***GNOSI:* An Interdisciplinary Journal of Human Theory and Praxis**
Volume 7, Issue 2, July-December, 2024
ISSN (Online): 2714-2485

Cosmopolitanism, Sovereignty and Global Justice in Light of Refugee Protection

Charles B. BEREBON
Rivers State University,
Rivers State, Nigeria

Patrick ELUKE
University of Port Harcourt,
Rivers State, Nigeria
Email: elukepatrick4u@yahoo.com

(**Received**: August-2023; **Accepted**: November-2024; Available **Online**: November-2024)

ABSTRACT

This paper critically examines the concept of a "duty to aid and assist" as a necessary extension of ethical responsibility in global relations. It situates this duty within the framework of global economic interdependence and historical exploitation, arguing for a departure from traditional Rawlsian perspectives that focus narrowly on the establishment of just national institutions. Unlike the Rawlsian "duty to assist," which prioritizes enabling burdened societies to become well-ordered, the "duty to aid and assist" integrates principles of global distributive justice, emphasizing the need to address systemic inequities arising from unequal starting positions, such as resource endowments and disproportionate bargaining powers in international trade. The paper highlights the limitations of Rawls' assertion that political and social culture alone determine societal success, noting the critical role of historical and material advantages. It critiques the narrow scope of global egalitarianism, advocating instead for a duty that incorporates practical cut-off points for assistance, such as the eradication of global poverty and equitable burden-sharing for refugees and immigrants. These benchmarks are grounded in objective metrics like Gross National Income (GNI), military spending, and population density, providing a pragmatic yet ethical roadmap for global cooperation. Rather than advocating for indefinite financial transfers or perpetual assistance, this duty calls for a globally equitable distribution of responsibility, rooted in past injustices and present interdependence. It stresses that this obligation must be driven by a moral sense of duty, not philanthropy or charity, to ensure sustainability and avoid compassion fatigue. By framing aid and assistance as a collective, equitable responsibility, this paper contributes to the broader discourse on global justice and offers actionable strategies to foster a fairer international order.

Keywords: Global Distributive Justice; Duty to Aid and Assist; Economic Interdependence; Refugee Burden-Sharing.

INTRODUCTION

The treatment meted out to different categories of aliens depends, among other things, on the commitments that a state makes by being party to the Convention Relating to the Status of Refugees, 1951, its track-record in meeting human-rights standards, both, domestically and internationally (Mole & Meredith, 2010). Additionally, other factors such as the territorial capacity of a state to deal with the influx, whether it's a mass influx or just a few refugees needing protection, the economic condition of a state, its political climate and cultural background, too matter. There are, therefore, a myriad intricate underlying concepts, ideologies, fears and concerns that influence the decision of states when it comes to extending asylum, residence and citizenship to immigrants, refugees and asylum-seekers. That being said, there are certain international norms, such as *non-refoulement* and extending first asylum protection that are so sacrosanct that they may not be circumvented. Depending upon how the logistics play out the refugees may be moved to a different location or a third state later on, but extending initial protection is something which is recognised as customary international law and is generally respected by states irrespective of whether they are party to the 1951 Convention and 1967 Protocol or not.

This objective of this chapter is not to delve into the laws, customary or treaty-based, that govern these issues. Instead, the present work will address these issues from a philosophical standpoint taking on the metaphysical core that influences the decisions made by the states which impact the present and future of immigrants, refugees and asylum-seekers. Issues ranging from how the 'others' are viewed in terms of *vasudhaiva kutumbakam* and cosmopolitanism, the morality behind the rights to hospitality, political membership as well as the duties owed by the states. Questions such as the role of culture and nationality in sovereign self-determination, how the freedom of movement of immigrants and refugees balances out with the right to associate of the existing members of a polity and how can cosmopolitan rights be reconciled with sovereignty of states, will also be probed. The chapter will also review the application of the Rawlsian *duty to assist* as well as the application of principles of global distributive justice in an attempt to articulate a *duty to aid and assist* which will act a bridge between these two concepts so as to provide effective assistance to refugees.

This research aims to bridge the theoretical and practical dimensions of cosmopolitanism, sovereignty, and global justice in the context of refugee protection. By examining the tensions and synergies between these concepts, the study seeks to illuminate how nation-states, international institutions, and global civil society can better address the rights and needs of refugees while balancing their obligations to justice and sovereignty. The importance of this inquiry lies in its potential to offer a nuanced framework for reconciling moral imperatives with political realities, thus contributing to more equitable and sustainable solutions for one of the most pressing humanitarian challenges of our time.

THE RIGHT TO HOSPITALITY

The starting point of any discussion on modern cosmopolitanism has been Immanuel Kant's seminal essay Perpetual Peace written just before and after the French revolution (Huggler, 2010). Kant's cosmopolitanism envisions a three-tiered system of the object and the subjects of laws. Under this scheme domestic law has to be in place to govern the relationship between individuals and the state, international law to govern the relationship between states and cosmopolitan law between individuals as world citizens and the states in transnational manner. Kant denounced the Westphalian way of doing things and proposed a cosmopolitan alternative believing that the former resulted in the looming threat of violence and war thereby causing instability in inter-state relations.

This also caused instability within the states adversely affecting the civil liberties of citizens. Kant believed that as long as states have a secret reservation in their minds of for a future war then it's a merely a truce not peace (Breen, 2004). He added that no independently existing state, large or small may be acquired by another state. This underscored the importance of state sovereignty. However, it is interesting to note that the next article says that standing armies must gradually be abolished altogether.

Reading this with the preceding article entails that the sovereign existence of an independent state, as per Kant, was not something contingent on its military might. But this appears achievable, only when read in sequence with the first two conditions.

In the second section of his essay, Kant constructed articles, which, if fulfilled, would help in achieving the elusive goal of perpetual peace between states. They are as follows:

1. The civil constitution of every state shall be republican as it is the only constitution which could be traced back to the original contract "upon which all rightful legislation of a people must be founded."
2. That there shall be a federation of states (foedus pacificum or a pacific federation) and their rights shall be governed by mutual agreement.
3. That a stranger on someone else's territory shall have the right to hospitality (Orend, 1998).

The term 'republican' in Kant's essay is used to bring out the concept of separation of executive and legislative powers. While the 'form' of the state could be autocratic, aristocratic or democratic, the 'method' used to govern the people should be republican (emphasis added). It is the third article pertaining to the right to hospitality that is intertwined with the rights of refugees and most pertinent to the present discussion. Here, the right to hospitality has to be delinked from philanthropy (Samanani¸2017). The stranger ought not be treated with hostility as long as he behaves in a peaceable manner. The stranger may be turned away if it does not result in causing his death. It is a "right of resort" as all men have a right to communal possession of earth's surface, not a "right of guest to be entertained" (emphasis original).

The purported common possession of the earth has a long history in European jurisprudence in the form of the doctrine of res nullius. Kant cautiously uses the words 'common possession of earth's surface' because he is wary of the justificatory use of this construct to legitimize western colonial expansion. However, at the same time he desires to base the right of stranger to avail the right of resort upon the assertion that since the surface of the earth is limited, humans must learn to enjoy its resources in common with others. The question that arises is whether this right to hospitality merely a moral right moored in mutual humanity or can it be called a right in a legal sense and thus enforceable? The answer to this question is not a simple one. While the obligation of the receiving states to grant temporary residency to foreigners is anchored in a republican cosmopolitical order, such an order does not have any supreme executive law governing it making it unenforceable; it remains a voluntarily incurred obligation of the sovereign. To be fair, this is the fate of most international obligations incurred by sovereign states.

Kant's right to hospitality has been imbibed in the Refugee Convention, 1951, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), 2006, as the principle of non-refoulement and is considered so sacrosanct that it is considered, arguably, a part of customary international law (Wainer, 2023). However, drawing a parallel here, just as Kant qualifies this right with the condition that the stranger has to behave peaceably, the Convention too reserves the right of the states to deny asylum to someone who might prove to be a threat to their security of their country, community or finally convicted of serious non-political crime. Kant's thoughts on respect for state sovereignty,

international right, cosmopolitan right to hospitality leave an indelible mark on cosmopolitanism as it stands today and the refugee jurisprudence in particular. Having said that, it is also important to point out that Kant's work on the cosmopolitan right of hospitality goes only so far as to the grant of first asylum to the seekers that too qualified with the proviso of the stranger behaving "peaceably". Kantian jurisprudence does not shed light on what ought to happen to the stranger once he is granted asylum, his rights, obligations, eventual assimilation or repatriation.

RIGHT TO SELF-DETERMINATION VERSUS OPEN BORDERS

Whenever the topic of admission of migrants is broached in a national context, some of the concerns expressed are of demographic imbalance and scepticism as to the capability of aliens to be a cultural fit. Several of the foundational international human rights instruments as well as regional instruments recognise self-determination a basic right of people. Generally, it is considered a given, that sovereign states have a right to choose who enters and settles within their territories and who should be considered as citizens, without much debate on the issue of justification of this purported right (Carens, 1987). However, when the argument of political selfdetermination is brought in as an excuse to exclude asylum-seekers, refugees and immigrants, it certainly calls for an analysis of the concept. Joseph Carens' famous words "Borders have guards and the guards have guns" vividly shows that entry within their territory is jealously guarded by states. Carens (1987) states that the reason why so little thought has been given to this is because the thinking is ingrained in our psyche that "the power to admit or exclude aliens" is part of sovereignty and also considered essential for a political community. It is argued by some that the right to allow entry of foreigners should remain a sovereign privilege of democracies within the boundaries of their international obligations and that political communities "should have a right to shape their resident population".

There are a few questions that ensue when a discussion on self-determination and the right to close borders is initiated. Firstly, who is the 'self' in self-determination and do open borders pose a threat to the 'national culture'? Secondly, is there a right to freedom of movement in the international sense? If so, then this would go against the closing of borders. Thirdly, is there a right to freedom of association for the people of a particular political community? If so, this would potentially conflict with the freedom of movement aspect. Lastly, can there be any exceptions to this right of self-determination?

IDENTIFYING THE 'SELF', CULTURE, NATIONALITY

Coming to the first question of identifying the rightful members of a political community who are entitled to the right of self-determination. From a 'nationalist' perspective the selfdetermining community would be the 'nation'. M.S. Golwalkar (1939) posited that the territory, race, religion, culture and language are the five elements of a 'nation'. Calling race a "hereditary society having common customs, common language, common memories of glory or disaster; in short, it is a population with a common origin under one culture" he considered race as the 'body' of a nation. He added that, in societies where religion forms the "life-breath of a people" and being the only incentive for worldly and spiritual life governs their every action, religion and culture become the same. Golwalkar defined 'culture' as:

> "[C]umulative effect of age-long customs, traditions, historical and other conditions and most particularly of religious beliefs and their attendant philosophy, (where there is such a philosophy) on the Social mind, creating the peculiar Race spirit (which it is difficult to explain) it is plainly a result mainly of that religion and philosophy, which controls the social life and shapes it,

> generation after generation, planting on the Race consciousness, its own particular stamp" (Golwalkar, 1939, p. 66).

Speaking about his version of India (a Hindu nation) he added that here religion and culture are indistinguishable as the religion is "an all-absorbing entity" (Okon, 2003a; Okon, 2003b; Okon, 2003c; Etim et al., 2014). He further added that a language becomes an "expression of the Race spirit" and is hence a crucial element of a 'nation'. Golwalkar strongly believed that those not belonging to the 'nation' organically fall out of the pale of real 'national' life'. This implies that membership is contingent on mutual recognition and those not recognised by other members feel left behind, deprived of opportunities. Simply put, "the tie between individual and the collective is at the heart of the case for self-determination".

Echoing sentiments similar to Golwalkar's, David Miller (1995) identified certain features of nationality. First that national communities are constituted by 'belief' of its members. On one hand, people may have common attributes, not share any beliefs and thus cannot constitute a nation. On the other hand, people may not have many common attributes yet share beliefs and pass the test of mutual recognition. Such people form a nation. Second that a national identity expresses a "historical continuity", military victories and defeats, joys and sorrows of building and defending the nation. Third that national identity is an "active identity" (Okon & Noah, 2023). By this Miller asserts that national communities do things together, take decisions together etc. Fourth that national identity connects people of a particular geographical place. Last that people sharing a national identity share a "common public culture" which may not be monolithic and homogenous as long as there are overlapping characteristic.

Miller (1995) further states that immigrants would not pose a threat to the nation as long as they share the common national identity to which they make their own distinctive contributions. This proposition is a toneddown and more palatable iteration of Golwalkar's view that "foreign elements either completely merge themselves in the national race and adopt its culture or to live at its mercy so long as the national race allows them to do and quit the country at the sweet will of national race." Margalit and Raz (2022) have suggested six characteristics, that go hand-in-hand, to identify the rightful members who would have a claim to self-determination:

1. The group possesses a "common character and a common culture" that may include different aspects of life, "activities, pursuits and relationships".
2. People who grow up in such groups will acquire "group culture", their choices, opinions, customs etc will be significantly affected.
3. There will be mutual recognition among members.
4. Members understand themselves, interpret their actions and tastes in the group's reflection, i.e., they derive their identity from the membership of the group.
5. The members would simply belong to the group irrespective of their achievements or qualifications.
6. Such groups are large anonymous groups where "mutual recognition is secured by the possession of general characteristics" as opposed to small groups where members know each personally.

The above-mentioned characteristics are built on the assumption of the existence of a "group culture" which when translated to a national level becomes a 'national culture' or at the very least a 'majority culture'.

In a similar vein and specifically in the Indian context, V.D. Savarkar (2003) while explaining his version of 'nation' and who are the supposed members of a national collective, talked the philosophy of Hindutva. He put forth the idea that Hindutva represents the entire history of the Indian 'nation'. In other words, it is the sum total of social, religious and cultural i.e., civilizational experience shared by the people of the

Saptsindhu region. Savarkar (2003) chose the term Hindutva to describe the 'quality of being a Hindu' in "ethnic, cultural and political terms". He argued that India is the land of the Hindus because of their ethnicity and because the Hindu faith originated in India. As per Savarkar, other religions such as Buddhism, Jainism, Sikkhism were also subsumed within the larger Hindu faith while Islam and Christianity which have foreign origins could not be reconciled with the Hindu faith. Consequently, Muslim and Christian minorities of India, even if born in the country, therefore could not be recognised as Hindus.'

Going by Savarkar's logic, it would appear that those who do not imbibe Hindutva or cannot be part of it for reasons beyond their control, can never be a part of the Hindu Rashtra and thus never be a part of what may be called the 'nation'. So, the minorities as they stand today would at best be second-rate citizens. This is precisely the problem with keeping 'nation' and 'culture' as relevant factors when trying to decipher the 'self' in self-determination. Taking India's example, it simply eliminates two most significant minorities of the country from its frame of reference.80 Multinational states, such as India or United States of America, where there exist hundreds if not thousands of cultures would be ill-suited candidates for such a characterisation as posited by Margalit and Raz (2022), because there is no "majority culture" in these liberal democracies. Let's say, for argument's sake, even if there were a "majority culture", would the minority, who are citizens too, be excluded for the purposes of national self-determination? The answer has to be an obvious no. It is also ironic because the reality is that many of the existing members who would decide on the questions of entrée may themselves have migrant origins.

Miller (2013) argues that it is one of the main roles of the nation-state to protect the distinct national culture albeit with a caution that "nations tend to attribute themselves a greater degree of homogeneity than their members actually display" and hence the need to tread carefully. However, he does believe that national cultures actually do exist in the form of "overlapping cultural characteristics".

In a multinational state it is not necessary that all the citizens identify with the majority national group, or where national groups comprise of people from other states, it becomes extremely challenging to identify as to who is entitled to self-determine. If, on the other hand, one says citizens, then the above stated issue does get resolved to some extent but then new issues surface. For instance, what is the basis for this entitlement enjoyed by the citizens? Is it residence for a long term? If yes then, what duration qualifies as long-term?

Ownership-based claims that the right of self-determination is due to the 'fruit of labour' of the citizens who have for long contributed towards the social, political and economic development of a state face challenges too, such as, what about children or immigrants who have been naturalised by the state and if the answer is no then this would be conflicting with the law of self-determination? What have they contributed and for how long? Also, what about those citizens who live off the land but contribute nothing in return? Will they enjoy equal rights of self-determination at par with those who actively contribute? Additionally, it is seen that often foreign states provide humanitarian, financial or military aid to other states, or there are foreign residents/citizens having a common cultural affiliation or transnational businesses that contribute towards the development of another state, would it then automatically guarantee their candidature for self-determination even when they don't even reside or are direct participants of the latter political community? Meaning, should they also have a say in the state's immigration policies?

An answer in the affirmative would be contrary to what is understood by 'self-determination of peoples', in the current scheme of international law. Another

interesting point is, who would determine the threshold of contribution, if at all arriving at a threshold is possible, that would entitle citizens to the right of determination? If one is to assert that citizens enjoy the right to self-determine just because they are born in the state, then isn't place of birth and the right to exclude outsiders that follows self-determination, as arbitrary a factor as a person's race or sex?

After considering the above notions, it is observed that the attempts to understand the 'self' based on considerations such as culture, residence, the accident of birth, contributions etc. are fraught with seemingly endless complications with no satisfactory solution on the horizon. Instead, it is proposed, if states were to simply keep an open mind about the fluidity of the 'self' and admission of new members, giving the existing members the right to deliberate and devise rules regarding the conditions of entry and membership based upon cosmopolitan norms of universal hospitality, the right of self-determination could be reconciled with open borders. Freedom of International Movement Moving on to the question of 'freedom of international movement'. Article 13 of the UDHR recognises the right to freedom of movement within the territory of a state and reside anywhere within the said territory. It also recognises the right to 'emigrate' from a state, including one's own and to return to their own country. It does not however, recognise the right to 'immigrate' (Juárez, 2023). Debates have occurred around three main points under this main issue. First, whether liberal democracies which allow freedom of movement within their territories are morally justified in keeping 'outsiders' from entering their territory specially when they believe (or are theoretically supposed to) in egalitarian principles like equal moral worth of all individuals (that would be citizens on one hand and immigrants/refugees/asylum-seekers on the other) and equality of opportunity. This makes it a duty of states to keep open borders. Second, whether the right to emigrate necessarily entails a right to 'immigrate' because if one has the right to 'exit' one must have a right to 'enter' some state. Third, financially able liberal democracies have a moral obligation to admit needy immigrants as a response to global injustices done to them (the third issue would be taken up under the heading 'the duty to assist, global distributive justice and immigration').

Addressing the first point where analogy is drawn between free movement within a territory and international free movement, and the same being considered a packaged-deal with a state's commitments to egalitarian principles. Kieran Oberman posits that if freedom of movement is restricted then it automatically means imposition of restriction on associated freedoms which might affect an individual both, personally, and politically by denying a person access to full "life-options". Such a person would not be able to visit family and friends in that region, seek employment, seek a marriage partner etc. Politically, the impact would be on the ability to lead or participate in demonstrations, to freely associate, have a conflict resolution, collect reliable information about political affairs etc. David Miller argues that the freedom to move within a territory and freedom to move internationally cannot be considered to be on equal footing. He considers free movement within borders a "basic freedom" and free movement across borders a "bare freedom".

Although, for Miller (2013), free movement across borders becomes a basic interest when it is to escape persecution, as in the case of refugees, or forced displacement due to starvation. Frey & Wellman (2008) contends that there is a difference in the application of morality when it comes to the two freedoms. Citizens are subject to the coercive laws of a state while foreigners are not. In return citizens enjoy certain freedoms which by implication foreigners cannot. Additionally, the legitimacy of a liberal state depends on it guaranteeing certain civil and political rights to its citizens. As per Blake, foreigners cannot claim the same justification. Carens (1987) himself supports some amount of restriction on immigration when it may lead to a disturbance in public order, endanger

national security or when immigration would entail entry of people who intend to overthrow "just institutions". After evaluating the above views it is apparent that freedom of international movement cannot be put on an equal pedestal and on the same moral standing as freedom to move within the borders of a state because, one, Blake's arguments appear sound. Equality among equals is the generally followed principle and reasonable classification for those constituting a separate class, in this case the foreigners may be done, and two, even for movement within the territory it is considered prudent for a state to apply reasonable restrictions for smooth functioning and prevention of subversion of democratic institutions.

So, some form of screening has to be in place to ensure that and if liberal democratic governments, in a legitimate effort to protect democratic institutions restrict free movement across borders then it may be a just action. The failsafe here is the legitimacy of the action and the reason behind the restrictions on entry, such as protection of basic human rights of existing members, all of which must be evaluated by an independent agency or a or a supra-national body working in cooperation with the state, following a fair and transparent procedure. Moreover, as will be discussed later in this part, the exception for refugees is accepted by most political theorists for whom the freedom to cross borders becomes, as Miller would put it, a "basic freedom".

Coming to the second point of whether right to 'emigrate' would entail a right to 'immigrate'. David Miller argues that the right to emigrate is satisfied as long as there is one other state where the person is permitted to enter and thus a right to exit does entail a "right to enter a state of one's choosing". Phillip Cole (2020) in his analysis of the right to emigrate explores the reason why this right is so fundamental that it found a place in the UDHR. Cole avers that if it can be said that a liberal democratic state draws its legitimacy from the consent of its residents then to sustain that legitimacy the residents must have the right to exit the state. It follows that if they do not have another state willing to permit entry then they are forced to reside in their state against their will thereby bringing the consent into question. Moreover, if there is only one other state that the individual can enter failing which he will have to renter his pervious state (for whom he had already withdrawn his consent) then the it can only be found out that he consents to live in the latter state if there is yet another state willing to take him in, which if it's not the case, then he'll be compelled to remain in his current state, again calling the consent into question. This conundrum will continue till all the finite number of states are exhausted. So, if legitimacy of liberal democratic states is premised on consent of its residents which ensures that the residents always have a right to leave if they so choose, then a right to enter any state of one's choosing, i.e., complete freedom of international movement, ensues. Cole also addresses the response that the right to emigrate may succeed so long as there is a choice to enter a 'reasonable' number of states that permit free entry. He argues that for such an arrangement to work there will have to be an agreement between such states and as such they will constitute a group. What if the person wants exit the group? Again, "at least one other state" will be required to satisfy the 'consent' argument.

Another argument by Cole goes to the logic that the right to exit entails a duty of noninterference by the state in which one wants to exit from. For the process of exit to be complete a duty of non-interference in the matter of entry from another state would also be required and if the right to exit is interpreted only in terms of duty of non-interference by the first state, then it will fail because the other state can stop the person at the border preventing the actual crossing of it. Therefore, the right to leave, even at a bare minimum, in its most negative form i.e., construed only as a duty to not interfere, would still require the right to cross into another state's border. Thus, it appears that for the right to emigrate to succeed, a right to immigrate follows and the assumption that it would suffice

even if there is a single state that is permitting entry to the individual, is fallacious. Seeing as the situation currently is, where there isn't a right to immigrate, one wonders if the intent behind the granting the right to emigrate was only to ensure the return of individuals to countries whose citizens they are and not emigrate, as a matter of right to other countries in search of a better life.

FREEDOM OF ASSOCIATION

Whether self-determination would entail the right to exclude future prospective members based on the right to freedom of association of existing members is another question that needs some analysis. Christopher Wellman argues for a state's right to control immigration on this very basis. He posits that freedom of association includes the right not to associate as well as the right to disassociate. Wellman draws analogies from marriage and religion and says that freedom of association entails that one has "dominion over our self-regarding affairs", just like in marriage one has the right to choose or reject a suitor. A similar analogy can be seen in Walzer's work where he contends that clubs decide upon their own membership criteria and admit and exclude whomever they want albeit not without legal challenges in liberal democracies. Just like states who cannot restrict the right to emigrate, clubs cannot bar withdrawals of memberships.

The obvious problem with this analogy is that private spheres and public spheres are different and while one may choose to associate or not with someone in their private life based on their whim, a state, which epitomises public sphere is expected to have appropriate admission standards and to act not whimsically but reasonably, fairly and justly. Additionally, Cole (2020) argues that one might exercise a right not to marry at all or the right not to practice any religion and this would not affect anyone else, but if a state choose not to associate then some might become 'stateless', which is a predicament that deprives a person of basic human rights including a right to live life with human dignity. Thus, the analogy is problematic to begin with. Another objection to Wellman's arguments, and one that he addresses himself, is that while individuals have the freedom to associate as per their choice, this does not necessarily mean that groups can be said to possess the same freedom. He contends that if the right to freedom of association of countries is denied, it would lead to unpleasant implications. Citing the example of North American Free Trade Agreement (NAFTA) and the European Union (EU), Wellman says that in such a scenario the choice of countries to decline invitations, accept or reject the terms of agreement, of such regional associations would go away. He adds that in the absence of right to freedom of association, one would also not be able to explain what is wrong with one country annexing another. He concedes that freedom of association in individual relationships is more important than of groups of citizens because of the intimacy factor in the prior, but says that he never set out to argue that both are equally important, just that for groups too, including states, this right exists. Another argument that goes in favour of giving citizens the right to choose who they may or may not want to share a morally significant political relationship put forward by Wellman is that despite the states being large, anonymous and multi-cultural groups, people care deeply about rules for gaining membership in these states, for the same reason why they "jealously guard" their state's sovereignty.

From a cost benefit perspective too people might want to restrict their sphere of association. Interestingly, Wellman too accepts that his arguments in favour of state's right to exclude would be "outweighed by sufficiently compelling considerations" but does not elaborate upon them. After considering the above arguments it is concluded that it is true that groups can also have right to freedom of association as part of their right to self-determination., however, such a right cannot be absolute. It comes with a

duty to accept new members in the political community after careful considerations in a democratic fashion, have transparent rules of admittance and exclusion based on cosmopolitan principles. While liberal democracies might choose not to associate with non-liberal people who might be subversives or have the potential to undermine democratic institutions, they may not exercise this right in an unbridled fashion, excluding anyone arbitrarily without showing cause. It is well-accepted that freedoms come with reasonable restrictions and freedom of association is no different.

Wellman (2005) contends that he is not arguing that an individual's freedom of association and a group's freedom of association stand on an equal footing and that because individual associations have greater importance because of the reasons of intimacy (examples may be friendships, love, marriages etc.) which shouldn't be forced upon an individual. In the same vein, the present research argues that it is 'not' being contended that states and existing political members do not have 'any' right to freedom of association. They do, but because of a lesser degree of intimacy they share in the public sphere of life, this freedom may be saddled with reasonable restrictions which prevent an arbitrary exercise of this freedom. This assessment appears to strike a fair balance between the right to freedom of international movement as well as the right to freedom of association.

REFUGEES AND ASYLUM-SEEKERS AS EXCEPTIONS TO THE RIGHT TO SELF-DETERMINATION

Coming to the question of whether there can be any exceptions to the assertion of right to selfdetermination. Michael Walzer (2008) believes that refugees are one group of "needy outsiders" whose claims cannot be met by yielding some territory to them or by simply providing them financial assistance. He recognises that refugees are in need of "membership" which is a "nonexportable good." He acknowledges that the goods that refugees are in need of can be shared only within the protection afforded by a state, and that allowing refugees in wouldn't necessarily mean that the liberty that existing members of the state enjoy would be diminished. He avers one hand that the refugees need a place to live and on the other hand refuses to recognise this as a right that can be enforced against host states stating that there is no enforcing authority in the international sphere, and even if there were, it would have better served by intervening against state oppression that forced the refugees to flee in the first place. While it is true that there may not be an enforcement authority in the conventional sense and yet it would be great if oppressive state practices could be nipped in the bud, it is also true that the even without a supreme international enforcement authority states may be convinced or coaxed into taking in refugees by incentivising the move for them or making the act of rejection disincentivised.

However, Walzer (2008) is of the view that the obligations of states towards refugees are limited only to those refugees who were created as a consequence of the actions of such states because of injury related affinity. He adds that states may also help other refugees if some ideological or ethnic affinity is shared between them. Moreover, if the number of victims is large then assisting states will "rightfully" look to find a direct connection with their own way of life. If there is no connection then there would be no need in giving preferential treatment to one group of victims over another. It is observed that while there be some merit in this line of reasoning advanced by Walzer especially when one thinks of the assimilation prospects of refugees in that they will be more readily accepted and would be able to mix well with societies with whom they share some commonalities, it is still a very slippery slope. Cherry-picking victims and providing assistance based on ideological affinity creates a hierarchy of lives within the victims

group. States already enforce hierarchies in terms of citizens and immigrants, insiders and outsiders, creating further sub-orders of lives may not be a wise choice.

Diverging from Michael Walzer, Wellman contends that even in the case of asylum-seekers, states need not take them in. Instead, justice may be exported in the form of military interventions to ensure that people are safe in their homelands. States who fail to provide protection, secure basic human rights of their citizens, have, as per Wellman (2005), no claim to selfdetermination. This argument seems naïve. Countering Wellman's view it is submitted that it is well-known that repatriation of refugees is sometimes not possible for years together due to unstable political environment in their countries of origin. Wellman himself admits that the asylum-seekers may not be refouled until military interventions have been successfully completed.

In such a scenario, refugee families start rebuilding their lives in their countries of asylum. It would be cruel to uproot such families and send them back to their countries of origin when they finally move past the atrocities and build a decent life for themselves. Keeping them deprived of assimilation and political membership for years together would negatively affect their human rights, as will be argued under the following heading. Though his "compelling considerations" have been left unexplained by Wellman and though he might disagree, it is further submitted that if at all there could be any legitimate contenders to defeat the right to freedom of association of states and their existing political members, they would be refugees. Ryan Pevnick (2011) opines that ownership claims do not entail unlimited discretion on citizens to decide on future memberships and that sometimes, granting membership is the only way to treat them as equals. Asylum seekers, children of illegal immigrants fall into the category of people who life chances are contingent on the status granted and treatment meted out to them. In such cases, Pevnick states, the needs of the such vulnerable groups supersede the ownership claims of the existing members.

Miller (1995) is of the opinion that states have an obligation to admit refugees, them being not just the way the 1951 Convention defines but the broader interpretation that includes people deprived of basic human rights and subsistence. However, once the threat that they were facing has passed, they may be asked to return, indicating Miller's preference for temporary sanctuary rather than permanent settlement. He advocates for greater autonomy of states in deciding particular asylum applications implying that states may admit asylum-seekers based on the overall number of applications they receive, the strain that accommodating refugees will put on citizens, cultural linkage, guilty conscience (if they are contributors to the predicament of refugees) etc. Additionally, states may be permitted to show compassion fatigue and close the door on entry at some point.

After examining different views on this topic, it is submitted that while advocating for state autonomy in decisions on asylum applications is one thing, making allowances such as strain on economy, factoring in causality and looking for cultural commonalties is another. Economic justifications for denial of asylum applications appear superficial with little to no empirical evidence that asylum-seekers are a burden on the economy. On the contrary immigrants may aid in the economic growth of the host country by being job-creators and providing gainful employment to natives. Cultural commonalities may be considered important to the extent of evaluating the chances of successful assimilation in neighbourhoods but should not have an overall impact on the fate of the applications. Miller himself agrees that immigrants can contribute to "distinct public cultures". Finally, at any point whatsoever, the tendency of states to feel 'compassion fatigue' or rejecting the obligation of providing temporary first asylum, should not be normalised.

COSMOPOLITAN RIGHTS VERSUS STATE SOVEREIGNTY

The notions of sovereignty and cosmopolitanism have since long been antithetical to each other. Stephen D. Krasner (1999) describes the term sovereignty in four ways – international legal sovereignty where territorial entities that have juridical independence mutually recognised each other, Westphalian sovereignty where external actors are excluded from authority structures within a territory, domestic sovereignty where the public authority formally organises itself and exercises effective control within its borders, and interdependence sovereignty which refers to the ability of the public authority to control the flow of information, people, goods etc across their borders. It is not necessary for all the four to co-exist in a state. A state might have one or more without having the characteristics of other forms. Krasner (1999) avers that Westphalian sovereignty has been frequently violated over the years and there is a disconnect between theory and practice. On papers external actors are not supposed to influence internal authority arrangements while in practice this been done time and again in the name of human rights, support of democracy, ideological reasons etc.

When discussing cosmopolitan right and state sovereignty even Kant has been accused by scholars, of conflating the two (potentially) irreconcilable notions, i.e., sovereignty and cosmopolitanism. In Theory and Practice (1793) an essay published just two years prior to Perpetual Peace, Kant proposes the establishment of a "universal state of all peoples, to whose power all states shall freely submit themselves" (Cavallar, 2020). However, in Perpetual Peace, Kant does not expect the states to submit to any international authority in the sense of supreme executive power but rather as a pacific federation (*foedus pacificum*). This federation, as per Kant, would not have the aim of acquiring state-like power, wherein states would be treated as subjects of an international authority, but rather have the goal of preserving and securing the freedom of each state. The contradiction between the two works is quite apparent and there seems to be no explanation from Kant, on this.

It is also alleged that on one hand, Kant holds that states are sovereign with complete control over internal and external affairs while on the other hand he demands that states give up lawless freedom and submit to a higher international authority to further the goal of perpetual peace. It may also be put this way, states are the bearers of international obligations as well as enforcers of rights domestically, so, if rights do need to be enforced then states must submit to some supra-national authority, which would be a problem because being supreme enforcers states themselves cannot be coerced. Critics also say that Kant's insistence on the voluntary nature of federation, especially in light of his analogy vis-à-vis states and individuals wherein the coercive power and submission are built-in in the relationship dynamic, with no coercive powers would entail that neither there is any supra-national authority that can force the states to stay in league nor enforce an international right or a cosmopolitan right. States would be free to come and go as they please.

Pauline Kleingeld (2017) reconciles the (dis)analogy employed by Kant juxtaposing the relationship dynamic of - states and individuals & State of states and states, and finds coherence in his line of argument by saying that Kant welcomes any movement from the state of nature towards a juridical state furthering a principle of right, even though initially the most powerful of individuals may be the law-makers ruling in a despotic way. This may eventually transform into a republican state spurred by self-interest of peoples and rulers. Implying that there is a scope of progress. However, granting a State of states coercive powers would mean that the most powerful of states or the strongest state would be the decision maker(s) and may not follow the principle of right, while other less-powerful states will be compelled to obey compromising their autonomy and their citizens run the risk of being governed by principles against their established republican ones. Implying potential scope of regression. Additionally, Kant recognises state as a

union of individuals who came together to be governed by self-given laws the idea of force and coercion runs contrary to the idea of autonomy and volition.

Kantians defend his position by asserting that he distinguishes between two conceptions of sovereignty and has paved the way for the transition from the first to the second. As discussed earlier, the original Westphalian sovereignty, also declaratory sovereignty (mostly observed in international context where state is a supreme entity in itself and refuses to recognise any higher juridical or moral authority), proving to be unsustainable gives way to a liberal version of sovereignty, also juridical sovereignty (observed in domestic context, where states are grounded in constitutional norms and institutional arrangements), in Kant's cosmopolitan world order. Perhaps the reconciliation may lie in the proposition that in Kantian cosmopolitan order states are morally not legally obliged to respect cosmopolitan right. In fact, Katrin Flikschuh (2010) posits that for Kant, sovereignty is "inherently" juridical and when Kant invokes state sovereignty he invokes the state's "morally grounded juridical authority". In the former, the declaratory kind, issues such as crossing of border would be treated as internal matter of a state while in the latter, the juridical kind, sovereignty cannot be interpreted to mean as arbitrary authority and issues such as the one mentioned above would entail a scrutiny by international bodies, perhaps even trade partners and states that do not fulfil their human rights obligations risk jeopardising transnational alliances as well as incurring the risk of sanctions, embargoes etc.

Hanna Arendt (1976) too was fully aware of this conundrum as the realisation of her 'right to have rights' depended upon the establishment of a republican constitution which would establish new "insiders and outsiders". Jürgen Habermas (1997) believed that the rift between these two notions is overstated and averred that the peculiar challenges and catastrophes of the twentieth century in conjunction with the forces of globalisation warrant the idea of cosmopolitan justice that Kant envisioned, however, with a jailbreak from the paradigm of the original vision of Kant. Habermas attempted to reconcile the authority of national and supra-national institutions by maintaining that the "rational content" of both is going to be substantially the same because and the difficulty would be only when the national institutions authorise things, such as human right violations, which would be abhorrent to cosmopolitan institutions.

The 1951 Convention and the 1967 Protocol, office of the UNHCR, ICC, UDHR, customary international law, jus cogens etc. are all developments in international law which provide protection and assistance to people without a state's legal protection and impose some kind of limitation on absolute assertion of state sovereignty. Despite this, violations of refugee protection norms are being witnessed more and more frequently under the umbrage of the same. Appiah et al., (2007) also suggests "cooperative federalism" between international law and individual democratic legislatures. She points out that today citizenship is extended to individuals, by liberal democracies, by virtue of residency rather than cultural identity which indicates towards cosmopolitanism norms working well within democracies, yet she acknowledges that people who are undocumented are treated like criminals by existing polities, making a case for decriminalisation of migration, legal or illegal. Appiah et al., (2007) further posits that, firstly, crossing borders should be viewed as an expression of human freedom rather than being viewed as a criminal act and secondly, democratic peoples must through legislation come up with rules for political membership in consonance with "cosmopolitan norms of universal hospitality". It may be noted that while she is correct in suggesting that migration is an expression of human freedom, in case of refugees and asylum-seekers, it is actually the lack of human freedom that compels them to cross the borders in search for liberal democracies.

It is true that the notion of strict sovereignty has diluted over the years. This phenomenon has occurred due to states entering into treaties where they have acquiesced to the relaxation of sovereignty in favour of principles or ideals which are so sacrosanct that they cannot be compromised upon such as universal human rights and international humanitarian assistance. That being said, it is also an observable fact that the global political atmosphere in the last decade or so has been primarily dominated by conservative ideologies and right-wing populism. These ideologies have at least one thing in common, i.e., they advance geographic limitations on human interactions and even thoughts. These limitations spring from a strong 'identity-affiliation' to a particular race, culture, nationality, political opinion, to the exclusion of all others, thereby fostering national prejudices in-turn leading to misguided patriotism, xenophobia and an anti-cosmopolitan attitude. For the asylum-seekers from war-torn countries or a diaspora fleeing genocide, this situation is of grave concern.

The question that remains to be examined is how to reconcile state sovereignty and cosmopolitanism in a manner that works towards securing the rights of the refugees without being vexatious to the states and their citizens. It is interesting to note that John Rawls denied that his "peoples" are states in the traditional sense because he did not wish to bestow sovereignty upon them, either internal or external. Sovereignty, derived from the Law of Peoples, was reserved for those who recognised certain principles of justice such as respect for human rights and not instigating war other than in matters of self-defence. As ideal as it sounds, this take has its own problems as realistically it would be impossible to envisage a constitutional government without some version of territorial sovereignty.

While the conventional version of sovereignty is heavily concentrated at a single level, i.e., the state, where the state is the overarching authority over each person and territory and where every such person owes political allegiance to the state. Pogge has proposed a move towards a more decentralised version of sovereignty where "persons should be citizens of and govern themselves through" several political units without any one political unit being the overarching one. Thus, the allegiance and political identity of citizens would be spread over units such as "neighbourhood, town, county, province, state, region and world at large". Pogge (1992) himself addresses the objection of indivisibility of sovereignty in a juridical state by saying that sovereignty that we see today (horizontal) is already divided between three branches of government and it would not be possible to point out as to which branch is the repository of sovereignty. Additionally, in an all-out power struggle we would not be able to avoid a constitutional crisis despite a legally correct method of resolution, which might itself be contested. Similarly, his version of sovereignty talks about a vertical division which can be seen in works in federalist regimes. Another objection to Pogge's proposal of vertical distribution of sovereignty which he himself addresses is that for the performance of some core governmental functions, there must be a dominant political unit. For example, it may be averred that controlling the influx of people from across the borders would require state control to decide who gets in and who stays out. Pogge rebuts by saying that the neighbourhoods left to themselves to decide who lives among them and how many may be allowed, will do a better job than a central authority. This would serve better in preserving the neighbourhood culture than some authority who isn't familiar with it at all.202

This proposal of Pogge would certainly help in overcoming the hurdle of nationalist sentiment that precludes the conventional sovereign from actually lending a helping hand in the refugee protection scheme of things. A dispersed sovereignty would also disperse the onus that falls on the conventional sovereign in taking the blame from the voters for allowing refugees in or from the international community if they choose to keep

the asylum seekers out. One potential issue that the present researcher sees in this model is that if the decision is totally left to the neighbourhoods to decide who is welcome and who is not, the reason behind the decision will most likely be neighbourhood centric with the interests of neighbourhood being paramount and taking precedence over refugee protection, international commitments or customary international law. While certainly in the current political scenario this problem is being faced with states pandering to their voter-base, it might be amplified if smaller political units decide on refugee influx issues because such smaller units would be even less accountable to international fora. So, both the approaches have their own merits and demerits and it is difficult to say which would serve better when it comes to refugee issues.

After the analysis of above theories, it is observed that the reconciliation between cosmopolitanism and sovereignty may lie in the interpretation that a state can be considered legitimate and thereby sovereign only if it abides by cosmopolitan rights by showing respect for human rights of citizens and immigrants alike. In scenarios where it is found that a state is treating cosmopolitan rights with contempt having no regard for human rights of immigrants, it may lose its legitimacy in the eyes of other states. In such a case the impugned state may be called a rogue state and be a fair candidate for military intervention, to restore order. However, the caveat is that such a decision may not be taken before thorough consideration and deliberation at the United Nations.

THE DUTY TO ASSIST, GLOBAL DISTRIBUTIVE JUSTICE AND IMMIGRATION

In his Law of Peoples, John Rawls (1993) posits that it is the duty of well-ordered Peoples to assist "burdened" societies. He defines "burdened" societies as those that are "burdened by unfavourable conditions" such as the "lack of political and cultural traditions", human capital, technological resources etc. The long-term goal to be achieved with such assistance is to bring burdened societies "into the Society of well-ordered Peoples". However, Rawls further adds that it does not follow from this premise that the only way, or the best way, to carry out this duty is by following a principle of distributive justice. It may be noted here that Rawls holds that societies become wealthy or burdened because of internal factors mentioned above rather than immediate external factors such as imperialism, colonization, predatory business policies that manipulate economically poor but natural resource rich countries, and other non-immediate external factors such as greenhouse gas emissions, high carbon-footprint, domestic industrial practices of wealthy countries that have the potential severely impact the environment of neighbouring countries etc.

Rawls' conception of duty to assist, however, does not extend to facilitating immigration, rather he appears to be in favour of limiting it because of primarily two reasons. First, that people's government in order to be the representative and effective agent of the people have to be responsible for the territory, environment and the size of the population, also in order to ensure that the territory can sustain them in perpetuity. Second, in order to protect a people's political culture and constitutional principles. Again, it is observed that there is hardly any evidence that liberal immigration policies are a threat to political culture of a state. As has been demonstrated in previous sections, it is in the interest of the liberal democratic societies that long-term immigrants be taken into the political fold of the community after duly sensitising them of the prevalent political culture.

Rawls states that in a majority of the cases the wealth of a society is dependent on the philosophical, religious, cultural and moral traditions of its peoples. Political and atmosphere of such societies along with the industry and talents of its members paves the way for its future and the duty of well-ordered peoples is to assist in changing the

political and social structures of burdened societies. Therefore, merely providing financial aid when the institutions of burdened societies may be corrupt, their population policy unsustainable and fundamental interest of women ignored, would not make any difference in their situation. Instead, he suggests that an emphasis on things such as human rights and working towards improvement in the status of women is something that would make a difference.

He defines the 'target' of the assistance to be the aim of helping burdened societies able to manage their internal affairs "reasonably and rationally", ultimately becoming a "Society of well-ordered Peoples". After this has been achieved, the duty of assistance ends irrespective of the now well-ordered society still being relatively poor. So, as he states earlier, wealth is not an indicator of a well-ordered society. Benhabib points that that while such assistance may relieve pressure on burdened regions for a certain period of time, it may be used by wealthier countries as an excuse to install harsh immigration policies, which is surely going to affect the moral and legal claims of refugees and asylum-seekers. This can be witnessed in Wellman's suggestion of "exporting" justice, rather than allowing them entry, even in the case refugees and asylum-seekers.

Though Rawls provides for a moral onus on well-ordered Peoples that goes beyond national borders, Thomas Pogge (1992) points out three issues from a social-justice cosmopolitanism point of view. He asserts that Rawls talks about 'peoples', and therefore an 'individual' is not the sole unit of moral concern for him. Second, that Rawls' conception supports moral concern only in cases of absolute deprivation of societies and well-ordered societies have to support these societies only up to the threshold where they too can become well-ordered. Pogge (1992) argues that this translates to humanitarian aid and assistance of burdened societies which is not something that such societies and its members can "claim as their due". Third, that it is not the duty of well-ordered societies, with no moral reason, to rein in the growing economic inequality. To reiterate, the duty is only to assist the burdened societies to reach the threshold where they can be on their way to becoming well-ordered societies with just national institutions (not to be construed as wealthy). Pogge (1992) also observes that unfulfilled human rights in other countries are rarely seen as a matter of concern by affluent countries thereby making them sceptical or at the very least ambivalent in offering aid and assistance. Additionally, the moral debate in such (affluent) countries is focused on the extent of the obligation to help the poor and needy. It is assumed that they are the potential helpers to those starving abroad without realising that they are supporters of and beneficiaries from a global institutional order that substantially contributes to their destitution.

Pogge (1992), in providing his own moral conception of cosmopolitanism and looking to establish just institutions, talks about institutional and interactional paradigms. While under the interactional paradigm, agents bear a direct responsibility for fulfilment of human rights obligations, under the institutional paradigm the responsibility is assigned to institutional schemes and a person is not directly morally responsible to remedy injustices. Here, one might contribute by not participating in an unjust institutional scheme. However, the responsibility doesn't stop here. As per Pogge (1992), the negative duty under the institutional paradigm includes not only a duty of forbearance but also a duty to make reasonable efforts in bringing institutional reform. This is in contrast to the negative duty under the interactional view where it would include a mere forbearance and anything pro-active would be called a positive duty.

Thus, in Pogge's version of institutional cosmopolitanism it would not suffice for the influential states of the world to merely not actively participate in causing harm to refugees. The negative duty 'not to cause harm' would also include duty to work towards reforming the system they are a part of and thus being part of the global scheme of social institutions that protect refugee rights under the refugee protection regime or human

rights and humanitarian regime, they would be required to work on bringing in institutional reforms. Charles Beitz (1999) criticises Rawls by saying that his law of nations misses out the "point of international justice altogether". If one were to confine the principles of social justice to domestic societies, in interdependent economies (as the world stands today) it would amount to "taxing poor nations so that others may benefit from living in 'just' regimes". National economies not being autarkic, principles of domestic justice would be 'just' only when they are consistent with principles of justice on a global scheme of social cooperation otherwise, they lose their significance. Rawls' duty of assistance cannot be construed as a facet of international distributive justice. It differs from the latter in two significant aspects, first that it has a "cut-off point", as in, the aid will stop as soon as the receiving society is in the position to become well-ordered, second, that it does not impose any "internal constraint" on the society receiving the aid. Like any liberal or decent society, it assumes that the human rights and basic needs of the peoples in that society will be met but beyond that the duty of assistance is agnostic.

Rawls argues that a global principle of distributive justice without a target or cut-off point (beyond the satisfaction of duty of assistance) makes its application questionable and provides two illustrations to justify his argument. In the first illustration two liberal or decent countries start at the same level of wealth but one industrializes and makes rapid economic progress while the citizens of the other with their leisurely attitude significantly lag behind in a matter of a few decades. Rawls asks whether it would be justified to tax the richer country to fund the poorer one when the latter is responsible for its own fate given that its peoples too were liberal or decent and free to make their own choices. As per duty of assistance there would be no such tax while as per global egalitarian principle (or cosmopolitan distributive justice, as Beitz calls it) there would always be a flow of funds from the richer to poorer country till both arrive at the same economic level, which would be "unacceptable".

Beitz (1992) rebuts the argument by saying that while this may be a reasonable understanding in the case of an individual who makes bad choices, ruins his or her life and nobody else suffers the consequences, this cannot be an acceptable reaction in the case of societies where successive generations, obviously with no say in the initial rule-making, would suffer due the bad choices of their forefathers. The second illustration of Rawls is similar to the first one but the emphasis is on role of population control and it impact on economies. Though Beitz does not directly address this one, the rebuttal remains the same. As Beitz suggests, it would be naïve to apply Rawls' thought-experiment to the situation of contemporary poor societies for various factors such as political autonomy, excessive dependence on international capital market or policies laid down by foreign institutions affect the capability of making an uncoerced choice of such societies. This too highlights the importance of cosmopolitan distributive justice.

Though neither Rawls' duty of assistance nor the principles of global distributive justice directly address migration yet they have significant repercussions on the fate of immigrants, refugees and asylum-seekers. Benhabib posits that "liberal cosmopolitans see migratory flows as aspects of global redistribution through which the poor of the earth claim a share of the wealth of the richer countries by seeking access to them". This makes these discussions in the context of immigration (be it refugees, asylum-seekers or other immigrants) not only relevant but also necessary. Refugees and asylum-seekers, for example, are equally the victims of unjust institutions (if not worse off) as their circumstances are dictated by violence and persecution at the hands of their countries of origin, forcing them to flee, in addition to the poverty and destitution they may already be in. It is submitted that the duty to assist, may therefore, take the form of 'burden-sharing arrangements', with a few tweaks, that are emphasised in contemporary refugee protection and assistance debates. The problem is that wealthier nations who ought to

contribute to financially, technically or in terms of manpower fail to see it as their duty to help the Southern countries of first asylum, but rather view it as charity or philanthropy. To identify the source of this duty, one might not look beyond the simple fact that because of the interdependence that pervades the global economic fabric, no country could be considered autarkic. While Rawls did not specifically deal with the source of his People's "duty to assist" it may be interpreted as the "long-term goal of a liberal foreign policy". Not selling short the industry and innovations of the members of wealthier societies, they have become rich due to reserves of natural resources through plain old imperialistic practices. Since they have historically benefited and continue to do so, from the destitution of poorer societies, then in the interest of justice, it makes it their 'duty' to step up and provide adequate assistance to countries of first asylum, that become so, due to the mere accident of geography.

Now, it is important to identify the way this duty could be performed and to determine its cutoff point, if there could be one. It could be in the form of opening up of borders for immigrants to mitigate poverty, or as a matter of global distributive justice, for asylum-seekers and refugees as a safe haven, guaranteeing in practice a right to first asylum, and/or providing technical, financial or other operational assistance to countries of first asylum, or as Rawls suggests in his Law of Peoples, the loftier goal of enabling the burdened countries in improving their political and social culture as well as their national institutions so that persecution or forced migrations do not occur at all. It could also be in the form of taxing the richer countries and diverting those funds to the poorer ones applying the principles of global distributive justice, global egalitarian principle or global redistribution.

Frederick Whelan (1988) prefers opening up of borders over foreign aid for reasons such as inefficient infrastructure, weak political structure, corrupt institutions which may all end up in misuse of the funds. If the donor government tries to ensure proper utilization then it may amount to infringement of government's sovereignty. He adds that foreign aid is sent to people who are "distant and anonymous" whereas immigrants are people standing on one's doorstep which may have a psychological bearing on donors. The only case where foreign aid might be a better option as per Whelan would be when for some reasons people who are intended to benefited are unwilling to move to a foreign land. In case of refugees, Whelan argues, the only viable form of help would be to open up the borders because their governments cannot act as a medium of aid for reasons that are obvious. The next argument revolves around capitalisation of the labour force in the receiving economy that the immigrants would bring along rather than staying where there is little to no demand for their labour. Whelan further reasons that sending aid is considered the business of government rather than individuals because if only a few of them were to cut down on their spending compromising their lifestyle while others do not, it would not have any significant impact on world poverty. Individuals would be trying very hard with nothing to show for it, unlike helping neighbours or friends where the results of the benevolence could be immediately seen. Whereas, if borders are opened and immigrants are let in, then even if the standard of living goes down in the receiving country, the hardship would be dispersed and results too would be "substantial and visible".

Pogge (1992), on the other hand, favours efforts in the direction of implementing a global poverty eradication programme instead of expending energy on convincing one's compatriots to admit more needy foreigners when the reality is that it is statistically impossible for rich countries to admit all those who live in destitution and who would be willing to move to a foreign land. He further argues that another reason, for immigration not being the best way to assist, is that those who are actually worst-off are left behind in the home country while the comparatively better educated and more resourceful make it

to the borders of the rich countries. Consequently, the money that they send back home from their jobs in their new countries is also received by families who are more privileged. Pogge does not maintain any difference in the moral urgency of favouring political refugees over economic migrants, as he reasons, "being beaten to death for participating in a demonstration is not, in general, worse than dying of diarrhoea or simple starvation." Moreover, he avers, such desperately poor are also persecuted by their governments as they are excluded form economic opportunities by the coercive power of their governments. Unlike Walzer (2008) who believed that when a country's actions were the reason behind the creation of refugees then they were owed a special obligation, Pogge does not see it any exceptional circumstance that could apply only in case of refugees. He argues that a parallel could be drawn in economic sense when high demands of a particular crop, such as, coffee would divert the use of land in a foreign country just to meet the export demands, thereby putting other crops, such as, rice and beans out of the financial reach of the local poor. He emphasizes that he is not opposed to admitting needy foreigners which still remains a worthy cause, but rather that much more could be achieved by trying to raise the standard of living in poorer countries.

It is submitted that Pogge's arguments in favour of prioritising eradication of global poverty over admitting needy foreigners do carry weight. That being said, the problem with not maintaining any distinction in the circumstances of refugees and asylum-seekers from those of facing severe economic hardships in their own countries or economic migrants, suffer from some issues. First, the circumstances of refugees are such that they are compelled to flee i.e., they absolutely cannot stay back in their own country, because if they do, they face immediate death or death in a relatively shorter term or other forms of persecution at the hands of the government that is supposed to protect them. While similar may be the case of starving individual who is facing utter destitution because of coercive and discriminatory practices of his government, it is not the same because he is not being actively hunted down. Second, economic migrants who wish to immigrate merely for a superior lifestyle cannot be equated with refugees or those economic migrants who wish to immigrate to escape poverty, i.e., hierarchy within the immigrant group cannot be ignored at this juncture. Third, eradication of global poverty is indeed a noble goal as in why admit needy foreigners when the need itself can be eliminated right where they are situated? Pogge has statistically demonstrated that the goal can be achieved. However, this would be an exceedingly difficult operation that would incur tremendous logistical costs not to mention the institutional corruption, bureaucratic hurdles every step of the way and near-about no transparent way to ensure that every dime reaches the pocket of its intended recipient. Making national, state, district and local self-government-level institutions across the globe more just and robust would necessarily be required prior to the commencement of global distribution of justice. Considering all this, making borders more porous while it is being figured out how to operationalise Pogge's vision is a more viable alternative.

Shelley Wilcox (2007) develops her argument on open borders on the foundation of human rights and the duty of states to admit immigrants, as a "global extension of the Harm Principle" (GHP), i.e., if they have been responsible for the violation of human rights of immigrants in their home states. She argues that often societies create "rights-violating conditions" in other societies which due to their nature cannot be remedied easily and it might not be possible to compensate the victims in their local environment before a subsequent human rights violation occurs. In such scenarios, by way of a compensatory measure, Wilcox suggests, the only recourse available is resettlement of victims by way of immigration. In her conception, granting admissions to immigrants would be mandatory if resettlement is the only way to compensate for past human rights violations. For example, if the victims cannot get adequate medical treatment in their

home country they must be relocated or the infrastructure has been so badly hit that fair compensation is no possible, then the rights-violating country must open their borders and relocate the victims. She adds that the duty to admit is solely borne by the rightsviolating country and not the global community. However, this does not preclude such a country from entering into voluntary agreements with other states who might be willing to resettle the victims, especially when some prospective immigrants, if admitted, may be a national security risk. Wilcox contends that immigrations coming from the GHP will sustain even in those scenarios where the freedom of international movement argument may become unsustainable and countries may impose immigration restrictions.

It is submitted that, firstly, the freedom of international movement argument is on a different tangent because it envisages liberty of individuals to cross international borders and the obligation of states not to deny them entry unless there are justifiable reasons, such as, prospective immigrants are subversives and might pose a threat to democratic institutions, public order, national security, threat to human rights of existing members etc. The right is assumed to be inherent drawing its life-force from the analogous right to move freely within the territory. Immigrations based on the GHP, on the other hand, are duty oriented and the principle kicks in as a compensatory measure for violation of human rights. The right is not inherent and only subsequently arises that too after an assessment of whether the compensation within the home country can adequately secured or not. Secondly, the restrictions that apply to the freedom of international movement argument as mentioned above (national security, public order etc.) are the same that would apply to the GHP argument and Wilcox herself concedes the same. States would anyway deny entry to potential subversives and justifiably so. Nonetheless, the principle serves its purpose, i.e., holding the rights-violators accountable, making them pay for it and compensating the victims and if the resettlement is the best or the only way to ensure fair compensation, then so be it.

DUTY TO AID AND ASSIST

After perusing the above-discussed views, it is opined that the existence of a duty to aid and assist is undeniable especially factoring in the economic interdependence that is all pervading. The duty to aid and assist has been used in this paragraph to differentiate it from Rawlsian duty to assist. Duty to aid and assist is intended to be an amalgamation of duty to assist and global distributive justice. Unlike global distributive justice or global egalitarian principle, it has a few potential cut-off points proposed in the main text and unlike duty to assist, it extends beyond establishing just national institutions in needy societies. Additionally, duty to aid and assist flows from global economic interdependence and the benefits that have been (and still are) derived by imperialists from disproportionate bargaining powers rather than the obligation to merely make burdened societies, well-ordered.

Disagreeing with Rawls at this point, who believes that the political and social culture of any society are the only relevant steps to success, the fact that certain societies become rich because of a better starting point (such as rich reserves of natural resources) is also something that cannot be ignored. Certainly, conducive political and social culture are vital for growth and success because without them in place even the advantageous starting position would be doomed to be lost. Further, the duty to aid and assist would also require a cut-off point and cannot continue till equilibrium is achieved between assisting society and the society that needs assistance, however, the cut-off point cannot be mere empowerment and establishment of just national institutions, again, because of the interdependence, past injustices and present profiteering and deriving benefits from others' burdens. Establishment of just institutions would be the starting point, not the

cut-off point. Perhaps the cut-off point could be Pogge's target of eradication of global poverty or in terms of assisting immigrants, asylum-seekers and refugees, the cut-off could be the fulfilment of a mandatory quota of burden-sharing based on the Gross National Income (GNI), military spending, and the fulfilment of a mandatory quota of resettlement of refugees based on population density, geographical size of the country, its GNI etc. When the conditions creating refugees have been removed and the existing situation has been satisfactorily dealt with, then the threshold of duty would be considered to have been reached, not before that. This does not entail the flow of funds from the richer countries to poorer countries, till equilibrium in wealth is achieved or that one country or a few countries keep on taking in immigrants and refugees while others stand by and do nothing. What it does entail is a global and equitable distribution of responsibility that is owed without compassion fatigue and without donor fatigue because the motivation behind action is duty not charity or philanthropy.

CONCLUSION

The duty to aid and assist represents a necessary evolution of ethical responsibility in an increasingly interconnected world. Moving beyond Rawlsian notions of assistance, this duty acknowledges that global economic interdependence, historical injustices, and ongoing disparities demand a more comprehensive framework. Establishing just institutions in burdened societies is essential but should serve as a starting point rather than an end goal. Practical benchmarks, such as eradicating poverty and equitable refugee resettlement, offer tangible pathways to operationalize this duty. Crucially, this responsibility must be driven by moral obligation, not transient compassion or donor fatigue, ensuring a sustainable and equitable distribution of global responsibilities. By adopting this approach, the international community can address structural inequalities and foster a more just and collaborative global order.

REFERENCES

Appiah, K. A., Benhabib, S., Young, I. M., & Fraser, N. (2007). Justice, governance, cosmopolitanism, and the politics of difference: Reconfigurations in a transnational world. *Berlin: Humboldt-Universität*.

Arendt, H. (1976). *The Origins of Totalitarianism*. Harcourt Brace & Company, New York.

Beitz, C. R. (1999). *Political theory and international relations*. Princeton University Press.

Breen, J. (2004). *The secret education of a wise sovereign: toward Kant's idea of perpetual peace* (Doctoral dissertation, Memorial University of Newfoundland).

Carens, J. H. (1987). Aliens and citizens: the case for open borders. *The review of politics*, *49*(2), 251-273.

Cavallar, G. (2020). *Kant and the theory and practice of international right*. University of Wales Press.

Cole, P. (2020). *Philosophies of exclusion: Liberal political theory and immigration*. Edinburgh University Press.

Etim, V. E., Okon, B. A., & Okon, M. M. (2018). First language attrition of lexical structures in a contact situation with English: A study among Anaañ bilingual child. *Advances in Social Sciences Research Journal*, *5*(6).

Flikschuh, K. (2010). Kant's sovereignty: A Contemporary Analysis. *Journal of Political Philosophy*, 18(4) 471-482.

Frey, R. G., & Wellman, C. H. (Eds.). (2008). *A companion to applied ethics*. John Wiley & Sons.

Golwalkar, M. S. (1939). Our nationhood defined. *Nagpur, India: Bharat Prakashan*.

Habermas, J. (1997). Kant's idea of perpetual peace, with the benefit of two hundred years' hindsight. *Perpetual peace: Essays on Kant's cosmopolitan ideal*, 113-53.
Huggler, J. (2010). Cosmopolitanism and peace in Kant's essay on 'perpetual peace'. *Studies in Philosophy and Education*, *29*, 129-140.
Juárez, K. A. C. (2023). Article 13–The Right to Freedom of Movement and of Residence. In *The Universal Declaration of Human Rights* (pp. 314-334). Brill Nijhoff.
Kleingeld, P. (2017). Approaching perpetual peace: Kant's defence of a league of states and his ideal of a world federation. In *Immanuel Kant* (pp. 451-472). Routledge.
Krasner, S. D. (1999). Sovereignty: Organized Hypocrisy.. Princeton University Press, Princeton.
Margalit, A., & Raz, J. (2022). National self-determination. In *Group Rights* (pp. 445-467). Routledge.
Miller, D. (1995). *On Nationality* 22-25. Clarendon Press.
Miller, D. (2013). Immigration: The case for limits. *Contemporary debates in applied ethics*, 359-375.
Mole, N., & Meredith, C. (2010). *Asylum and the European convention on human rights* (Vol. 9). Council of Europe.
Okon, M. (Ed.). (2003c). *Topical Issues in Sociolinguistics: The Nigerian Perspective*. National Institute for Nigerian Languages in collaboration with Emhai Printing & Publishing Company.
Okon, M. M. (2003a). The Grammar of Questions Formation in Yala Language, by Okoji R. Oko. *Journal of African Languages And Linguistics*, *24*(1), 111-116.
Okon, M. M. (2003b). Une Étude Contrastive Des Prépositions en Ibibio et en Français. *Nduñọde: Calabar Journal of the Humanities*, *4*(1), 206.
Okon, M. M. (2004). The Kiong language in the 21st century: Problems and prospects. *Language and Culture in Nigeria: A Festschrift for Okon Essien*, 91-96.
Okon, M. M., & Noah, P. (2023). Challenges to Language Revitalization: The Efut Perspective. *Celt: A Journal of Culture, English Language Teaching & Literature*, *23*(1), 181-204.
Orend, B. (1998). Kant on International Law and Armed Conflict.
Pevnick, R. (2011). *Immigration and the constraints of justice: Between open borders and absolute sovereignty*. Cambridge University Press.
Pogge, T. W. (1992). Cosmopolitanism and sovereignty. *Ethics*, *103*(1), 48-75.
Rawls, J. (1993). The law of peoples. *Critical inquiry*, *20*(1), 36-68.
Samanani, F. (2017). Introduction to special issue: Cities of refuge and cities of strangers: Care and hospitality in the city. *City & Society*, *29*(2), 242-259.
Savarkar, V.D. (2003). *Hindutva: Who is a Hindu?* 40. Hindi Sahitya Sadan.
Wainer, D. (2023). *Human Rights for Refugees and Other Marginalised Persons: A Midrash Methodology*. Springer Nature.
Walzer, M. (2008). *Spheres of justice: A defense of pluralism and equality*. Basic books.
Wellman, C. (2005). The Blackwell Companion to Applied Ethics. Blackwell.
Whelan, F. (1988). Citizenship and Freedom of Movement" in Mark Gibney (ed.) *Open Borders? Closed Societies? The Ethical and Political Issues*. Greenwood Press.
Wilcox, S. (2007). Immigrant Admissions and Global Relations of Harm. *Journal of Social Philosophy*, *38*(2).