

*The Ethics of Resisting Immigration Law*

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Abstract: States heavily restrict immigration, and many people violate these restrictions. For example, unauthorized immigrants cross borders without official permission and other actors, such as people smugglers, assist them in doing so. How should we evaluate resistance to immigration law from a moral perspective? In this article, I survey recent work on the ethics of resisting immigration law. In particular, I examine three categories of resistance to immigration law: unauthorized immigration, people smuggling, and citizens' resistance to laws that prohibit them from assisting or interacting with unauthorized immigrants.

## **1. Introduction**

Virtually all states enforce immigration restrictions that exclude foreigners. Among other measures, governments build walls, authorize border patrols, incarcerate unauthorized immigrants, and deport foreigners with the aim of controlling immigration. States restrict immigration in more subtle ways as well. Governments forbid citizens from interacting and associating with unauthorized immigrants in certain ways by, for instance, offering them employment or housing (Pham 2008). There's little doubt that these legal barriers prevent millions of potential immigrants from crossing borders (Clemens 2011).

Many people also violate immigration laws. Every year millions of immigrants cross borders and live in other states without authorization. To immigrate illegally, migrants evade border patrols, deceive immigration agents, and even on occasion use coercion and force against border guards. People smugglers often help these immigrants to avoid immigration agents and

reach their destinations in return for money. Some of the citizens of states that enforce immigration restrictions aid unauthorized immigrants and interact with them in proscribed ways. Citizens may transport unauthorized immigrants, provide with them with shelter, hide them from the authorities, or employ them against the law. All of these activities are instances of what I refer to as “resistance to immigration law.” Resistance to immigration law involves actions that disobey or obstruct the enforcement of this law.

Resistance to immigration law has become prominent in recent years. Populist governments hold power in several Western democracies, and these governments have acted aggressively to prevent immigration and remove unauthorized immigrants. Citizens and immigrants have responded with defiance and disobedience. Consider the sanctuary city movement in the United States. Hundreds of cities and counties have declared that they will refrain from cooperating with immigration agencies to detect and deport unauthorized immigrants. This movement has sparked controversy. Proponents argue that sanctuary cities shield unauthorized populations from unjust deportation policies and have other benefits for the communities where unauthorized immigrants live. Critics contend that sanctuary cities involve vigilante behavior, endanger the security of communities, and undermine legitimate law enforcement (Gonzalez, Collingwood, and El-Khatib 2017).

How should we evaluate resistance to immigration law from a moral perspective? This question seems neglected. Most philosophers who work on the ethics of immigration write about public policy, not questions about individual ethics. Consider the subject of unauthorized immigration. Most of the philosophical work on unauthorized immigration has focused on what states should do with their unauthorized populations (Carens 2013; Pevnick 2014). Political theorists who focus on unauthorized immigration address questions like “should states grant

unauthorized immigrants permanent residency and citizenship?” and “how should states protect the human rights of unauthorized immigrants?” In contrast, questions about resistance to immigration law are questions about individual ethics--that is, questions about how individual actors should behave. This subject includes questions like “when are citizens obligated to disobey immigration law to aid unauthorized immigrants?” or “when is it permissible for immigrants to evade immigration restrictions?” Only a handful of philosophers and political theorists have written about these questions.

Why might the individual ethics of immigration nonetheless be worth discussing? The most obvious reason is that discussion about these questions can guide decision-making. Many immigrants and citizens face moral questions with respect to immigration law. Philosophical discussion can clarify these questions, and suggest some answers to them. Another reason to care about the individual ethics of immigration has to do with our policy preferences. People’s policy preferences about immigration often depend on their moral evaluation of the conduct of immigrants. Here’s an example. Congressman Raul Labrador says: “The people that came here illegally, knowingly, I don’t think they should have a path to citizenship. If you knowingly violated our law, you violated our sovereignty, I think we should normalize your status, but we should not give you a pathway to citizenship” (Huemer, 2019, p. 34). We can interpret these remarks in different ways, but one interpretation is that unauthorized immigration is wrong and that’s why the government should deny unauthorized immigrants access to citizenship. In this way, judgments about the permissibility of unauthorized immigration can affect our views about public policy.<sup>1</sup>

In this paper, I’ll critically survey recent philosophical work on resistance to immigration law. I will proceed as follows. In section 2, I’ll clarify some assumptions about states’ rights to

exclude immigrants that will inform my account. These assumptions will inform the rest of my discussion. In section 3, I'll consider debates about the ethics of unauthorized immigration. In sections 4, I'll discuss the ethics of people smuggling. In sections 5, I'll examine the obligations of citizens with respect to the immigration laws of their own state. Section 6 concludes.

## **2. On the Right to Exclude**

Before I examine the ethics of resistance to immigration law, I want to briefly clarify some background issues in the ethics of immigration that will frame my discussion. These issues involve the moral status of immigration restrictions. Our evaluation of resistance to immigration law will depend in part on our views about the legitimacy of immigration restrictions. So, it's worth explaining some different views on this subject before connecting them to resistance to immigration law.

Most people believe that immigration restrictions are permissible and international law reflect this view. The conventional view of immigration restrictions is that states have robust rights to exclude potential immigrants. Some political philosophers agree that immigration restrictions are justified, but they give different arguments for this conclusion. Some defenders of the right to exclude potential immigrants begin by arguing that states have rights to collective self-determination (Miller 2016; Walzer 1984; Wellman 2008). On this view, the citizens of a political community have rights to shape their collective destiny and control the character of their political community. Immigration may alter the character, membership, and institutions of a political community. So, if citizens have rights to control these aspects of their collective affairs, then perhaps the value of self-determination justifies immigration restrictions.

Other defenders of immigration restrictions appeal to the bad consequences of unlimited immigration in justifying immigration restrictions (Joshi forthcoming). Immigration might have bad economic effects. Immigration could lower the wages of citizens, increase unemployment, or strain public finances. Alternatively, immigration can change a society's culture or institutions in harmful ways. Some political theorists contend that a society's reasons to prevent these bad effects outweighs the moral reasons to permit more immigration at some margin. Most of these authors also argue that citizens have special obligations to protect each other's interests that they lack with respect to foreigners (Macedo 2007). On their view, these special obligations are, in some cases at least, weightier than the moral reasons to allow immigration.

On the other side of the debate, many philosophers defend open borders. The most prominent justifications for open borders appeal to the value of liberty and obligations to reduce global inequality and poverty (Carens 2013; Kukathas 2013b). Defenders of open borders argue that immigration restrictions interfere with valuable liberties, such as freedom of occupation or association, and are presumptively unjust for that reason. Immigration restrictions prevent people from associating with people in other states and finding the employment of their choice. Immigration restrictions may also reinforce global inequality. Most immigrants want to move in order to improve their standard of living, and immigration restrictions prevent them from doing so. According to some economists, liberalizing immigration restrictions would generate large gains for the global poor and would substantially reduce global inequality (Clemens 2011). Advocates for open borders argue that the moral reasons to permit immigration generally defeat the reasons in favor of immigration restrictions when they come into conflict.<sup>2</sup>

Your background views about the moral status of immigration restrictions will likely affect your position on the permissibility of resistance to immigration law. Why? The justice or

injustice of law is relevant to whether we should obey it or avoid resisting it. Here's a historical illustration: the Fugitive Slave Act in the mid-nineteenth century United States. This law requires officials to return escaped slaves to their masters if they were captured. The gross injustice of this law explains why it was permissible for officials to disobey it.

Similarly, if immigration restrictions are seriously unjust, then this fact could justify resistance to these laws. Nonetheless, the moral status of resistance to immigration may not be entirely a function of the justice or injustice of immigration restrictions. It's possible that we have good reasons to obey the law and to avoid obstructing it even if this law is problematic in some respects. My point here is only that our prior assessment of the justice of a law will affect our all-things-considered judgments about whether it's permissible to resist it or not. For this reason, what we think about the moral acceptability of immigration restrictions will influence how we evaluate resistance to immigration law.

### **3. Unauthorized Immigration**

Many people around the world are unauthorized immigrants (other common terms for members of this group include undocumented, illegal, and irregular immigrants). How many? It's hard to answer this question with confidence because unauthorized immigrants actively avoid detection. But it's clear that they can make up a significant fraction of immigrant populations. Estimates suggest that there over ten million unauthorized immigrants in the United States (The National Academy of Sciences 2016, p. 9) and between about two and four million in Europe (Vogel, Kovacheva, and Prescott 2011). A large fraction of immigrants in low-income countries are unauthorized (Sadiq 2010, chapter 1). Is unauthorized immigration morally justified? Let's consider some possible answers to this question.

## *Unauthorized Immigration is Wrong*

There are several reasons why we might conclude that unauthorized immigration is morally problematic. One reason is that law-breaking is morally wrong and that unauthorized immigrants violate the law. There's a long tradition in political philosophy that holds that we have political obligations to obey the law. Political philosophers have given different arguments for political obligations: they've claimed that we have contractual duties to obey the law, obligations of fairness to do so, or obligations to respect the outputs of democratic procedures, among other reasons (Lefkowitz 2006). If one of the arguments for political obligation succeeds, then this argument could perhaps apply to unauthorized immigration as well. However, one challenge for this argument is that the scope of political authority may not extend to unauthorized immigrants (Hidalgo 2015; Huemer 2019). Standard accounts of political obligations to obey the law, such as social contract or fair play accounts, might fail to apply to unauthorized immigrants who never consent to a state's authority or receive their fair share of benefits from this state.

A second reason to object to unauthorized immigration is the costs that this immigration imposes on others. Unauthorized immigrants may pay too little in taxes, overtax public services, damage legal institutions, or have other negative effects on residents of the states in which they live. Perhaps these costs makes unauthorized immigration impermissible. Michael Blake (2013) defends a related idea. Blake argues that citizens have obligations to protect the human rights of everyone in their state's jurisdiction. When people immigrate, then citizens acquire obligations to protect the human rights of these entrants as well. But Blake claims that it's wrong to impose obligations on others without their consent. When foreigners immigrate without the consent of a

political community, they impose obligations on the members of this community, obligations to protect their human rights. So, unauthorized immigration violates citizens' rights to be free of unwanted obligations. Blake suggests that we should avoid regarding unauthorized immigrants as "morally monstrous" because there often mitigating factors that reduce their culpability and the severity of their wrongdoing. Yet the conduct of unauthorized immigrants is still morally objectionable.

A third reason to criticize unauthorized immigration is that it violates states' rights over its territory. Suppose that you believe that states have rights to control access to their territories. And let's assume for the moment that these rights are analogous to ownership rights over property. If you knowingly trespass on my property, you act wrongly because you violate my property rights. In the same way, if states' rights over their territories are analogous to property rights, then it stands to reason that unauthorized immigrants act wrongly when they trespass on the territory of another state without authorization. In fact, several authors do argue that the territorial rights of states are in some respects analogous to ownership rights over property, and that these ownership rights permit states to exclude potential immigrants (Miller 2008; Pevnick 2014). Yet these authors have refrained from discussing a possible implication of their accounts: that unauthorized immigration is wrong in virtue of the fact that it violates the ownership rights of political communities.

Some political theorists contend that unauthorized immigration is morally objectionable not because it wrongs the recipient political community but rather because it wrongs other immigrants. David Miller (2016) argues that unauthorized immigrants act unfairly by skipping ahead of other legal applicants for admission who had to put up with "the delays, costs and bureaucratic procedures" that legal admission involves. The thought here is that unauthorized



immigrants violate a duty of fairness to potential immigrants who seek admission through legal means. Miller suggests that unauthorized immigrants thereby acquire reparative duties to recipient societies that they must discharge before they are eligible for permanent residency. In a similar vein, Hrishikesh Joshi (2018) suggests that unauthorized immigrants are analogous to a person who unfairly sneaks into a clinical trial to access a beneficial new drug.

Is unauthorized immigration unfair? Consider an analogy. Imagine that you're wading in line to see a movie, and another person, Sam, cuts in front of you. Unfortunately, Sam buys the last available ticket, and now you need to wait for the next showing. Clearly, Sam has acted unfairly. But here's another scenario. Once again, suppose that you're waiting in line for a movie, and Sam secretly sneaks into the theater. This time the theater is almost entirely empty and so there are plenty of spare seats for everyone who wants to see the movie (you caught an early showing). Has Sam wronged you? I'm not entirely sure. But I'm inclined to say that Sam has not acted unfairly with respect to you. Why not? Well, Sam's rule-breaking has refrained from imposing costs on you. As a result, it's hard to see that you have any significant complaint against him.

How is this relevant to immigration? Suppose that immigration is zero-sum and there are only a fixed supply of slots available. If some people immigrate without authorization, then some foreigners who seek to immigrate through legal means will be denied admission. Thus, unauthorized immigration imposes significant costs on legal applicants in this scenario. This seems unfair. On the other hand, suppose that immigration is not zero-sum. If some unauthorized immigrants cross borders, this won't affect the status of legal applicants. This doesn't seem unfair to legal applicants (or at least not seriously so). Which scenario best describes the real

world? That's hard to say.<sup>3</sup> But it's at least possible that immigration is not zero-sum in the way that Miller's analysis seems to assume.

### *Unauthorized Immigration is Permissible*

Several political philosophers argue that unauthorized immigration is morally permissible in some cases. Luis Cabrera (2010) and other authors (Benli 2018) defend unauthorized immigration as a kind of civil disobedience. As traditionally understood, civil disobedience aims to reform the law and must satisfy certain conditions, such as publicity, nonviolence, and willingness to accept punishment. Cabrera contends that unauthorized immigration can satisfy at least some of these requirements, although he acknowledges that unauthorized immigration may fail to meet all of them. Unauthorized immigrants are often "highly visible" in their communities and this satisfies the publicity requirement of traditional civil disobedience. Unauthorized immigration is also analogous to civil disobedience because it promotes the reform of immigration law by drawing attention to its' exclusionary effects. If unauthorized immigration is similar to traditional civil disobedience, then it's likely to be morally justified.

Cabrera is right that unauthorized immigration can involve civil disobedience. Unauthorized immigrants do sometimes engage in law-breaking in order to spur political reform and policy change. For example, migrants at the United States-Mexico border have publicly violated immigration law and willingly accepted punishment with the aim of raising awareness of their plight and cause (Kinosian and Partlow 2018). Nonetheless, the analogy between unauthorized immigration and traditional civil disobedience is strained. It's far from clear that unauthorized immigration generally promotes reform. It's equally plausible that unauthorized immigration provokes backlashes that lead to more punitive immigration policies. Furthermore,

unauthorized immigrants by-and-large strive to avoid detection and punishment. Thus, it's doubtful that most unauthorized immigrants can satisfy the publicity requirement of civil disobedience. Unauthorized immigration is, on the whole, closer to what James Scott (2014) calls "everyday forms of resistance" (p. 8). Everyday forms of resistance is "[q]uiet, unassuming, quotidian insubordination" that includes activities such as draft-dodging, sabotage, hunting on the king's lands, and other kinds of covert law-breaking.

Can unauthorized immigration nonetheless be justified? In my own work, I've developed the following argument for the position that unauthorized immigration is morally acceptable (Hidalgo 2015). My argument begins with the assumption that at some immigration restrictions are unjust. But notice that immigration restrictions involve coercion. Immigration agents pose threats of physical force to immigrants. So, immigration restrictions sometimes involve unjust threats of force. Like everyone, immigrants have defensive rights against unjust threats and these rights can justify resistance. Moreover, I argue that standard accounts of political obligations and legitimacy are unable to explain why unauthorized immigrants have duties to obey unjust immigration laws. For these reasons, immigrants can rightfully resist unjust immigration restrictions. In particular, immigrants can permissibly evade border patrols, deceive immigration agents, and even use defensive force against these agents, provided that defensive force satisfies principles of necessity and proportionality.

In contrast to Cabrera's account, my account holds that unauthorized immigration is permissible even it falls short of satisfying the conditions of traditional civil disobedience. Several other authors make broadly similar arguments as well (Blunt 2018; Huemer 2019). But critics object to these arguments by claiming that unauthorized immigration is incompatible with the value of political legitimacy. For example, Caleb Yong (2018) contends that foreigners have

duties to refrain from actions and policies that undermine an legitimate state's capacity to regulate immigration to its territory. Thus, prospective immigrants should comply with the immigration laws in order to respect the international legitimacy of states.

#### **4. People Smugglers**

Immigrants often enlist people smugglers in helping them to cross borders. People smugglers are actors who assist people in immigrating without authorization and in return for compensation. This assistance takes a variety of different forms. Some smugglers serve as guides, run safe houses, operate trucks or boats that transport migrants, and coordinate the logistics of smuggling. People smuggling provokes strong feelings. Politicians, newspaper editorials, and international organizations routinely condemn people smuggling (Missbach and Sinanu 2011). A United Nations protocol commits over a hundred signatory countries to criminalizing people smuggling.

Only a few ethicists and political philosophers have examined the moral issues that people smuggling raises. But some agree that people smuggling is objectionable. Luis Cabrera (2010) argues that people who smuggle immigrants for pay do not act justifiably. Cabrera's reasoning seems to be that many people smugglers abuse their clients by extorting money from them, kidnapping them, and using violence against immigrants. Other common objections to people smuggling are that smugglers wrongfully exploit migrants, and that smugglers deceive migrants by exaggerating the odds that they'll reach their destinations and understating the risks of the journey.

But other political philosophers, myself included, defend people smuggling as potentially permissible and even obligatory (Aloyo & Cusumano, Forthcoming; Hidalgo, 2018; Kukathas,

2013a; Müller, Forthcoming). Defenders of people smuggling contend that smuggling can be voluntary and beneficial for immigrants. While it's true that immigrants and refugees are often in desperate positions, they nonetheless retain the power to voluntarily consent to the risks that immigration poses for them. Furthermore, people smugglers may provide a valuable and beneficial service to most of their customers. For example, a large fraction of refugees rely on people smugglers to reach their destinations (Koser 2011). Defenders of people smuggling cite ethnographic evidence that many immigrants have positive attitudes towards smugglers and that people smugglers have vested professional interests in the safety of their clients (Sanchez 2014).

However, it's a mistake to suppose that there's a general answer to the question of whether people smugglers act permissibly or not. It's certainly the case that some smugglers act wrongly because they abuse and exploit their clients, while others act permissibly and even in an admirable way. The moral debate mostly involves clarifying the conditions under which people smuggling is justified or impermissible, and investigating to what extent actual smugglers satisfy these conditions.

## **5. Citizens**

Another important category of resistance to immigration law is the disobedience that is committed by the citizens of states that enforce immigration restrictions. Modern immigration law doesn't only regulate the behavior of foreigners, it also restricts the conduct of private citizens in various ways. When is it justified for citizens to disobey these laws? To answer this question, let's draw a rough distinction between positive and negative duties. Positive duties are moral reasons to actively provide people with assistance, usually at some cost to the duty-bearer. Negative duties are moral reasons to refrain from harming or coercing another person; negative

duties require inaction. Both positive and negative obligations can plausibly require resistance to immigration law in certain circumstances.

Governments have sometimes punish citizens for providing assistance to unauthorized immigrants. Here's an example. Humanitarian groups, such as the organization No More Deaths, operate near the Mexico-United States border and give food, water, and shelter to migrants who pass through the area. State officials have arrested several members of these groups for transporting immigrants to seek medical attention or for providing them with shelter. Candice Delmas argues that bystanders can have samaritan duties to disobey the law in these circumstances (Delmas 2014). On her view, we have duties of rescue to break the law when the law contributes to endangering people, and when this assistance is not unreasonably costly for the duty-bearer. Immigration laws that forbid bystanders from helping immigrants in dire need place the lives of these immigrants in jeopardy. Moreover, bystanders who are in a position to covertly aid unauthorized immigrants in need can sometimes avoid incurring unreasonable costs and risks. So, samaritan assistance is morally required in cases like these ones.

Many political philosophers have also argued that we have natural duties of justice. Natural duties of justice bind all moral agents, irrespective of whether people consent to these duties. According to John Rawls and others, natural duties require us to promote just institutions (Rawls 1999). Rawls thought that natural duties ground political obligations, obligations to obey the law. But this claim only applies to a society with reasonably just institutions. When social institutions are seriously unjust, our natural duties of justice could imply that we should disobey and resist the law if this helps to end this injustice. Let's assume for the moment that the mass deportation of immigrants is unjust. So, citizens could have natural duties of justice to obstruct these deportations.

Consider the example of the Sanctuary Movement in the United States (Cunningham 1995; Davidson 1989). This was a movement in the 1980s to oppose the deportation of refugees from Central America, particularly Guatemalan and El Salvador. Religious congregations hid refugees and protected them from the authorities, and committed civil disobedience to protest their unjust treatment. The members of the sanctuary movement attracted sympathetic media attention and the U.S. government eventually extended protection to many refugees. Perhaps a natural duty of justice can help justify the Sanctuary Movement because this movement's resistance to the law contributed to a reform of unjust policies (Delmas, 2018, chapter 3).

Let's now turn to duties to refrain from contributing to harming or coercing others. Modern immigration laws attempt to make citizens complicit in immigration restrictions. As I've noted, states forbid citizens from interacting with unauthorized immigrants in certain ways (Pham 2008). In some cases, complying with these laws requires citizens to contribute to the state's project of excluding immigrants from labor and housing markets. Take the prohibition on hiring unauthorized immigrants. If an employer discovers that her employees are unauthorized immigrants, she may be legally obligated to fire them. Critics of immigration restrictions claim that that this employer would be complicit in injustice if she complied with the law. While the actions of one employer may have limited effects, wide-spread compliance with laws that forbid the hiring of unauthorized immigrants would seriously erode the occupational freedom of these immigrants. If immigration restrictions are unjust and we have moral obligations to refrain from contributing to injustice, then citizens should refuse to comply with many of the immigration laws that regulate their interactions with unauthorized immigrants (Hidalgo 2016; 2018).

Naturally, there are important objections to citizens' resistance to immigration law. One objection denies that modern immigration laws are unjust. If states have moral rights to exclude

immigrants and deport unauthorized residents, then perhaps it's a good thing if citizens comply with immigration laws or even report unauthorized immigrants to the authorities (Appiah, 2017). Another objection to resistance appeals to political obligations and legitimacy. Resistance to immigration restrictions often violates the law and, if citizens have obligations to comply with the law, then law-breaking involves wrongdoing (Yong 2018).

Let's take a moment to reflect on the argument against disobedience that appeals to political obligations to obey the law. I briefly considered a similar argument against unauthorized immigration in section 3. But an argument from political obligations has greater force for citizens than it does for potential immigrants. Recall that one problem for the view that unauthorized immigrants violate political obligations to obey the law is that it's unclear whether the scope of political authority extends to outsiders. However, it's more plausible that, if there are political obligations, then they bind the citizens of legitimate states. On the other hand, everyone agrees that it's permissible to violate laws that are egregiously unjust. If immigration restrictions are sufficiently unjust, then this injustice arguably releases citizens from their obligations to comply with them. Once again, whether citizens' resistance to immigration law is justified depends in part on our background assumptions about the justice or injustice of immigration restrictions.

## **6. Conclusion**

Debates about unauthorized immigration and resistance to immigration law are here to stay. We can expect states to enforce strict immigration restrictions for the foreseeable future. Support for restrictive immigration laws appears to be growing in certain parts of the world, and states respond to this popular opposition by further restricting immigration. Yet millions of



people want to immigrate to other states. These factors--strict immigration restrictions and the widespread desire to move--guarantee that people will continue to engage in unauthorized immigration. And, as long as unauthorized immigration exists, the moral challenges that I've described will persist. Immigrants and bystanders will need to decide how to interact with immigration law and whether to actively resist and subvert these laws. For that reason, philosophers should continue to investigate the ethical issues that resistance to immigration law raises.

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<sup>1</sup> Owen Fiss (1999) and Adam Hosein (2014) make similar points. Fiss argues that people’s judgments about the “innocence” of unauthorized immigrants affects their views about whether to extend them public benefits and entitlements. Hosein considers whether the wrongdoing of unauthorized immigrants is a reasonable objection to granting them the legal right to live and work in the country where they reside. So, both of these authors suggest that there’s a link between judgments about the moral status of violations of immigration law and policy preferences.

<sup>2</sup> For more detailed overviews of these debates, see Fine (2013) and Wilcox (2009).

<sup>3</sup> There is, I concede, some evidence that unauthorized immigration increases the voting share of more conservative and anti-immigration parties. And it’s possible that, if anti-immigration parties come into power, they’ll respond by restricting legal immigration as well. So, unauthorized immigration might lead to fewer opportunities to immigrate for legal applicants. See: Baerg, Hotchkiss, and Quispe-Agnoli (2018).