metaethical questions in which we cannot enter into here.⁸ We thus want to rely here on a characterization that seems adequate for our purposes. Supererogatory in that sense means that a certain action is praiseworthy to undertake while cannot be strictly demanded and thus is not blameworthy. Applied to this case, I think, we can now appreciate that Anna's ferrying Bert to B for free was actually a supererogatory act, since what could be demanded of her – at most – was to ferry him across the sea is ferrying him across the sea for a fair price.

There is also a related case to consider that is important for our discussion. In many circumstances there are actually a lot of people that wish to be ferried to B. Given that Anna wants to help as many destitute people as possible, it would be even irrational for her to ferry Bert over for free. In a situation, where many people are in need of her services, Anna needs to make sure that her boat is in a condition to make a safe passage. Furthermore, she needs to make enough money to take care of her own needs and the ones of her depends, for instance her family. Indeed, it would be prudent for her, to create savings in case she needs to pay for repairs. In this scenario, even though Anna charges a fair fee, some might deem her actions indeed not only morally permissible, but even

praiseworthy, considering that dealing with sanctuary seekers will inevitably be more dangerous than a normal job.

Case 4: Anna illegally ferries Bert from island A to island B for a very high price.

So far I have only looked at cases which – at least after some initial reflection – seem relatively uncontroversial. Next I want to look at a case that is more difficult to evaluate, but at the same time might be closer to what we associate with commercial human smuggling.

Let us assume that Anna offers Bert to ferry to B for a very high price, even an exorbitantly high price. Would there be anything morally wrong with that? The answer seems to be: not necessarily. Many goods and services are very costly, because the input factors to create a specific good x or service y are themselves very expensive. A ferry service seems to be one of these things, since offering a ferry service might include buying a boat, paying maintenance fees, paying salaries for the crew and so on. Let us for a moment assume that Anna is altruistically motivated and has very little money herself. After speaking to other smugglers and reading the available information, she comes to the conclusion that on average every third attempt of ferrying immigrants illegally to B gets shut down by the authorities. If she gets caught smuggling, she knows, her boat will get confiscated and destroyed.⁹ Given that she bought a boat for 60.000 dollars – bracketing all the other costs – and she can only take one passenger per trip that means each of her passengers need to pay at minimum 20.000 dollars. What should become clear from this small thought experiment is that charging a high price for a service does not necessarily need to constitute a moral wrong.

What we are concerned with are thus not high prices per se, but unfairly high prices. To put it differently, in this section, we are interested in how our moral judgment of Anna changes, when she engages in 'price gouging'. Following Zwolinski (2008: 349), price

gouging should be understood here “as a practice in which prices on certain kinds of necessary items are raised in the wake of an emergency to what appear to be unfair or exploitatively high levels.” Before I grapple with this problem, I want to pause here for a moment, to highlight that it is not clear whether the high prices for human smuggling are mainly due to the fact that human smugglers pocket huge profit margins or are best explained by the average costs of organizing human smuggling. Pocketing huge profit margins is usually only possible over a longer stretch of time, in case one can achieve a monopoly or some sort of cartel. At the same time, the actual evidence does not support the case that human smugglers can secure any kind of monopoly. Reitano and Tinti (2015: 25) for instance write that “due to modern communication technology and the proliferation of social media there is near constant communication among migrants at source and in transit, with common messaging boards and apps providing the average price along key legs of the journey.” Baumgärtner et al. (2015) report that “[s]mugglers don't just look for potential customers on the streets, but also hang out in social networks and operate Facebook pages with names like "Smuggle to Europe" and "As an Illegal to Sweden." Birnbaum (2015) confirms: “On social networks and in person, migrants can pick from a menu of services, ranging from a slippery seat on a rubber dinghy to Greece all the way to a chartered business jet straight to the refugee haven of Sweden.” Given these empirical accounts, it seems from the very outset dubious whether the high prices are best explained by price gouging. Let us nevertheless, inquire whether commercial human smuggling would be morally bad, if it necessarily involved unfairly high prices. As I stated above, it is notoriously hard to conceptualize meaning of a fair price and for that matter also what an unfair price is. Since my general argument does not rely on a specific account of fair prices, I will leave it to the reader to plug-in her favorite account of fair prices. How should we then morally judge Anna in case she takes unfair advantage of Bert by fully exploiting her bargaining power?

Let us assess the case. In the case we are discussing, it is undeniable that – even though – Bert needs to pay an unfair price, he nevertheless gains from the transaction between him and Anna. Since Anna also gains considerably, the transaction between both continues to be a win-win situation. Both are better off due to the transaction. At the same time one might claim that Anna unduly gains by pocketing a huge profit margin, something, I submit, we usually associate with unfairly high prices. It might be claimed then that she gains considerable more by the transaction than Bert. This claim though does not hold under scrutiny since it is evident that Bert, whose life is in danger, actually gains much more by the transaction than Anna.

We might nevertheless want to challenge the moral permissibility of the transaction by charging that although both parties have gained by the trade and although Bert has actually gained much more by any plausible standard – Bert nevertheless has not gained *enough* by the transaction. For instance, we might want to argue, that pocketing extraordinarily high profit margins is in itself morally blameworthy. In particular in situations in which Anna gains these profit margins by striking bargains with vulnerable persons, such as refugees. The question then becomes, whether pocketing huge profit margins is what makes commercial human smuggling morally blameworthy. While this charge might have an intuitive pull, it nevertheless might strike us as odd. Anna for instance could justify her behavior by pointing out that she has no more obligations to help out Bert than anyone else. Further she might say, at least by offering her services she does something to advance Bert's situation while all the people who blame her for actions actually do nothing for Bert. Everybody else – for instance in Europe –, she might argue, could rent or buy a ship and help out Bert, but almost no one does. So why blame the few that actually do something? In a slight variation of the Wertheimer's (1999) *nonworseness claim*, we can put Anna's defense more abstractly: It cannot be morally worse for Anna to interact with Bert than not to interact, given that (1) the interaction is better for Bert, (2) Bert has consented to the

interaction, (3) this interaction has no serious negative effects on others. There are two possible interpretations of this issue. First, we could maintain that in the case of refugees, neither individuals, nor companies and states have the duty to provide safe passage to sanctuary. If that is the case, then it would be not blameworthy for Anna not to engage with Bert at all. If Anna for instance decided to rent out her ship to tourist groups instead of ferrying Bert, she would act morally permissible. However, it would be strange then to think that Anna, who actually decided to take a risk and ship refugees, and thus already does something for the refugees is morally blameworthy. Zwolinski and Wertheimer reach the same conclusion: "in cases where *A* has a right not to transact with *B*, and where transacting with *B* is not worse for *B* than not transacting with *B* at all, then it cannot be seriously wrong for *A* to engage in this transaction, even if its terms are judged to be unfair by some external standard".¹⁰

It is of course also possible to view the refugee situation differently. We might think that, despite of what our politicians say, we all actually have a duty to support the persecuted and destitute. Against this standard then, most of the developed world would need to be blamed for their inaction. At the same time – Anna – would also need to be blamed since she has not lived up to her duties to the full amount. But then again Anna would at least do morally better than most of us.¹¹

Before concluding let me discuss a challenge to this line of reasoning. One could hold that Anna in some sense has a greater duty to help out refugees than others. Imagine for instance a parallel case, in which Anna owns an oasis in the desert and Bert, who is close to dying of dehydration, just arrived at her sanctuary.¹² In this case, we might think that Anna has a special obligation towards Bert, because she is the only one who could help out Bert. In this case, we might then judge, that by being the only one who could save Bert, Anna has obtained a particular set of new obligations to Bert. Within this set of obligations, for instance, might be the particular obligation to no charge unfair prices. However we might

want to judge this case, it should be pointed out that this case is different from smuggling case in one particular, morally relevant aspect. While it can be reasonable argued in the desert case that Anna has a special obligation towards Bert, this cannot be argued in the smuggling case. In the smuggling case by default Anna has no more obligations to help Bert than anybody else. I take it that this is also the case for the real world. It seems unplausible to hold that – except in particular cases – human smugglers have other obligations to support the destitute than say international organizations like the EU or any other private parties. Let me consider another rebuttal here that is inspired by Meyers (2004: 324-5). Imagine that Anna would not only pocket huge profit margins in the desert case but on top of it would require certain sexual services of Bert. In such a situation, Anna would exploit her full bargaining power. It seems to be obvious that such a conduct by Anna would be strictly morally impermissible.¹³ However, the question must be asked in how far this example is relevant to the case of commercial human smuggling. It can be freely admitted that, in case human smugglers indeed abuse their bargaining power as in the desert case, they are morally blameworthy. Nevertheless, as I pointed out above, the empirical conditions under which commercial human smuggling takes place, usually do not put smugglers in a situation in which they have such bargaining power to begin with. Furthermore, commercial human smuggling does obviously not necessarily involve such atrocities.

To conclude, we can either think that human smugglers are morally blameworthy insofar as they engage in price gouging. If we do that, we thereby admit that although the human smugglers are morally blameworthy, there are at least not as blameworthy as everybody else who could step in but refuses to do so (for instance private individuals, companies or wealthy governments). At the same time, if we think that there is no obligation to the destitute than pocketing huge profit margins cannot be morally blameworthy, since it cannot be morally worse for Anna to interact with Bert than not to interact with him given

that the interaction benefits Bert and is consensual. Furthermore, as I have pointed out, from an economic point of view, it is not very plausible that commercial human smugglers can secure high rents to begin with.

Case 5: Anna illegally ferries Bert from island A to island B, engages in price gouging and cannot warrant a safe passage.

“Migrant Smuggling – it’s a crime” is one of the headlines of a recent article by the United Nations Information Service Vienna (2015). This headline is just part of the more general efforts of the United Nations to crack down on human smuggling and vilify human smugglers. One of the central reasons to justify the crackdown on migrant smuggling by the UN is the undeniable fact that the practice of human smuggling is accompanied by the death of thousands of migrants and refugees. The UN – as well as much of the media and national governments – hold human smugglers responsible for their death. Yury Fedotov, Executive Director of the UN Office on Drugs and Crime (UNODC) for instance writes: "There is seemingly no end to tragic reports of migrants losing their lives on desperate voyages to safer havens. These perilous journeys undertaken by hundreds of thousands of women, men and children are mostly facilitated by *criminal smuggling rings*."¹⁴ (United Nations Information Service Vienna 2015)

I take it then that we take human smuggling in general to involve risks to the life of the smuggled. Strictly speaking ‘a risk to life’ is not inherent to the practice of human smuggling. There are many cases in which human smuggling is done for instance by issuing fraudulent documents that allow a refugee to obtain a visa for a wealthy country, which in turn allows him to just take a regular flight to that country. Having arrived at his destination, the refugee then can seek asylum. Although this is true, I will nevertheless, for the sake of argument, assume that human smuggling in general involves risks to life for the smuggled – and thus I take human smuggling per se to endanger the life of the smuggled.

The question then becomes whether the risk to life can justify a general moral condemnation of human smuggling. To answer this question, we might ask, whether in general we morally condemn people that put the life of third parties at risk. The answer here, I submit, is straight forward again. Sure, we morally condemn violent goons that go around a beat up people. We are also morally blaming people for speeding since they put not only their own life, but also the life of third parties at risk. In some countries, even smokers are blamed for harming others. At the same time, we do not condemn a surgeon for treating medical conditions, even though a particular treatment might involve clear risks to life. Further, we are also not blaming pilots even though air travel comes with certain risks to life. In general, we are only condemning actors that put our life at risk, if they do so without our consent. Take again the case of a medical procedure that puts the life of the patient in danger. In general, we think, that as long as the patient has made a deliberate choice, it is morally permissible for the doctor to conduct the medical procedure. We even think this is permissible if the treatment is not strictly necessary for the patient for medical reasons. People for instance quite regularly undergo cosmetic surgery under general anesthetic, even though neither the surgical procedure nor the anesthetics are without danger.

The decision by Bert for or against to be smuggled on the other hand should not be compared to the decision for or against cosmetic surgery. His decision might be best compared with the decision of a seriously ill patient. Let us assume then that Bert would be diagnosed with a disease that is deadly in 1 of 4 cases. At the other hand Bert could undergo surgery, but surgery is also not without risks, it might end deadly in 1 of 10 cases. Given that the chance of dying due to the procedure is lower than due to the illness, we would deem Bert rational to undertake the risk. The same, I take it, holds true for human smuggling. Bert should be at liberty to decide whether he takes the risk to rely on a smuggler or not. That human smuggling, like medical treatment, involves certain risks does

not speak against the practice. For the destitute and persecuted it is often rational to take the risks involved in human smuggling.

Of course, if human smugglers would in general rely on deception and downplay the risks of human smuggling then it would make their practice highly immoral. The same goes obviously for the medical doctor who downplays the dangers of a certain procedure. A necessary condition for being able to deceive is in general asymmetric information. If both parties to an agreement have the same amount of knowledge there is not much room for deception. While it might be certainly true that human smugglers sometimes deceive their costumers, it is unreasonable to believe that deception is inherent to the practice of commercial human smuggling. The reasons for that are manifold. The first reason is that refugees in many instances are organizing the smuggling themselves (Baumgärtner et al. 2015). Secondly, as we have pointed out already, many of the refugees are themselves or via third parties connected to the internet. Reitano and Tinti (2015: 25) for instance quote a refugee who reports about his journey: "I was following Facebook pages which were created by Syrians to give advice for a safer journey to Europe and I contacted many people who were posting about their experience in crossing to Europe."

We are now in a position to answer our question. In the last few pages, I have discussed three important features of human smuggling: the practice of smuggling someone *illegally* in a country, the practice of alleged *price gouging*, and the fact that human smuggling in most cases *endangers the life of the smuggled*. If our analysis is correct then none of the three features makes human smuggling inherently wrong.

Part 2: Is a blanket condemnation of commercial human smuggling in the current crisis nevertheless justified for contingent reasons?

Given that our analysis so far is correct, we might nevertheless want to inquire whether commercial human smuggling is contingently wrong. If we could show that for contingent

reasons the actions of human smugglers in the wake of the refugee crisis are by and large morally blameworthy, we could nevertheless justify the blanket condemnation of commercial human smuggling. What kind of contingent reasons would justify a blanket condemnation? There are a few contenders. First of all, we might think that migrant smuggling is morally reprehensible, because commercial human smuggling is for the most part based on fraud and deception. As I already discussed, this is highly unlikely, because of the levels of competition and information available in the black market for human smuggling. Another reason might be that the same people that organize human smuggling right now often have a background in other illegal activities such as the trafficking of illegal drugs (Birnbaum 2015). While if that were true at large this might speak against the character of the people who organize human smuggling, but here we are not concerned with question of character, but the moral evaluation of certain kind of conduct. Furthermore, as I pointed out above, many commercial human smuggling networks are actually operated by refugees themselves. A more serious reason to justify a blanket condemnation is that smugglers actually exacerbating the current crisis. Reitano and Tinti (2015: 2) for instance claim that “these smugglers [...] benefit from *exacerbating* the crisis by *inciting* migration and using unscrupulous practices, such as abuse, extortion and violence, to seek profits.” Furthermore they (2015: 25) write that the “the proactive and unscrupulous nature of the migrant-smuggling trade has unquestionably played a part in amplifying the problem”, while they admit at the same time that the smugglers are not the cause of the migrations. It seems however questionable whether the smugglers indeed amplified the problem or merely brought the plight of the refugees to the spotlight of western media. What we are facing here seems to be an example of the classic ‘what is seen and what is not seen’. While it is undoubtedly the case that the practice of human smuggling has brought death to many, it is nevertheless also true that it saved many lives.

The Syrian civil war alone is responsible for the death of more than 400.000 people according to an estimate by the UN.

There is however a strong case to be made that that a blanket condemnation of human smuggling is justified, even if it is only for contingent reasons. The argument here harks back to our second ferry example. The idea here is that human smugglers by and large help people to enter in Europe who have *no justified claim to cross the border* and seek sanctuary in Europe. This is a very interesting argument since it binds our current topic back to the more general topic of immigration ethics and one of its core debates, namely the issue whether – and if so under which circumstances – nation states have the right to close their borders. If one for instance maintains that in the end only an open border regime can be justified then, at least *prima facie*, everybody would have the moral right to enter in the European Union. This approach then would legitimize practically all kinds of human smuggling provided that the smugglers do not unnecessarily put the lives of the smuggled in danger or rely on deception and fraud. At the same time, if states would have the moral right to close their borders at will¹⁵ – as some theorists believe – then indeed human smugglers would by and large conducting a morally blameworthy practice, since their practice entails helping people to cross borders.

It seems then that we have reached an impasse. If the open borders approach is correct than we are not justified – even on contingent grounds – to condemn human smugglers, if on the other hand the closed borders approach is correct, than a roundabout way of condemning human smuggling seems possible. This stark contrast, though, conceals that both positions actually agree that in times of crisis, states have a *pro tanto* obligation against the destitute. Even advocates of a closed border regime that emphasize the right of the nation state to self-determination, like Wellman, Miller and Walzer, agree that we have such a minimal obligation. Miller (2015: 395) for instances write: “we must assume that all agents, individual or collective, share in a responsibility to protect the human rights of

vulnerable individuals". He continues: "The responsibility obtains regardless of national or other boundaries, which is why it can form the basis of a justice claim made by a refugee against a state that is not her own." Wellman (2008: 129) has a very similar position and maintains that "affluent societies have a duty to help [...] just as global poverty requires wealthy states to either export aid or import unfortunate people, the presence of those desperately seeking political asylum renders those of us in just political communities duty bound either to grant asylum or to ensure that these refugees no longer need fear their domestic regimes." On the grounds that there is an overlapping consensus that we have pro tanto obligation against the vulnerable persons, I think, we can forge an argument against the charge that commercial human smuggling is contingently wrong, because smugglers by and large help people to cross the border to Europe that are not justified to cross the border. I have just stated that there is an overlapping consensus that wealthy nation states have an obligation towards the vulnerable which includes both the destitute and the persecuted. It should be noted here at least in passing that this view is strikingly different from international law. In the legal literature it is common to distinguish between refugees and economic migrants. According to the Article 1 of the 1951 Convention relating to the Status of Refugees: "A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." Let me draw attention to two important details of this definition. First of all a refugee is defined as a person that is "outside the country of his nationality." This means that this definition excludes people that are internally displaced within a country, because of unjustified persecution. Undoubtedly, the reasons why people flee from their own country are plentiful. The UN definition of

refugees at the same time grants the “refugee status” only to a very small subset of the people that are leaving their home countries in search for a better and more dignified life. The central criterion, as Cherem (2016: 191) notes, that distinguishes refugees from other kind of people in desperation is their peculiar kind of need. The need of refugee occurs mainly because a “loss of national protection”. Refugees, according to the UN definition, are then first and foremost in need of protection from unjustified persecution. This need can be differentiated then from the need of the global poor and destitute that are first and foremost in need of a bundle of primary goods that would allow them to live a minimally dignified live. As many philosophers have pointed out the need of the global poor and refugees then can be met through different sets of actions. While refugees can only be helped by granting them sanctuary from persecution, the need of the global poor might also be addressed by exporting wealth. Concerning this definition by the UN, one needs to distinguish two issues. The first issue is conceptual. From an analytic point of view, differentiating between different kinds of need is surely appropriate. Different kinds of needs need to be addressed by different kinds of actions, so the distinction between people in need for protection and people in need for resources is important. The second issue, though, is normative. The question here is whether the two needs are different in weight. The UN document – and this is crucial – grants only the former group a pro tanto right to seek asylum while it is silent about the latter. Philosophers have pointed out that it seems dubious why just the one kind of need and not the other should create obligations to wealth state to grant asylum. Pogge (1997: 15) for instance famously commented: “I cannot see why the moral importance of admitting political refugees should be any greater than that of admitting so-called economic migrants. For one thing, the politically persecuted are not, in general, worse off than the desperately poor. Being imprisoned for one’s beliefs is not, in general, worse than working 16-hour days while being permanently hungry.” In this

essay, I am not concerned with the proper definition of 'refugees', so I want to side-step the question whether the UN definition is appropriate or not.

Coming back to our earlier issue, we saw that there is widespread agreement between open and closed border advocates that wealthy nation states have an obligation against the persecuted as well as against the destitute. The general argument for an obligation of wealthy states towards the destitute and persecuted goes something like this. Human beings have a right to a minimally good life. This generates first and foremost an obligation of the individual's nation state to meet these basic needs. In a situation, in which his basic needs are not fulfilled by his home state, the destitute and unjustly persecuted have a right to sanctuary that is grounded in the right to a minimal good life. Call this the minimal consensus view (cf. Oberman 2015: 241). However, in case the individual's nation state does not meet her minimal rights, a conundrum arises. On the one hand, the individual still has a right, but on the other hand it is not salient against whom she has the right. To put it differently, in a situation like this, it becomes unclear which actor has the obligation to fulfill her right.

In such a situation, I want to argue, the destitute is at liberty to bring her case to the actor she deems most likely to meet her rights. This means that – as a corollary of her general human rights – she has the right to *apply for* sanctuary or asylum wherever. Since she only has a pro tanto right to sanctuary, the nation state is also only under a pro tanto obligation to grant sanctuary. The state might for instance fear that an additional influx of people in need threaten its public order and thus might be forced to deny sanctuary. If we accept the minimal consensus view and its derivative the pro tanto right of the destitute and persecuted to apply for sanctuary, it is easy to see that – in the case of the European refugee crisis – illegally crossing the border to apply for sanctuary cannot count as a moral wrong for the destitute and persecuted. The argument can be put like this:

(1) Wealthy states have a pro tanto obligation towards the destitute and persecuted.

(Minimal consensus view)

(2) As a consequence of (1) the destitute and persecuted at least have a right to apply for sanctuary or support more generally.

(3) The only way to make good on their right to apply for asylum is from within the EU.

(C) (1)-(3): It is morally permissible for the destitute and persecuted to cross the border to the European Union.

From the conclusion, it straight forwardly follows that human smugglers are morally permitted to help the destitute and persecuted to make good on their right. If the argument is conclusive than the ones who want to issue a blanket condemnation with regard to the practice of commercial human smuggling have to fight an up-hill battle. They must show that the human smugglers in the European theater have by and large smuggled people that are not destitute or persecuted.

Part 3: Brief Remarks on the Crisis

Where do we stand? In this article, I have defended two claims. First, I argued that there is nothing inherently wrong with commercial human smuggling. Secondly, I made the argument that with respect to European refugee crisis, there is no moral basis for a sweeping condemnation of commercial human smuggling on contingent grounds.

Nevertheless, the horrors in the wake of commercial human smuggling are undeniable. In the last part of this essay, I want to argue that by respecting the right to apply for sanctuary the European Union could end the practice of *morally permissible* commercial human smuggling. Stopping morally permissible commercial human smuggling would a) drastically reduce the practice of commercial human smuggling in toto and thus ameliorate the

humanitarian catastrophe in the wake of this practice. Furthermore, it would legitimize b) the practice of the EU to fight commercial human smuggling.

As I have established in the last section, there is a wide consensus that the destitute and persecuted have a right to apply for sanctuary. For contingent reasons, though, the only way to apply for sanctuary is within the European Union. In this situation then, commercial human smugglers are actually helping the destitute and persecuted to secure their pro tanto right to apply for sanctuary. Given that this analysis is more or less correct, then much of what the European Union is currently doing to prevent the destitute and persecuted from arriving at the shores of the European Union constitutes actually a moral wrong. While the European Union, based on the minimal consensus view, might not have the moral obligation to protect the rights of the destitute, they nevertheless have an obligation to respect the rights of the destitute. Preventing the destitute by force to exercise their right to apply for sanctuary is then a clear rights violation. Furthermore, by conducting a war on morally permissible and morally impermissible commercial human smuggling the European Union is essentially driving the prices up for the destitute and persecuted to exercise their right to apply for sanctuary. The surging prices for commercial human smuggling have two morally relevant outcomes. First, it harms the destitute by essentially raising the prices for human smuggling. This is of course a great problem for the destitute that are already poor. Secondly, a surge in prices has the effect that many of the destitute and persecuted need to economize on safety if they want to exercise their right. While Bert might have been able to purchase a safe passage to B before the surge in prices, he afterwards might only be able to pay for a less safe vehicle. By actively preventing the destitute and persecuted from exercising their rights, the European Union then on top brings great financial and personal peril for the destitute and persecuted.

There are several ways, in which the European Union could honor the rights of the destitute and persecuted to apply for sanctuary. I want to briefly discuss two options here. As

(Gibney, 2015: 448) writes “[o]ver the last two decades, refugees seeking protection in northern states have been confronted with a barrage of measures designed to prevent their arrival, including visa controls and carrier sanctions, and even efforts to interdict them at sea”.¹⁶ The first approach would be then to just do away with all these measures and allow the destitute and persecuted to freely travel to Europe, for instance, by plane in order to apply for sanctuary. This could be done by creating a visa that allows everyone – at their own cost – to travel to Europe to apply for sanctuary. This approach would instantaneously dry up the morally permissible variation of commercial human smuggling. The reason is simple, it is much cheaper and safer for the destitute to rely on regular airlines and shipping companies to come to Europe then to rely on unprofessional human smugglers. The only ones – under these conditions – who would rely on human smugglers are the ones that have good reason to believe that their chances of being granted sanctuary will be very slim. That is the people – given the process of checking applications is just – that are not eligible for sanctuary. Preventing the non-destitute and non-persecuted from entering the EU on the other hand, is within the moral right of the European Union.

While this approach will predictably dry up the practice of morally permissible commercial human smuggling, it nevertheless comes at great financial cost, at least, if the European Union will decide for providing the necessary accommodations, etc. for the destitute and persecuted while they are awaiting the decision about their application. At the same time – as was already noticed during the short period of Angela Merkel’s open door policy – just finding enough appropriate living space for the applicants is a great organizational and financial problem. However such an approach is not only riddled by instrumental, but also by moral problems since a regime would unduly advantage the applicants who are – within the group of the destitute – better off, since the worst-off might not even be able to afford a plane ticket. The asylum system of the EU as well as the approach discussed have the serious drawback, as many commentators have noted, that it fails to address the needs of

the people that are in need of sanctuary the most. Morisson and Crossland (2001: 21) explain: “[The current asylum regime] advantages those with the money and the connections required to engage the services of the smuggler. [...] It is the poorest and most marginalised populations around the world that are least likely to be able to pay the price to enjoy asylum in Europe.” In particular the current regime makes it very difficult for women and children to “successfully complete the clandestine journey to European countries.”

There is, fortunately, a better approach to the problem. As Reitano and Tinti (2015: 25) write: “Migration experts have emphasized the need for safe, legal channels to address the legitimate protection needs of the Syrian people and other nationalities whose stability, human rights or political freedoms are considered seriously at risk. For those nationalities for which granting asylum is a less obvious decision, providing the opportunity to have claims for asylum verified closer to home would immediately reduce demand for smuggling services, though it would not eradicate them altogether.” To verify the claims for sanctuary, the EU could for instance employ the embassies of its member states. Furthermore, *prima facie*, nothing much speaks against online applications for sanctuary seekers. As the current refugee crisis has taught us most of the people looking for sanctuary in the west are using web services for engaging and contracting with human smugglers. If that is the case, the destitute and persecuted could – at least *prima facie* – use their connection to the internet to apply for sanctuary as well. Of course some applicants might find it difficult to provide the appropriate documents, so that a pure web-based application process might be in the end not sufficient. Allowing the destitute to apply from their home countries or someplace close to their home countries would have the additional advantage that it would give the worst-off within the group of the destitute and persecuted a better chance to be considered for sanctuary.

Part 4: Conclusion

Many commentators have observed that in the last thirty years there has been a considerable shift in public discourse towards criminalization and moral condemnation of commercial human smuggling.¹⁷ The goal of this article was to analyze whether this all-out moral condemnation of human smuggling is justified. In the first chapter, the essay discussed whether there is something inherently wrong with commercial human smuggling. Here I focused especially on four features that are common to human smuggling: the commercial aspect, illegal border crossing, exploitatively high prices and a risk to life. The analysis came to the conclusion that there is nothing inherently wrong with commercial human smuggling. Secondly, the essay wanted to ascertain whether a roundabout condemnation of the human smuggling taking place in the European theater is justified for contingent reasons. In particular, I inquired whether the fact that the commercial human smuggling activities in the European theater caused millions to cross the border to Europe illegally, is a sufficient reasons to condemn the practice. I argued that this is not case. The main argument here was that (1) there is an overlapping consensus that wealthy states have a pro tanto obligation against the destitute and persecuted. (2) The destitute and persecuted are in a specific moral situation in which they are at liberty to bring her case – e.g. applying for sanctuary – to the actor she deems most likely to meet her rights. (3) The only way to apply for sanctuary in the EU currently is from within one of the European nation states. Given the conditions 1-3, it is morally permissible for the destitute and persecuted to cross the border to Europe in order to apply for sanctuary.

In the third part, I discussed some empirical implications of the normative results from the first two parts. In particular, I argued that by respecting the right to apply for sanctuary the European Union could end the practice of *morally permissible* commercial human smuggling. Stopping morally permissible commercial human smuggling would a) drastically reduce the practice of commercial human smuggling in toto and thus ameliorate the

humanitarian catastrophe in the wake of this practice. Furthermore, it would legitimize b) the practice of the EU to fight commercial human smuggling.

REFERENCES

- ARD (2015) *Innenminister Thomas de Maizière im tagesthemen-Interview*. Available at:
<http://www.tagesschau.de/multimedia/video/video-78663.html> (accessed 10 June 2016).
- Baumgärtner M, Becker S, Buschmann R, Buse U, Diehl J, Ehlers F, et al. (2015) *Asylum's Dark Side: The Deadly Business of Human Smuggling*. Available at:
<http://www.spiegel.de/international/europe/refugee-smuggling-a-big-business-in-the-balkans-a-1051461.html>.
- Birnbaum M (2015) *Smuggling refugees into Europe is a new growth industry*. Available at:
https://www.washingtonpost.com/world/europe/smuggling-refugees-into-europe-is-a-new-growth-industry/2015/09/03/398c72c4-517f-11e5-b225-90edbd49f362_story.html.
- Brennan J (2016) When may we kill government agents?: In defense of moral parity. *Social Philosophy and Policy* 32(02): 40–61.
- Cherem M (2016) Refugee Rights: Against Expanding the Definition of a “Refugee” and Unilateral Protection Elsewhere. *Journal of Political Philosophy* 24(2): 183–205.
- Gebauer M, Knaup H, Müller P, Popp M, Schindler J and Schult C (2014) *An Unending Refugee Tragedy: Europe's Path to Deadly Partition*. Available at:
<http://www.spiegel.de/international/europe/eu-policies-worsen-an-already-deadly-situation-for-immigrants-a-1030550.html>.
- Gibney MJ (2015) Refugees and justice between states. *European Journal of Political Theory* 14(4): 448–463.
- Heyd D (2016) Supererogation. In: Zalta EN (ed.) *The Stanford Encyclopedia of Philosophy*.
- Huemer M (2013) *The problem of political authority: An examination of the right to coerce and the duty to obey*. Basingstoke: Palgrave Macmillan.
- Meyers C (2004) Wrongful Beneficence: Exploitation and Third World Sweatshops. *Journal of Social Philosophy* 35(3): 319–333.
- Miller D (2015) Justice in immigration. *European Journal of Political Theory* 14(4): 391–408.

- Morrison J and Crosland B (2001) *The trafficking and smuggling of refugees: the end game in European asylum policy?* Available at:
<http://www.unhcr.org/research/working/3af66c9b4/trafficking-smuggling-refugees-end-game-european-asylum-policy-john-morrison.html>.
- OBERMAN K (2015) Poverty and Immigration Policy. *American Political Science Review* 109(02): 239–251.
- Pogge T (1997) Migration and poverty. In: Bader V (ed.) *Citizenship and Exclusion*. Basingstoke: Palgrave Macmillan, pp. 12–27.
- Reitano T and Tinti P (2015) *Survive and advance: The economics of smuggling refugees and migrants into Europe*. Available at:
http://www.hss.de/fileadmin/media/downloads/Berichte/151211_Migration_ISS.pdf (accessed 10 June 2016).
- Rodenhauser T (2014) Another Brick in the Wall: Carrier Sanctions and the Privatization of Immigration Control. *International Journal of Refugee Law* 26(2): 223–247.
- Simmons AJ (1996) Philosophical Anarchism. In: Sanders JT and Narveson J (eds) *For and Against the State: New Philosophical Readings*. Lanham: Rowman & Littlefield Publishers, pp. 19–40.
- Snyder JC (2008) Needs Exploitation. *Ethical Theory and Moral Practice* 11(4): 389–405.
- United Nations Information Service Vienna (2015) *Migrant Smuggling: It's a crime*. Available at:
http://www.unis.unvienna.org/unis/en/events/2015/crime_congress_migrant_smuggling.html.
- United Nations Office on Drugs and Crime (2004) *United Nations Convention against transnational organized crime and the protocols thereto*. Available at:
https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.
- United Nations Office on Drugs and Crime (2010a) *Toolkit to Combat Smuggling of Migrants: Actors and processes in the smuggling of migrants*. Available at:

https://www.unodc.org/documents/human-trafficking/Toolkit_Smuggling_of_Migrants/10-50812_Tool2_eBook.pdf (accessed 10 June 2016).

United Nations Office on Drugs and Crime (2010b) *Toolkit to Combat Smuggling of Migrants:*

Understanding the smuggling of migrants. Available at:

https://www.unodc.org/documents/human-trafficking/SOM_Toolkit_E-book_english_Combined.pdf (accessed 10 June 2016).

van Liempt I and Sersli S (2013) State Responses and Migrant Experiences with Human Smuggling: A Reality Check. *Antipode* 45(4): 1029–1046.

Wellman CH (2008) Immigration and Freedom of Association. *Ethics* 119(1): 109–141.

Wertheimer A (1999) *Exploitation*. Princeton, N.J., Chichester: Princeton University Press.

Zwolinski M and Arnold DG (2007) Sweatshops, Choice, and Exploitation. *Business Ethics Quarterly* 17(4): 689–727.

Zwolinski M and Arnold DG (2008) The Ethics of Price Gouging. *Business Ethics Quarterly* 18(3): 347–378.

NOTES

¹ Emphasis added.

² I introduce this assumption for reasons of simplicity. We do not want to be concerned here with the possible wrong that might be caused by Anna illegally crossing the border of A or B. The reasons for that is simply that we usually – or so I assume – do not think that what makes human smuggling wrong is that the smugglers themselves illegally are in A or B.

³ I understand murder here as a killing that is non-consensual.

⁴ Another way to put this is to say that an inherently wrong act is an act that is pro tanto morally wrong.

⁵ We are touching here on the question under which governments have political authority. Following a common distinction in political philosophy, governments are legitimate if they are justified in issuing and enforcing certain sorts of laws against their citizens (Brennan 2016: 45–46). A government furthermore has authority if it is – as a rule – pro tanto wrong for its citizens do not obey these laws. As Huemer (2013: 19) notes the dominant view in philosophy is that governments probably in general do not have political authority, compare also the classic statement of philosophical anarchism: Simmons (1996). For the question at hand, it is though not important whether there are any governments that have authority but only that there are governments that have no political authority. We might say that if a government has political authority then its citizens have a pro tanto obligation to obey. If the government however has no authority, then the citizens have no pro tanto obligation to obey the government (the citizens may nevertheless have an obligation to obey morality). It should be noted furthermore that even if a governments has authority it prima facie only creates obligations for citizens not for non-citizens.

⁶ I am referring here to the fact that the member states of the European Union have signed the 'Convention relating to the Status of Refugees' and in that have affirmed the right of refugees to seek asylum. I will later discuss different stances in the ongoing debate whether states have a moral right to unilateral exclude foreigners.

⁷ This fact is widely acknowledge, so much so, that, one might suspect, the UN deemed is necessary to emphasize that the "right to apply for asylum is upheld regardless of the means by which the smuggled person gained entry into the destination country." (United Nations Office on Drugs and Crime 2010a: 14).

⁸ Compare Heyd (2016).

⁹ It should be noted that this is actually what is happening in the EU.

¹⁰ We could though argue that given it is not blameworthy to not help out refugees in need of a ferry service, then it must be prima facie morally praiseworthy to do so. (Which would lead to a reassessment of the earlier cases). At the same time, one might argue that somehow the badness of price gouging and the praiseworthiness of providing safe passage are cancelling each other out.

¹¹ I take it that this would be the conclusion that follows from Sneyder's (2008: 403) position on exploitation. On his account we have at least a minimal duty to beneficence in general. Commercial human smugglers act morally wrong, in his view, in case they demand a price that is unreasonably high. At the same time, commercial human smugglers that exploit their customers, would still be not as blameworthy as the governments, citizens and companies in Europe since commercial human smugglers at least do something for the ones in need.

¹² For a similar desert example: Meyers (2004: 324-5.)

¹³ If Bert would agree to this, given that he doesn't fancy Anna, it would raise the question whether his consent was free to begin with.

¹⁴ Emphasis added.

¹⁵ These theorists usually, as we will see shortly, however usually affirm that wealthy states nevertheless have some minimal obligations towards the destitute and persecuted.

¹⁶ Rodenhauser (2014: 223) explains: “Under carrier sanction legislation, carrier personnel are obliged to control migrants’ documentation at the point of embarkation, and to deny boarding to undocumented migrants. In this respect, private carrier personnel become a first instance immigration control [...]”

¹⁷ Compare: van Liempt and Sersli (2013).