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Illegal Immigration as Resistance to Global Poverty

Penultimate Draft ***Forthcoming Raisons Politiques***

Illegal economic immigrants have become a *bête noir* in the affluent states of the Global North. They have been portrayed as threats to wealth and stability; they are “anonymous and out of place, homeless and bereft of clear national belonging.”¹ It is easy to imagine that many people share David Miller’s reaction of sympathy and outrage at impoverished persons illegally crossing borders. He asked incredulously whether the migrants thought they had a “natural right to enter Spain in defiance of the laws that apply to everyone else who might want to move there?”² This article asks how cosmopolitans should assess the actions of illegal immigrants. It argues that immigrants who suffer from severe poverty do, indeed, have a right to enter Global North, even if they are not legally permitted to do so.³ This argument is not derived from a right to freedom of movement that other cosmopolitans have advocated.⁴ Instead, this is an instance of people enacting their right to resistance by escaping to the North; it is comparable to fugitive slaves in the antebellum United States. Both cases are examples of infrapolitical resistance by severely dominated agents.

Some readers may be surprised and potentially upset by the terminology employed in this article. The use of ‘illegal immigration’ is deliberate and, indeed, provocative. It is understandable that certain stakeholders prefer such adjectives as ‘undocumented’ or ‘irregular’ and the general noun ‘migrant’ instead of ‘immigrant’.⁵ However, there are no neutral terms in this debate and, by avoiding a politically toxic term like ‘illegal immigrant’, an important question about the morality of breaking the law is obscured. It concedes the point that breaking the law by clandestinely crossing borders is something shameful. It becomes unmentionable. This article will argue that it is not in the case of severely poor immigrants and aims to reclaim this term.

The article is structured in three parts. The first summarises the two premises that underpin the argument: cosmopolitanism about distributive justice and the right to resistance. It is

¹ Ruben Andersson, *Illegality, Inc.: Clandestine Migration and the Business of Bordering Europe* (Oakland: University of California Press, 2014), 8.

² David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), 1-3.

³ Some might be troubled by the idea of having a right to cross borders, but still be liable to legal punishment. However, this, it will be argued, is an instance of an unjust positive law. It is comparable to examining fugitive slaves, who were also liable to legal punishment as slavery supported by the law.

Furthermore, this article addresses illegal immigration between the Global South and the Global North. It will not address illegal immigration in the Global South, such as the movement of people from Zimbabwe to South Africa or from the Horn of Africa to Kenya.

⁴ Cf. Joseph Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), 225-54.

⁵ *Ibid.*, 129-30.

important to note that these premises are taken as read, while recognising that they contested claims. The aim of this article is to assess illegal immigration from the perspective of cosmopolitanism, which is justified as it holds a prominent position in the debate on global poverty. The second section argues that, if one grants that fugitive slaves did nothing wrong by escaping from bondage, then one must have the same attitude towards illegal immigration by those whose human rights have been violated by the international system. This is because both cases are characterised by a severe domination that is intransigent but escapable. The final section will address several objections to this argument.

1. Premise: Cosmopolitanism

This section of the article provides a summary of cosmopolitan global distributive justice and the right of resistance. Cosmopolitanism is a broad term, but there is a shared belief that the ultimate units of moral concern are individual human beings. If corporate agents, like churches, states, or sewing circles, have any value, then it is derived from the moral worth of their members. This moral concern attaches to all persons equally; it is not qualified by membership in any group. It also has universal force. Individual human beings are the ultimate unit of moral concern for all other persons.⁶ This provides the foundation for an account of global distributive justice that is broadly egalitarian, though the path from the former to the latter varies. Some cosmopolitans argue that the simple fact of moral cosmopolitanism is sufficient to ground obligations of distributive justice.⁷ Others argue that globalisation has produced the circumstances of justice between all peoples and, therefore, positive obligations of justice.⁸ Finally, others have proposed a relational account, which claims there is only a negative duty to not support unjust social institutions, both domestically and globally.⁹ The argument will generally rest on the final account as it is the least demanding. If the argument works in its context, then it should also work in the more demanding accounts.

Negative relational cosmopolitanism is most closely associated with the works of Thomas Pogge. He argues that there is a duty to not support social institutions that violate the human rights of other people.¹⁰ Human rights are conceived of in a practical fashion; they are not eternal principles, but reactions to predictable threats to human autonomy.¹¹ This is not a demanding conception of autonomy, but is merely the ability for a person to plan and pursue their conception of a decent life.¹² It is Pogge's contention that the world's affluent, especially

⁶ Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 2nd ed. (Cambridge: Polity, 2008), 132-35.

⁷ Simon Caney, *Justice Beyond Borders: A Global Political Theory* (Oxford: Oxford University Press, 2005), 102-41.

⁸ Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1999), 125-76; Darrel Moellendorf, *Global Inequality Matters* (New York: Palgrave-Macmillan, 2009), 19-39.

⁹ Pogge.

¹⁰ *Ibid.*, 176.

¹¹ Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2011), 131-6; Pogge, 23-26.

¹² , 33-7.

those in the North, have failed to satisfy their duty to not support unjust social institutions. This is because they have benefitted from an international system that foreseeably and avoidably produces poverty. It does so in two general ways. The first is that the international system grants certain privileges to states that foster poverty. These are privileges that allow states to sell resources, borrow from international institutions, and purchase arms regardless of their internal character. Pogge compares this with granting a band of goons who seize a warehouse legal title to the goods therein.¹³ It creates incentives for *coups d'état* in fragile states, and provides sufficient resources of elites within states to create patronage networks and ignore the human rights of ordinary people.¹⁴ The second way in which the system creates poverty is by allowing the asymmetric distribution of power in the international system to produce terms of social cooperation that are highly favourable to the Global North. The Global South has little choice but to sign up to disadvantageous terms and, in many cases, the local elites in control of the Global South have little interest in securing deals that protect the rights of their people.¹⁵ Consequently, the states of the Global North and their citizens have an obligation to reform the international system and provide compensation to those who have had their rights violated. Pogge advocates systemic reforms to, for example, international patent law to incentivise the development of medical treatments for diseases that affect those living in poverty.¹⁶ In the meantime, states can increase their development aid budgets and individuals can give to charitable organisations.¹⁷ The importance of these duties to reform and compensate can be appreciated by the comparisons between global poverty and crimes against humanity; global poverty demands urgent action in the same way that slavery, apartheid, or ethnic cleansing does.¹⁸

2. Premise: The Human Right to Resistance

The addressees of cosmopolitanism have tended to be the affluent. This is understandable, as the audience of most academic philosophy tends not to be living in extreme poverty. However, this has produced an unbalanced literature in which the global poor are identified as formal rights bearers, but little is said about what they can do to claim these rights. Several academic philosophers have begun to examine resistance to global poverty in recent years,

¹³ Ibid., 119.

¹⁴ Ibid.; *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric* (Cambridge: Polity, 2010), 48-9.

¹⁵ *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 222-6.

¹⁶ "The Health Impact Fund: Enhancing Justice and Efficiency in Global Health," *Journal of Human Development and Capabilities* 13, no. 4 (2012): 543-7.

¹⁷ *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 150-1.

¹⁸ Gwilym David Blunt, "Is Global Poverty a Crime against Humanity?," *International Theory* 7, no. 3 (2015): 566-68.

but it remains a fringe topic.¹⁹ I have defended a conception of the right to resistance elsewhere and the account I offer here is derived from it.²⁰

The argument is based on the political or practical conception of human rights that underpins several prominent cosmopolitan accounts of global distributive justice.²¹ These accounts avoid the question of the foundations of human rights and, instead, look at the function of human rights in the international system.²² It examines the normative reasons that animate human rights claims and develop the best practice.²³ The function of human rights is to protect the 'urgent interests' of human beings from predictable threats.²⁴ These produce obligations that attach to states as the primary agent of justice in the international system to respect and protect human rights, as well as provide aid to those who have experienced rights violations.²⁵ Human rights also produce second-level normative reasons for states and non-state actors to respect, protect, and assist outsiders. However, Charles Beitz admits that these are not binding duties but *pro tanto* moral reasons, that can be set aside if there are compelling reasons to do so.²⁶ The admission that human rights only produce *pro tanto* reasons for action has prompted critics to claim that human rights cannot properly be thought of as rights. Rights must produce a claim-based relationship between the rights-holder and the duty-bearer. If a person's human rights-claim can be set aside with impunity, then it is not a right, but merely a statement of interests, however vital.²⁷

The right to resistance defuses this argument by providing an ultimate remedy to human rights violations. For human rights to be proper rights, duty-bearers need to be held to account. If there is no institutional remedy and the violation is severe enough, then rights-holders must be able to resist unjust agents and institutions. The right to resistance is compatible with the political conception of human rights. It is not claimed that all human rights claims are simply *pro tanto* appeals. The state is identified as having rights-based obligations to its citizens. In *extremis*, a state's failure to realise these obligations can produce

¹⁹ "Transnational Socio-Economic Justice and the Right to Resistance," *Politics* 31, no. 1 (2011); Simon Caney, "Responding to Global Injustice: On the Right of Resistance," *Social Philosophy and Policy* 32, no. 1 (2015); Alejandra Mancilla, *The Right of Necessity: Moral Cosmopolitanism and Global Poverty* (London: Rowman & Littlefield International, 2016).

²⁰ Gwilym David Blunt, "Is There a Human Right to Resistance?," *Human Rights Quarterly* Forthcoming (2017).

²¹ Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*; Beitz.

²² , 8-11.

²³ *Ibid.*, 104-6.

²⁴ *Ibid.*, 109-12; Tony Honoré, "The Right to Rebel," *Oxford Journal of Legal Studies* 8, no. 1 (1988): 42-3; John Rawls, *The Law of Peoples: With, the Idea of Public Reason Revisited* (Harvard University Press, 2001), 79-80.

²⁵ Beitz, 109; Henry Shue, *Basic Rights: Subsistence, Affluence, and Us Foreign Policy* (Princeton: Princeton University Press, 1996), 60.

²⁶ Beitz, 109-10.

²⁷ Honoré, 34-5; John Tasioulas, "On the Nature of Human Rights," in *The Philosophy of Human Rights: Contemporary Controversies*, ed. Gerhard Ernst and Jan-Christoph Heilinger (Berlin: de Gruyter, 2012), 54-55.

armed international intervention to protect rights.²⁸ The international community's responsibility to protect human rights must ultimately be derived from the right to resistance. It would be nonsensical to say that external agents can use force to protect human rights of distant strangers, but that these distant strangers do not have the right to protect their urgent interests. All human rights claims would only be *pro tanto* moral reasons if this were not the case. The state would have strong reasons to respect them, but ultimately would have no obligation to do so. Moreover, resistance is recognised in the body of international law, being referenced in the preamble to the Universal Declaration of Human Rights and endorsed in the various resolutions condemning colonialism and apartheid.²⁹ Consequently, the right to resistance is necessary to ground the political conception of human rights and is present in human rights practices.

The human right to resistance is a molecular right in that it has both liberty-right and claim-right elements. At its most basic, it is a liberty-right to resist the imposition of unjust institutions and an obligation not to interfere with another's resistance.³⁰ The claim element is more complex. Simon Caney describes this as a claim against interference.³¹ However, in the context of a political conception of human rights, these are claims that are made against a social institution with human rights responsibilities to protect individuals against predictable threats to their basic interests. This is a fiduciary relationship and, if it is broken, the right returns to individual persons.³² The institutional element recently defended by Caney and Christopher J. Finlay has somewhat obscured the liberty-right element of the right to resistance. It is important to keep in mind the liberty-right element moving forward, as there are instances where the institutional-reform is not feasible. Persons in radically unjust situations might lack the capacity to overturn the institutional sources of their oppression, but this does not mean they have an obligation to obey. They might be able to resist in other ways, such as evading or escaping unjust institutions.

The right to resistance is compatible with the political conception of human rights. It is not claimed that all human rights claims are simply *pro tanto* appeals. The state is identified as having rights-based obligations to its citizens. In *extremis*, a state's failure to realise these obligations can produce armed international intervention to protect rights.³³ The international community's responsibility to protect human rights must ultimately be derived from the right to resistance. It would be nonsensical to say that external agents can use force to protect human rights of distant strangers, but that these distant strangers do not have the

²⁸ State Sovereignty International Commission on Intervention, and International Development Research Centre (Canada), *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (Ottawa: International Development Research Centre, 2001); Beitz, 39.

²⁹ Blunt, "Is There a Human Right to Resistance?."

³⁰ James W. Nickel, *Making Sense of Human Rights: Philosophical Reflections on Universal Declaration of Human Rights*, 1st edition ed. (London: University of California Press, 1987), 31.

³¹ Caney, "Responding to Global Injustice: On the Right of Resistance," 53.

³² Christopher J. Finlay, *Terrorism and the Right to Resist: A Theory of Just Revolutionary War* (Cambridge: Cambridge University Press, 2015), 35.

³³ International Commission on Intervention; Beitz, 39.

right to protect their urgent interests. All human rights claims would only be *pro tanto* moral reasons if this were not the case. The state would have strong reasons to respect them, but ultimately no obligation to do so. This right is not only held against the state, but against the international system as a whole, which is conceived of as the conglomeration of agents and institutions that produce rules of global social cooperation.³⁴ This is because the international system is coercively imposed, insofar as there is no feasible alternative, and can profoundly affect the urgent interests that human rights are designed to protect. It is a predictable threat and subject to human rights claims, including the right to resist injustice. The affluent citizens of Global North become liable to resistance because they support and benefit from unjust institutions, while failing to provide the remedies of reform and compensation.

The content of this right is difficult to define; resistance can take many forms. However, there are several distinctions that help trace the contours of resistance. The most prominent one is the distinction between resistance and what Frank Lovett calls “ordinary political action”.³⁵ The latter includes activities such as standing for office, voting, campaigning for reforms, and the like. The quality all these distinctions share is that they do not violate the law, whereas resistance does transgress the law. This is usually qualified with an overt political agenda. A person engaged in resistance is openly declaring that they object to the policy of the state by acting in a way that breaks the law.³⁶ The line between resistance and civil disobedience is less clear. Civil disobedience is often characterised by fidelity to the law; one may break a law out of protest, but still accept the legal punishment for doing so.³⁷ This fidelity to the law would be self-defeating in many cases of resistance since it would mean reaffirming the circumstances that violate their basic human rights. However, this does not mean that resistance members would be free to ignore laws that do not violate the human rights of others.

The discourse on resistance tends to focus on overt political action; this problematic, because it favours the position of relatively privileged agents, those who can act overtly and run the risk of punishment. Lovett focuses on resistance that is justice-seeking, but resistance can also be injustice-evading. Focusing on the former fails to recognise that, in some cases, resistance cannot be in the open and is “infrapolitical”. This term was coined by James C. Scott to describe the forms of resistance that appear outside of the “visual” spectrum of normal politics.³⁸ This includes actions such as slaves stealing from their masters, yeomen poaching in royal forests, or peasants avoiding tithes through dissimulation. These practices are not overtly political, because the risks that overt political actions carry are too high. Weak political agents may not be able to compel strong agents to live up to their obligations, but might be

³⁴ Beitz, 143-53; Moellendorf, 19-39; Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 97-123.

³⁵ Lovett, 221.

³⁶ John Rawls, *A Theory of Justice*, Revised ed. (London: The Bellknap Press of Harvard University Press, 1999), 319-20; Roberto Gargarella, "The Right of Resistance in Situations of Severe Deprivation," in *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor*, ed. Thomas Pogge (Oxford: Oxford University Press, 2007), 370; Lovett, 221; Finlay, 20.

³⁷ Rawls, *A Theory of Justice*, 320-22.

³⁸ Scott, 19.

able to escape or mitigate the injustice to which they are subjected. Infrapolitics helps to strengthen the agency of oppressed persons in our political discourse. The global poor might not be able to act in ways that are overtly political, but they might have other means. This throws into relief the distinction between justice-seeking and injustice-evading forms of resistance. Justice-seeking forms of resistance tend to be the focus of many discussions about resistance. These are activities that are aimed at reforming social institutions. Justice-seeking resistance tends to be public and organised. However, injustice-evading resistance represents attempts to escape from, or at least mitigate, the effects of injustice. In these cases, resistance is clandestine and decentralised.³⁹

The argument that is developed in the remaining sections of this article is based on these two premises. Some readers might disagree with them, but they are taken as read. This article does not seek to justify these positions, but to examine the consequences of holding them.

3. Fugitive Slaves and Illegal Immigrants

To show why illegal immigration is a form of resistance, this section will draw a comparison between illegal immigrants and fugitive slaves. The slave analogy is useful because it seems safe to assume that most people would agree that slavery is abominable and that slaves did nothing wrong when they attempted to escape, even if this meant violating the law. Slavery and global poverty share three morally relevant characteristics: the presence of domination, the durability of domination, and the prospect of escape. It will, therefore, be argued that, if it is permissible to escape in one case, then it must be in the other.

Slaves and the global poor are both denied secure access to their human rights. This is because the social institutions that define their positions are characterised by domination.⁴⁰ Domination, here, refers to a social relationship or institution in which one agent possesses the capacity to arbitrarily interfere with choices available to another.⁴¹ Domination can occur interactionally; this is the case between a master and a slave. It can also occur systemically, when a person's status is arbitrarily determined by a social institution over which they have no control; this is also present in instances of slavery where the master's power is recognised by the law and cannot be contested by the slave.⁴² It is this second mode of domination that especially characterises the condition of the global poor. Their status is arbitrarily determined by the rules of the international system in a way that they cannot contest. This does not mean they do not suffer from interactional domination; indeed, if they are living in an authoritarian regime propped up by the privileges of the state system, they almost certainly do, but that

³⁹ "Resistance without Protest and without Organization: Peasant Opposition to the Islamic Zakat and the Christian Tithe," *Comparative Studies in Society and History* 29, no. 3 (1987): 448-52.

⁴⁰ Gwilym David Blunt, "Justice in Assistance: A Critique of the 'Singer Solution'," *Journal of Global Ethics* 11, no. 3 (2015): 559-65.

⁴¹ "On the Source, Site and Modes of Domination," *Journal of Political Power* 8, no. 1 (2015): 5; Francis Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010), 120; Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), 50-6.

⁴² Blunt, "On the Source, Site and Modes of Domination," 7.

the systemic form of domination matches the cosmopolitan critique of the international system. Being subjected to domination is important because it deprives people of secure access to their human rights. Arbitrary power is beyond the control of those subjected to it. This does not make it necessarily malevolent. A slave might be fortunate and have a benevolent master, but the benefits she enjoys are *cum permissu*, or by the leave of her owner.⁴³ Domination is about the structure of social relationships and institutions rather than the intentions of agents within them.⁴⁴ Consequently, the dominated agent cannot be said to possess autonomy. They cannot have a “purpose of one’s own”, since their plans will be contingent on another’s permission or institutional design.⁴⁵

The sources of domination in both cases are extremely durable. The master-slave analogy that is common in the domination literature often gives a binary rendering of the dynamics of slavery; it is more than “living on another’s terms”.⁴⁶ Many plantation slaves, for example, had no direct contact with their masters save for brief exchanges.⁴⁷ They spent more time in the direct power of overseers, agents, and privileged slaves.⁴⁸ This demonstrates how deeply embedded slavery was in American society. It was not just dominating in the sense of the interactional relationship between master and slave, but at the systemic level as well. It was widespread, supported by the law, and so entrenched in the social reality that the slave-owning states chose to secede from the Union to protect it. Likewise, the current international system is deeply rooted in the daily lives of the affluent. It provides the clothes on our backs, the mobile phones and laptops that connect us, and the jobs that allow us to afford such goods. It determines the life prospects of billions of persons and is supported by a complex web of international law and institutions. The durability of oppressive institutions influences how the right of resistance can be enacted. Slave rebellions in history have produced great suffering with limited success. The idea of an uprising by the global poor seems even more far-fetched, as the asymmetry of power between the Global North and the Global South is so great as to make the conclusion of redistributive war a forgone conclusion.⁴⁹ A revolution against global inequality may be justified, but this would not be particularly helpful given its minimal prospect of success.

Yet even in these circumstances domination does not completely obliterate agency. Dominated agents may lack the ability to freely pursue their own purposes, but they can and do resist. In the case of slavery, this often took the form of theft, withholding labour, or ‘lurking’, which was the practice of temporarily fleeing plantations.⁵⁰ In some cases, this resulted in better working conditions by pressuring slave-owners. However, it could also

⁴³ Pettit, 61.

⁴⁴ Blunt, "On the Source, Site and Modes of Domination," 6, 14-16; Lovett, 43-7.

⁴⁵ Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms*, 37.

⁴⁶ Pettit, 7-9.

⁴⁷ Frederick Douglass, *My Bondage and My Freedom* (London: Yale University Press, 2014), 33-4.

⁴⁸ John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* (Oxford: Oxford University Press, 1999), 9-11.

⁴⁹ Thomas Pogge, "Poverty and Violence," *Law, Ethics and Philosophy* 1 (2013): 103-4.

⁵⁰ James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (London: Yale University Press, 1990), 188-9; Franklin and Schweninger, 57.

result in severe punishments. Alternatively, a high-risk act of resistance involved planning to escape to the free states or British North America. This was not an easy task, as it required slaves to cross hundreds of kilometres of territory while avoiding slave-catchers, but many braved the challenge. Yet, even success had a melancholic note. Escaping from slavery meant a permanent disconnection from what was often the only life a slave knew. Frederick Douglass writes that, after the initial joy of his escape passed, he found himself alone in New York with little resources and no friends.⁵¹ The risks that flight entailed were too high for many slaves in the Antebellum South.

The global poor also possess the means to escape injustice through flight. However, it might be objected that this is rather different to the flight of slaves. Once a slave reached a jurisdiction where slavery was outlawed, they would be free. However, when an illegal economic immigrant enters a state in the Global North, they are not transformed into an affluent suburbanite. There is an element of truth in this claim, but the reality is not so clear. The Dred Scott case shows that living in a free state was no guarantee of freedom.⁵² Moreover, escaping from slavery did not mean escaping from racism, exploitation, and poverty. It did mean escape from one form of particularly severe institutionalised domination. Likewise, crossing a border does not make the immigrant immediately wealthy. Indeed, many of them are subjected to exploitation in the shadow economy, and lack access to basic services if they do not live in a jurisdiction like a 'sanctuary city' that has firewalls between immigration authorities and other public services.⁵³ However, in reaching the Global North they have mitigated the worst effects of the international system, insofar as extreme poverty is rare in the Global North and access to the contents of one's human rights is relatively more secure. That said, the vulnerability of many illegal immigrants to exploitation and domination is a concern. If illegal immigration results in trading one form of severe domination for another, it would certainly not be an effective remedy. This problem will be revisited in the conclusion.

As with escaping from slavery, illegal immigration can be extremely perilous. Between January and September 2014, there were over 4,000 migrant border-related deaths around the world, most of which occurred while crossing the Mediterranean Sea.⁵⁴ Illegal migration also often requires collaborating with criminal elements that place migrants at risk of being trafficked into bondage labour or the sex trade.⁵⁵ Even if the illegal immigrant is successful, she then faces circumstances similar to those experienced by Douglass in New York, namely life in a strange land with little support. Yet, the prospect of freedom from slavery or poverty is sufficient to motivate many people to endure these risks. Consequently, if illegal migration provides the same remedy to human rights violations as escaping slavery, then we cannot condemn impoverished migrants for resisting in the same manner as fugitive slaves.

⁵¹ Douglass, 269-73.

⁵² Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (Oxford: Oxford University Press, 1978).

⁵³ Carens, 131-5.

⁵⁴ Tara Brian and Frank Laczko, eds., *Fatal Journeys: Tracking Lives Lost During Migration* (Geneva: International Organization for Migration, 2014), 18.

⁵⁵ Kevin Bales, Zoe Trodd, and Alex Kent Williamson, *Modern Slavery: The Secret World of 27 Million People* (Oxford: Oneworld, 2009), 22-5.

4. Objections

This section will address several important objections to this argument. The first is that illegal migration is not a form of resistance. It is rather, as Alejandra Mancilla suggests, an instance of someone acting on the right of necessity; they cross borders to save their lives rather than merely looking for better lives.⁵⁶ It is an understandable objection. Illegal immigration does not appear like intuitive cases of resistance, such as the partisan resistance to the Nazi occupation of Eastern Europe or anti-colonialism in the twentieth century. Categorising illegal immigration as an act of necessity obscures this dimension of agency. The right of necessity is not targeted at unjust social institutions, but rather is focused on the rights of persons to preserve their lives. This is seen in the archetypal example of a starving man stealing a loaf of bread from someone in possession of a superabundance of resources.⁵⁷ This says little about the relationship between the starving person and the institutional conditions that have produced their starvation. It does not comment upon the source of the affluent person's wealth, because presumably the starving person's right of necessity applies regardless of whether the affluent person's superabundance is the product of just transactions or unjust appropriation. Necessity occurs beyond the scope of justice. Taking subaltern agency seriously means deepening our understanding of resistance to understand the strategies available to them. Consequently, illegal immigration is a form of resistance, albeit one that is infrapolitical and injustice-evading.

The second objection argues that this is not an accurate depiction of illegal economic immigrants. Those who engage in the practice are usually not the most worst-off people in the world. They must have sufficient resources to pay for transport and evade border patrols. The world's poorest persons do not even have access to this option for resistance.⁵⁸ This point is well taken, but it is unclear how it undermines the argument. Those engaging in illegal economic migration may be relatively affluent compared to the world's poorest persons, but they are often extremely poor when compared to the average person in the Global North. Moreover, their status is insecure. They do not have secure access to their human rights. They might have enough to eat this season, but the next might be famine. Their children might have access to education this term, but cuts in education budgets or overseas aid might mean the school will close. The situation of those living above the World Bank's poverty line of \$1.90 per day might mean they are technically not in poverty, but they are constantly vulnerable to poverty. If we return to the slave analogy, a so-called 'house slave' lived a relatively privileged life compared to slaves that worked in the cotton fields. However, if her owner decides to "sell her down the river", a phrase that describes being sold to the brutal plantations in the Deep South, she has no recourse but resistance.⁵⁹ She is at her master's pleasure. Those people from extremely poor countries who illegally cross borders are in the same position as the well-treated slave who absconds. Their relative affluence does not seem

⁵⁶ Mancilla, 113.

⁵⁷ Mancilla, 28-9, 68-77.

⁵⁸ Andersson; Hans Lucht, *Darkness before Daybreak: African Migrants Living on the Margins in Southern Italy* (London: University of California Press, 2012), 86.

⁵⁹ Lee Sandlin, *Wicked River: The Mississippi When It Last Ran Wild* (New York: Pantheon Books, 2010), 121; Douglass, 264

to be a meaningful obstacle, as their human rights remain insecure. Moreover, even though current illegal immigrants are often not the most worst-off persons, this does not really affect the argument that the absolute worst-off persons would do nothing wrong if the opportunity to illegally immigrate presented itself.

A related claim is that resistance does not accurately describe the motivations of illegal immigration. This is not an anthropological survey; it is not meant to be descriptive. However, there is evidence that refutes this objection. Those living in severe poverty are aware of the massive inequality and feel that they have been excluded. They may not think of themselves as engaged in justice-seeking resistance, but they are aware of not enjoying the benefits of global cooperation.⁶⁰ Ruben Andersson uses the term *adventurier* to describes a subculture of immigrants who are not just fleeing poverty, but pursuing a “quest for self-realisation and emancipation”.⁶¹ This aligns closely with seeking the minimal autonomy human rights are supposed to protect. This is not to claim that there are not a variety of motivations driving illegal migration. However, we should be extremely cautious about downplaying awareness of global inequality and the feeling of exclusion in the Global South.

The remaining objections are derived from the debate on open borders. The first of these is that the human rights system permits states to exclude would-be immigrants on the grounds that one cannot become responsible for the human rights of another person without giving consent. This argument is most clearly articulated by Michael Blake, although Christopher Heath Wellman makes a similar case.⁶² Blake’s argument is compelling because he employs a similar approach to this article, but reaches radically different conclusions. He begins by looking at the “facts on the ground” of the international system.⁶³ From this, he argues that states have jurisdictional control over a territory and have human rights responsibilities to respect, protect, and fulfil human rights.⁶⁴ However, this does not mean that the state is obliged to protect the human rights of all persons, as it is only responsible for its own jurisdiction. The state has the right to exclude would-be immigrants on the grounds of free association. An individual cannot unilaterally demand that a state treat it as a citizen. It is wrong to impose burdens on other people without providing a reason why they should have this burden.⁶⁵ The state has a responsibility to protect its citizens from unwanted obligations.⁶⁶ However, when it comes to refugees, Blake admits that this restriction would be much weaker, though they might be subject to restrictions such as not being able to

⁶⁰ Katy Gardner, *Global Migrants, Local Lives: Travel and Transformation in Rural Bangladesh* (Oxford: Clarendon Press, 1995), 62-4; Lucht, 86-7.

⁶¹ Andersson, 107.

⁶² Christopher Heath Wellman, "Immigration and Freedom of Association," *Ethics* 119, no. 1 (2008).

⁶³ Michael Blake, "Immigration, Jurisdiction, and Exclusion," *Philosophy & Public Affairs* 41, no. 2 (2013): 107.

⁶⁴ *Ibid.*, 110.

⁶⁵ *Ibid.*, 115-7.

⁶⁶ *Ibid.*, 120.

choose where they get to be settled.⁶⁷ If a person crosses the border illegally, then they can be expelled. This might be condemned, but not for reasons of justice.⁶⁸

Blake's argument, while compelling, is at an impasse with the premises of this paper. He is a noted sceptic of cosmopolitan theories of distributive justice. He argues that the circumstances of justice only occur in the presence of state coercion as a means to compensate the loss of autonomy.⁶⁹ This does not recognise the transnational use of coercion that frames cosmopolitan arguments, such as the coercion used by multinational corporations against the states of the Global South.⁷⁰ Blake demands that immigrants provide justification for why the citizens of the state that they wish to migrate to should take up the burden of protecting their human rights. The illegal economic immigrants can reply that the citizens of Global North have failed in their duty to not support unjust institutions and have benefitted from an international system that is comparable to a crime against humanity.⁷¹ Blake's argument, that individuals have the right not to be burdened with human rights responsibilities, can be granted as valid. If we lived in a world of reasonably just states, in which the cosmopolitan principles of distributive justice were realised, then illegal migration would not be permitted. However, the creation of a globalised economy that directly undermines a distant stranger's secure access to the content of their human rights renders it moot to cosmopolitans. He might contest that global coercion is sufficient to generate obligations of justice, but that would be challenging one of the premises of this article and is, therefore, beyond its scope.

David Miller has defended the state's rights to control borders in order to preserve important collective goods. He argues that open borders cannot be justified by either original common ownership of the Earth, nor by the right of free movement.⁷² The positive case for the state's right to control immigration is based on the protection of collective self-determination, the rule of law, democracy, the welfare state, and national identity of the liberal variety. The state must have the right to control its borders to protect these vital goods that, in the context of this paper, can be understood as necessary for possessing secure access to one's human rights.⁷³ Miller's claims are supported by some of the empirical research on the costs of migration. Robert Rowthorn's analysis of the economic impact of mass immigration on Britain shows that the economic benefits of mass migration by unskilled workers are marginal, while it produces significant negative consequences for the working class, the environment, and

⁶⁷ Ibid., 126-9.

⁶⁸ "The Right to Exclude," *Critical review of international social and political philosophy* 17, no. 5 (2014): 534-5.

⁶⁹ "Distributive Justice, State Coercion, and Autonomy," *Philosophy & Public Affairs* 30, no. 3 (2001): 273-9.

⁷⁰ Mathias Koenig-Archibugi, "Transnational Corporations and Public Accountability," *Government and Opposition* 39, no. 2 (2004): 242.

⁷¹ Blunt, "Justice in Assistance: A Critique of the 'Singer Solution'."

⁷² David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (London: Harvard University Press, 2016), 38-56.

⁷³ Ibid., 58-62.

public infrastructure.⁷⁴ Paul Collier has made a similar analysis, but adds that it also causes social dislocation in host countries as large migrant communities, once they reach a critical mass, do not integrate and function as parallel societies. This can erode trust within society and damage the solidarity necessary to maintain public goods.⁷⁵ This gives empirical heft to Miller's claim.

Yet, it is not clear how his objections to open borders would affect a resistance-based argument, though Miller certainly would not accept its cosmopolitan premise. The argument supporting illegal migration is not based on common ownership, nor a human right to immigrate where one pleases. It is silent on both. The dislocation that Miller is concerned with is associated with legal immigration. His argument may hold in a world in which all people had secure access to the content of their human rights. In these circumstances, states could arrest and deport illegal migrants without concerns of justice. However, it does not seem likely that hundreds of millions of impoverished people are going to suddenly decamp and move to the Global North. This is the work of bad fiction, specifically Jean Raspail's odiously racist *Camp of the Saints*, where Global North is swamped by illegal immigration and civilisation collapses. The idea of the global poor migrating in their hundreds of millions simply does not seem plausible, for the same reason that the millions of slaves in the Antebellum South did not just walk off the plantations. Migration is so physically and psychologically demanding that it is not a reasonable option for many. The number of people escaping from extreme poverty through illegal migration is relatively low compared to those living in extreme poverty. The million people who illegally entered Europe in 2015 are a tiny fraction of those living in extreme poverty. This can be compared to the fugitive slaves in the United States. Contemporary estimates claimed that between 1810 and 1850 roughly one hundred thousand slaves escaped bondage from a population of over three million.⁷⁶ History would not have been kind to the free states or British North America if they returned fugitive slaves because important social goods would be imperilled if every slave absconded.

Yet, one might say that even if the numbers of actual illegal economic immigrants is small, there would be hundreds of millions of potential immigrants. Does this undermine the idea of resistance as a last resort? Resistance, it has been argued, is a human right; it is held by all appropriate agents. The fact that nearly a billion people live beneath the international poverty line and are in circumstances where they can act on this right demonstrates the severity of this injustice. Raspail's troglodytic novel ends with the French countryside being overrun by his locust-like caricature of the global poor who have come to feast on the harvest of the Global North. It never asks whether our abundance is reliant their poverty. If mass illegal migration threatens projects that we in the Global North have reason to value, then it should serve as warning that our intransigence may carry a very heavy price.

⁷⁴ Robert Rowthorn, "Large-Scale Immigration: Its Economic and Demographic Consequences for the UK," (London: Civitas: Institute for the Study of Civil Society, 2014), 5-7.

⁷⁵ Paul Collier, *Exodus: Immigration and Multiculturalism in the 21st Century* (London: Penguin, 2013), 135-42.

⁷⁶ Wilber H. Siebert, *The Underground Railroad from Slavery to Freedom* (New York: Russell & Russell, 1967), 341.

Arguments against illegal immigration tend to be skewed towards the rights and interests of the affluent. As non-cosmopolitan theorists do not recognise global poverty as a systemic violation of human rights, they tend not to consider migration in the context of injustice. The arguments about the negative effects of illegal migration on the citizens of the Global North have an echo of the special pleading of slave-owners. It cannot be denied that fugitive slaves, let alone abolitionism, deeply hurt the economic interests of the slave-owning class and the fabric of white society in the American South. A small slave-owning farmer would have been in serious difficulty if two of his six slaves absconded, while abolition decimated the planter class.⁷⁷ Those in the Global North may have strong reasons to value their standard of living and their cultural ties, but if these are sustained by unjust social institutions then it is not clear why these interests trump the rights of their victims.

5. Conclusion

Cosmopolitans cannot condemn illegal economic immigration by impoverished persons. It is a legitimate form of infrapolitical resistance by subaltern agents confronted with intransigently unjust circumstances. They are the fugitive slaves of the twenty-first century. Instead of recapitulating the argument, it might be more useful to think about the impact that this argument makes in the politics of illegal migration. Thinking of illegal immigration as resistance colours at least two cases in a different light. The first is the sanctuary cities that were mentioned earlier. These cities do not collaborate with immigration enforcement in most cases and provide access to public services to illegal immigrants. This helps to protect these people against domination and exploitation, but it can be understood as satisfying the liberty-right element of resistance by not impeding a person's legitimate resistance against unjust institutions. Resistance provides a justification against collaboration with immigration authorities and provides reasons to ensure that illegal immigrants are provided with secure access to the content of their human rights.

The second case seems obvious given the *leitmotif* of slavery in this article. Fugitives often had assistance from free citizens to escape from slavery from the 'Underground Railroad'. Harriet Tubman acted as a 'conductor' on the Railroad; she made at least nineteen trips into the South and rescued more than three hundred people from bondage.⁷⁸ She is justifiably celebrated. Is there an obligation to establish a new railroad to the Global South? Concerns about the poorest persons not possessing the resources for clandestine escape and fears about immigrants being coerced into sex work or debt bondage could be allayed by such an organisation. However, one cannot ignore the illegality of such practices. The right to resistance provides a *prima facie* case for breaking unjust laws. It cannot be rejected out of hand, but reasons must be given as to why individuals should support unjust social institutions by collaborating with them. These are far from complete defences of sanctuary cities or assisting illegal immigration, but they illustrate that this is not a trivial argument. Shifting attention to the global poor, as active agents expose a radical core in cosmopolitan political

⁷⁷ Martin Ruef, *Between Slavery and Capitalism: The Legacy of Emancipation in the American South* (Princeton: Princeton University Press, 2014), 103-31.

⁷⁸ Mary Ellison, "Resistance to Oppression: Black Women's Response to Slavery in the United States," *Slavery & Abolition* 4, no. 1 (1983): 59-60.

thought and thinking of illegal immigration as resistance, compels cosmopolitans to engage with this radicalism.