

Refugees and the Rise of the Novel: Trespass, Necessity, and Humanitarian Casuistry in the Long Refugee Crisis

Introduction

There is kinship between novels and refugees. In Europe, they were both born following the Restoration, when the *modus vivendi* between Catholics and Protestants reached points of crisis in France and England. The revocation of the Edict of Nantes (1598) by the Edict of Fontainebleau (1685), nine months after the death of Charles II, ended France's commitment to pluralism and demarcated a new era in political thought as thousands of fleeing Protestant Huguenots were unleashed into the British Isles, the Netherlands, and the New World. The refugee crisis—"refugee" was the term coined for fleeing Huguenots—would transform European political theory. The topic of refugees is of necessity one that crosses borders, and one with specific cultural responses that become evident in different regions. This essay is about the close and long-standing links between refugees and the novel in England.

In the "rise of the English novel" tradition, one understudied fascination of Daniel Defoe was the plight of Protestant refugees in Europe. Throughout his career, Defoe offered numerous full-throated justifications for granting asylum to refugees, struggling for decades to find a persuasive form to convince his readers of the justice of granting asylum to refugees. A political economist and briefly a spy, Defoe turned to crafting fiction only late in life (in his sixties), and his novels never strayed far from political theorizing. In fact, one could plot the stages of Defoe's development as an author by way of his coping strategies for refugee advocacy. In the late 1690s, he began with appeals to religious fanaticism that gave way to pragmatic arguments about political economy and labor power; in "The True-Born Englishman" (1701), he resorts to a withering poetic satire of racism and xenophobia; a decade later, he fashioned arguments that sought to evoke Christian charity in his readers.¹ Defoe finally stepped away from persuasive writing to fashion what Ian Watt refers to as the realist novel. At that stage in his career, Defoe began to think normatively about the refugee—to ask his readers to ponder why refugees should evoke both humanitarian good will and skeptical malice.

For legal studies, revisiting the aftermath of Fontainebleau allows us to consider the emergence of the English novel—Defoe's in particular—alongside a refugee crisis that took place prior to the border controls, passports, and regimes of status determination that eclipse our view of the current refugee crisis. In the eighteenth century, all who migrated through the English countryside became fodder for a growing paranoia about immigration, economic anxiety, and criminal vagrancy, which raised quintessentially novelistic questions about how the affect of travelers can lay bare their motivations.²

In looking back at this moment of conceptual redetermination, legal studies can find traces of the normative expectations that fuel our present-day expectations about refugees.

Today, refugees may only be admitted into countries after passing a credible fear test.³ The UN's Convention Related to the Status of Refugees (1951) requires refugees to demonstrate not only that they are fleeing objective persecution, but also that they fear that persecution. Present-day accounts of the refugee fail to consider the normativity in the way that refugees are tested affectively. Why is it that refugees must produce a narrative testifying to how they felt about atrocities that forced them to leave their homes? What legal principle justifies the demand for sincere terror?

The area of indeterminacy for lawyers who make or adjudicate refugee claims is whether asylum-seekers have legitimate cause for seeking refugee status (i.e., whether asylum-seekers are lying about their affect). This essay demonstrates that the early novel is an aesthetic pedagogy that serves as a model for assessing affect to train early modern readers to ponder the sincerity of wrongdoers. The novel *is* a credible fear test that judges subjects according to a metric of necessity posed by the humiliations of migration.

Anthea Vogl argues that refugee applicants must adopt "certain narratives and generic forms" and that "decision-maker's expectations" shape that narrative.⁴ In order to assert that the subject of human rights and the refugee are coextensive, she turns to Joseph Slaughter's account of the sovereign subject of the Bildungsroman, or novel of formation, as the subject of human rights.⁵ Those shaping narrative expectations turn on the presentation of sovereignty, privatizing sovereignty and equating it with the representation of a coherent self. Yet, if there is an ethical injunction to grant membership to the stateless, it cannot possibly hinge upon the usefulness of a persecuted population, upon their being competent, sovereign liberal subjects. If so, those would be the only subjects that merit asylum under refugee law.⁶

Vogl's is a formalist account that assumes a formal symmetry between the novel and human rights such that key features of one (sovereignty) must be present in the other. I take a more historicist approach. If we detach the refugee from the nineteenth- and twentieth-century subject of human rights, turning instead to the wake of the Edict of Fontainebleau and to the early history of refugees, it will become clear that the mutual co-constitution of novelistic form and refugee narrative does not require sovereignty: it entails its absence in a paradoxically decisive presentation of affective terror and indecision.

The area of law that does require both objective and subjective threat is the doctrine of lawful excuse, which comprises a set of defenses such as self-defense, duress, and necessity. These defenses all accept that the defendant has committed wrongful conduct, but claim that they are not guilty on the grounds that their actions were morally involuntary. Lawful excuses require proof of an objective, imminent threat, and for each defense the defendant must also evidence the subjective experience of that threat. While common law jurisdictions treat these defenses similarly, the one that most closely resembles the legal requirements for the refugee, and the one Defoe most likely used to conceive of the refugee, is the defense of necessity.

Our modern-day conception of the refugee requires that one be terrified with a "well-founded fear of being persecuted" at the same time as it assumes the rationality of

flight. Likewise, the American Model Penal Code treats the defense of necessity as a choice between evils, as “conduct which the actor believes to be necessary to avoid harm or evil to himself or another is justifiable, provided that: The harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged.”⁷ The agent of necessitous wrongdoing has engaged in a calculation that a reasonable person would engage in when weighing options in the midst of imminent threat. Refugees share with agents of necessitous wrongdoing this calculation of the harm of persecution (by a state or third party) as the justification for a trespass.

Any defense of policy decisions to admit refugees begins from the premise that refugees need more than mere protection: refugees come in need of a defense.⁸ The designation of refugee exculpates asylum-seekers: it excuses a putatively unwanted presence or burden. With this acknowledgment of burden comes the suspicion of guilt. The philosopher Elizabeth Cohen enumerates some of the grounds of suspicion: refugees are enmeshed in politically charged and violent circumstances; they will disrupt social relations; they will burden the welfare system; they will compete in the marketplace; and, finally, one last reason to be chary of their motivations, “malign intent could slip through the screening process.”⁹

This suspicion, I will show, is nothing new. In fact, it is baked into the way that we understand the refugee as a subject of skepticism, compelled to explain herself. The refugee crisis raises recognizably novelistic questions. The quintessential feature of the novel shares qualities with the skepticism faced by asylum-seekers, and the same tenor of writing that casts doubt on the sincerity of verbalized expression and questions whether interior life matches testimony about it has made its way into the attitude that our international agreements take toward refugees. The early novel and the refugee share a narrative form, but what that form narrates is the skepticism of affective indecision (a formal representation of a loss of control, a loss of self-sovereignty). The depiction of subjectivity and objective experience in the novel illuminates necessity and subjective judgment in the legal regime around asylum-seeking. The law of asylum revolves around a credible fear test that triggers the same skepticism that animates novelistic form. Because a refugee protagonist’s choices are not freely willed, the necessity that demolishes free will becomes tied to eighteenth-century legal debates around the state’s responsibility to provide the infrastructure for lawful conduct.

In the seven sections of this essay, I follow a haunting formulation used by Defoe’s literary trespassers—“we can neither go away nor stay here”—which echoes throughout religious, legal, and literary texts to encapsulate the dilemma of the refugee. When is it that one must decide to leave everything behind to trespass on the land of others? How does one decide when to flee? For Immanuel Kant, it must be a decision made without calculation, one based on the same principle used in defenses of lawful excuse—one’s justifications must reference moral involuntariness. Following my discussion of self-justification, I will turn to the centrality of skepticism about moral involuntariness in the theory of the novel and will subsequently turn to the co-emergence of necessitous action within the common law using Thomas Hobbes and William Blackstone as foils to Defoe. Ultimately, Defoe would place limits on the right to excuse one’s own wrongful conduct—limits that may be helpful to legal studies in understanding our current expectations of refugees.

By the Terror of Present Death

Of the three major candidates to the paternity of the English novel—Daniel Defoe, Samuel Richardson, and Henry Fielding—Defoe’s claim has always been the most controversial. On the occasions that I have presented drafts of this paper, frustrated audience members have brusquely objected that Defoe’s *A Journal of the Plague Year* (1722)¹⁰ “is not a novel.” In part, that is because the aesthetic of the *Journal* scarcely resembles that of later eighteenth-century novels and uncannily resembles our contemporary fictions. The conceit of an eyewitness account of the events of the Great Plague, which took place nearly sixty years prior to its writing, presents as a form of early journalism and self-declares as nonfiction (a hallmark of Defoe’s imaginative fiction). The narration is focalized through the figure of H.F., whom many critics take to be Defoe’s uncle Henry Foe, and it often veers unmarked between his perspective on events and anecdotal accounts of life under the plague. H.F. constructs an illusion of verisimilitude by treating the accounts transmitted through rumor as parallels so close to his own experience that at moments it becomes difficult to determine whether H.F. is narrating his own personal experience or that of others. The distinction is clearest in the novel’s longest digression, a telling of events set outside of London for which H.F. (who never leaves the city) relies on the accounts of three refugees—a man named John, his brother Thomas, and a friend—as they flee from plague-ravaged London. As the trio contemplate the trouble they are sure to face on the road, John summarizes the pros and cons of staying and going. For H.F., their back and forth becomes a template for decision-making in crisis: “Their story has a moral in every part of it, and their whole conduct, and that of some whom they joined with, is a pattern for all poor men to follow, or women either, if ever such a time comes again.”¹¹ The soon-to-be refugees have kept close track of the plague and see it traveling toward them. John and Thomas are both on the verge of being evicted from their lodgings as a result of the panic. It is through the deliberations of refugees that I will track what makes the *Journal* quintessentially novelistic.

John models his reasoning on biblical precedent, “Why, brother, Our Condition at this Rate is worse than any Bodies else; for we can neither go away nor stay here; I am of the same Mind with the Lepers of Samaria, . . . if we stay here we are sure to die, and if we go away we can but die: I am resolv’d to be gone.”¹² This is the first of a number of interlocking proofs that form an ongoing argument throughout Defoe’s work, and alludes to the lepers of Samaria in 2 Kings, where another proof is used to come to an agonizing decision:

Now there were four leprous men outside the city gate, who said to one another, “Why should we sit here until we die? If we say, ‘Let us enter the city,’ the famine is in the city, and we shall die there; but if we sit here, we shall also die. Therefore, let us desert to the Aramean camp; if they spare our lives, we shall live; and if they kill us, we shall but die.”¹³

John and his caravan are within the city and the lepers outside of it; so, at first glance, the analogy can be confusing. Like the speaker in Robert Frost’s oft-misunderstood poem, “The Road Not Taken” (1916), John is generating a counterfactual world—one in which he has already decided what road to travel in full awareness that he will have reason to

later regret his choice. At this point, John envisages already having left London and contemplates in a premeditated fashion his future trespass onto parish grounds and the deceptive intimidation he will practice later in the novel to threaten townsfolk with infection in exchange for food. In fantasizing of the lepers, John dreams of movement unconstrained by sovereign rule. Little do the lepers realize that the Syrians have fled their city out of fear that the Israelites have enrolled the Hittites and Egyptians to overwhelm them. The lepers begin with the assumption that their fate lies entirely in the hands of a political authority and find that they must continue on their journey without the support of a state or the guidance of laws. For John, the comparison to the lepers is apt because the state is absent for him as well. London and the surrounding country are leaderless. The recently restored Charles II and his court fled to Hampton Court during the Great Plague, while Parliament retreated to Oxford. John compares his caravan's flight from a collapsed society with the choice made by the lepers—a choice predicated on the apprehension that an absent state no longer has a say in where and how its subjects move.

John declares that they are acting in a state of exception through the parable, and that exceptionality allows him to be cognizant that he is planning wrongdoing. In the 1720s, it would not be strange to align refugees with criminal conduct. John's movement is criminal even when not "realistically" contemplating any crimes: as Thomas observes, their movement constitutes vagabondage, since the caravan travels the national highways without a destination in mind. It is a short step from their initial vagabondage to later acts of trespass, intimidation, and thievery. Vagabondage indirectly led to trespass and theft and could be considered a stage in it—a preliminary thieving.¹⁴ The historian Peter Lawson treats vagabondage and theft as a sequence of acts that logically follow from economic crisis, and he formulates those criminal acts in terms of necessity, "For many individuals, the initial response to economic crisis may have been migration; theft would come later, as means of survival while on the road."¹⁵ Unless justified by commerce or public service, those who migrated signaled disorder, and the mobility of their encampments was a sign of vagabonds in a state of trespass. In alluding to 2 Kings, Defoe links the refugee's terror of making criminal choices to the lepers' realization that they are free to (and have no practical choice but to) illicitly plunder. In this conception, refugees are left threatened and unprotected by the state in circumstances that will not allow them to act otherwise than criminally, while at the same time H.F.'s moral paragons are explicitly contemplating embarking upon an adventure that would place them in the position of criminals.

Defoe overtly routed his account of the refugees through his understanding of the defense of necessity. It is not simply the parallel in circumstances between John's caravan and the lepers that prompted Defoe's allusion to 2 Kings. The same rhythmic conditionals that precariously balance stillness against movement and death against life are taken up by Thomas Hobbes when he explains the defense of necessity in his own echo of the lepers of Samaria:

If a man, by the terror of present death, be compelled to do a fact against the law, he is totally excused; because no law can oblige a man to abandon his own preservation. And supposing such a law were obligatory; yet a man would reason thus, if I do it not, I die presently; if I do it, I die afterwards; therefore, by doing it, there is time of life gained; nature therefore compels him to the fact.¹⁶

Thomas Hobbes wrote about those in flight crossing the threshold between legality to criminality, but he never came to name the refugee crisis. He, nevertheless, influenced Daniel Defoe's explicit theorizations of the refugee. Hobbes reasons that there is a right to go unpunished when faced with a choice between imminent death and an uncertain future bounded by an act of criminal wrongdoing. It would be irrational to imagine that anyone would choose death over an uncertain future. This is an early articulation of the defense of necessity, which today no longer needs the threat of imminent death, but rather the threat of a harm that is understandably more serious than the wrong being defended.

One reader who caught that John's caravan was simultaneously an allusion to the plight of the Huguenots and an account of necessity, was J. Hector St. John de Crèvecoeur, whose twelfth letter in *Letters from an American Farmer* (1782) is replete with echoes of the *Journal*, including a similar defensive proof that makes explicit the circuit connecting the defence of necessity to the figure of the refugee. The formulation should by now be familiar, "If we stay we are sure to perish at one time or another; no vigilance on our part can save us; if we retire, we know not where to go; every house is filled with refugees as wretched as ourselves; and if we remove we become beggars."¹⁷ The previous proofs all cite death as one of the two available outcomes; in Crèvecoeur's eyes, beggary seems almost as dire. Crèvecoeur's adoption of the plague year destruction in his twelfth letter points to an understanding of jurisdiction in the civil condition enabled by Defoe and Hobbes: your movement across the threshold of one legal community or another depends on your motivation and your relationship to legal authority. In the midst of a conflict where individuals are forced to decide which jurisdiction's laws they will follow—Great Britain's or the rebelling colonies—the farmer asks his reader to picture him on the run in a "half-dissolved" society where "hundreds of my friends and acquaintances have already perished."¹⁸

Because the farmer is unable to decide whether he is a refugee, a criminal, a traitor, or a loyalist, he cannot decide which actions or inaction constitute wrongful, law-breaking conduct. There is nothing to grant him an independent source of direction as to how he stands in relation to either side. Choosing to flee as opposed to staying is a factional decision: "Some have asked whether it was a crime to resist, to repel some parts of this evil. Others have asserted that a resistance so general makes pardon unattainable and repentance useless, and dividing the crime among so many renders it imperceptible."¹⁹ Crèvecoeur's farmer is trapped in state of existential and informational uncertainty that brings with it a fundamental indecision; when unable to characterize an action, he cannot characterize either its motivation or purpose. The farmer understands that the only law that can guide him in a moment when the state is undergoing regime change is a higher law that transcends the conflicting and overlapping jurisdictions in which he finds himself; but, he describes as "presumptuous" any attempt to deduce that law, to "predict all the good . . . [or] foresee all the evils which strew the paths of our lives," leaving him bereft.²⁰

The Right to Explain One's Self

As Max Cherem points out, there are two interests at stake in the present-day conception of refugees, namely the interests of those who have lost national membership and the state system that promises national membership to all.²¹ Kant's account of hospitality considers

both those interests, taking the subject of ethics to be the fully formed state that benefits from strangers in need. For Kant, a state's obligations to strangers grounds the state in an international legal public. In the seventeenth and eighteenth centuries, refugees and their movement across thresholds between territorial jurisdictions and across the non-topographical threshold between the state of nature and civil society were managed by virtue of justifications. Supplication contained an exculpatory element.

Kant conditions the right of hospitality similarly to discourage visitors from attempting to enter other nations for non-reciprocal economic gain; thus, the right of hospitality is skeptical of economic motives and "does not extend beyond the conditions which make it possible to seek commerce with the old inhabitants."²² Kant was wary of those who would use hospitality as an excuse to treat another nation's economy as a means to an end. Likewise, evaluating an asylum-seeker's motives is consonant with the suspicion built into the right to hospitality. Asylum is a conditional, preliminary right designed to discourage economic opportunists from supplicating for national membership while feigning political persecution. Kant's anxiety is that too many refugees on the road will inhibit commerce with their self-interested behavior. Therefore, association of refugees with skepticism is not incidental; it is baked into philosophical attempts to derive asylum from the philosophical right of hospitality.

Even when welcomed into a nation, refugees are met with ambivalence. The hatred directed at refugees may shock humanitarians; nevertheless, as a legal concept, refugee status—like necessity—is designed to encourage a skeptical liberality. Thus, today, when the state encounters asylum seekers, it evaluates the magnitude and authenticity of their fear as well as that fear's objective relation to objective persecution. It seeks to determine whether the affect is actually a façade for an economic motivation.

Because the state system whose structure emerges from hospitality to strangers does not yet exist in the eighteenth century, humanitarianism as Defoe would have understood it lacked a mechanism of enforcement. He would not think of hospitality as a right. Instead, the closest parallel would be to conceive of asylum in terms of equity—the fairness or mercy a sovereign can extend as head of the nation's legal system through his judges. Kant later argued that equity was closely related to the defense of necessity and that both necessity and equity constitute ambiguous right (*ius latium*), which are "true or alleged rights."²³ Theorists of the refugee have sidetracked ambiguous right and favored Kant's right of hospitality. But hospitality can be seen as a kind of state equity extended to strangers—for example, a preliminary right that does not exist in law, but that is respected by the state, nonetheless.

Kant wrote of the defense of necessity as encompassing a category of unpunishable wrongdoing. His view of criminal law is like the right of hospitality inasmuch as it is meant to produce rightful relations between people. He understood the normative foundation for criminal punishment as being the protection of equal freedom of all persons through the threat of coercion. Yet, for Kant, the power of the law to coerce is limited by those ambiguous rights. Equitable rights do not come from legal sources, and the state has no obligation to enforce them. The sovereign may grant them as equity (a form of mercy or charitableness), but he is not required by law to coerce individuals into fulfilling the duties demanded by a right so preliminary that it has not been written into law.

Legal scholars tend to settle upon fairness as the meaning of equity, because it tends to be framed as a fairness between parties, but it also was understood in the sixteenth

century by Christopher St. German to be a form of mercy: “Equity is a right wiseness that considereth all the particular circumstances of the deed, the which is also tempered by mercy.”²⁴ He takes up asylum as the example that illustrates equity by asking his reader to imagine a law that forbids the opening of the city gates before dawn “on pain of death . . . yet if the citizens, before that hour flying from their enemies, come to the gates of the city, and one for saving of the citizens openeth the gates before the hour appointed by the law, he offendeth not the law, for that case is excepted from the said general law by equity, as is said before. And so it appeareth that equity rather followeth the intent of the law.”²⁵ The problem that St. German is drawing upon is the Aristotelian interpretative problem of *epieikeia*, or fairness, that Saint Thomas Aquinas would first frame through an example of asylum. Aristotle and Aquinas worried that interpreting the law generously sets aside the letter of the law to allow judges the authority to legislate. For many judges in the common law this was not a problem since they were also legislators and felt empowered to speak to what a law meant. St. German recognizes the law to contain an implicit exception for necessitous circumstances. In explaining equitable interpretation of the law, he stresses that this asylum applies to citizens in immediate peril, but the technicality of citizenship is less important than *epieikeia*’s interpretative qualities. Those seeking equity (and asylum) qualify for *epieikeia* through what Homi Bhabha calls a “right to narrate,” which is “an enunciative right—the dialogic right to address and be addressed, to signify and be interpreted, to speak and be heard, to make a sign and to know that it will receive respectful attention.”²⁶

The connection between refugees on the receiving end of equity and the defense of necessity is prefigured in the early modern novel, which is where skepticism about the motivations for actions committed in extremis is worked out dialogically. Novels can reflect more freely than judges on such commonalities. It is their province to show whether someone acts with clean hands, that is, with sincere motive. Defoe’s *Journal* compares people fleeing the plague with vagabonds, who raised the defense of necessity against charges of trespass, who must similarly be acting with clean hands. In today’s legal idiom, we call this moral involuntariness, which is “the quality of a person who commits a crime but who because of emergency circumstances has no realistic choice but to commit the crime.”²⁷ This common law principle that you are blameless if you acted without malice and without control dates from the 1616 case of *Weaver v. Ward*, which decided that “no man shall be excused of a trespass (for this is the nature of an excuse, and not of a justification, *prout ei bene licuit* [as is properly permitted to him]) except it may be judged utterly without his fault.”²⁸ In *Weaver v. Ward*, the defense for trespass was an archaic form of excuse known as inevitable accident. Necessity eventually replaced it as the defense for trespass, but they share the core exculpatory element of moral involuntariness. By the eighteenth century, leniency was extended to involuntary conduct in general. Refugees and trespass could be justified as the unwilling outcome of circumstance.

Why Affect Matters in Novels from the Legal Point of View

The importance of establishing evidence of the affect appropriate to one who has been abandoned by the state cannot be overemphasized. Today, when a refugee is interviewed and shows insufficient terror at the prospect of returning home, or returns to the nation of origin for a visit, she can be re-availed—sent back to that nation because the asylum nation has determined from this behavior that the subjective or objective threat has diminished.

Several strands of literary criticism theorize the novel as an enlightenment device that developed in relation to skepticism about the authenticity of affect. Following the parallel that Ian Watt draws between trial juries and novel readers who both evaluate the plausibility of narrative circumstance, Frances Ferguson equates the “formal skepticism” implicit in rape trials with the readers’ role as juror. The theory goes something like this: the novel mimics a courtroom problem that occurs in many incidents of rape when a formal stipulation of nonconsent is not taken to accurately reflect internal feeling. Alternately, in cases of mutual mistake, the invitation to intercourse can itself be perceived as threatening; or a verbal assent does not correspond to internal consent; or a muted refusal does not register to the initiator of the unwanted action.²⁹ For Ferguson, then, the novel’s function is to cast doubt: it dramatizes a potential contradiction between a character’s dramatic expression of their mental state and their true subjective state.³⁰ It also seeks to stage a reconciliation between these potential contradictions, as marriage would do retroactively to rape. Here I refer to Ferguson’s account of how bride-price in Anglo-Saxon law carries into eighteenth-century English debates about consent: “marriage recasts rape, so that marriage is a misunderstanding corrected, or rape rightly understood.”³¹ This accounts for a novel like Samuel Richardson’s *Pamela*; although, in Richardson’s *Clarissa*, a fidelity between external nonconsent and internal consent never harmonizes to culminate in a marriage. In fact, the drama of *Clarissa* is the gas-lighting plot about whether she can be battered into believing her actions signaled a desire to consent that she represses from conscious thought.

The skepticism that Ferguson describes has affinities with earlier accounts of the relationship between dramatic dialogue and the internal life of the character. E. M. Forster wrote that “we cannot understand each other, except in a rough and ready way . . . But in the novel we can know people perfectly . . . we can find here a compensation for their dimness in life.”³² Although the novel provides us with “the illusion of perspicacity and of power,” it makes us aware of our epistemological inadequacies. Ferguson posits this contradiction as native to the internal world of the novel, rather than, as Forster does, as a problem that manifests in readers’ encounters with the novel.

In a like manner, Georg Lukács’s neo-Kantian discussion of the novel, in *The Theory of the Novel* (1915), claims that the novel is a form endemic to modernity, designed to work through the gap that emerges when individual subjectivity is severed from the objective world. Lukács argues that the way novels technically figure alienation is historically contingent, yet they are always shot through by characters’ striving to become themselves, a dramatic imperative to achieve their moral personality.³³

Ferguson understands the novel as introducing the Enlightenment problem of doubt about the very possibility of representing consent—albeit rape is only one manifestation of this general skepticism: “a crime like rape would represent one element of the intersection between eighteenth-century skepticism and prose fiction.”³⁴ The emergence of skepticism in eighteenth-century English law and fiction was an unintended consequence of England’s parallel march alongside France toward a state of religious intolerance that culminated in the Test Act of 1673, which excluded dissenters from holding public office. Testing for doctrinal deviation broaches a split between belief and speech. In the *Journal*, we see that split as integral to the form, one that builds up on the skepticism of an earlier work like *Don Quixote*, which emphasizes a split between action and belief that leads readers to ask whether the events as narrated are plausible. Quixotism, as Aaron Hanlon

observes, foregrounds whether reformist-minded idealists can plausibly distinguish reality from fantasy.³⁵ Defoe's skepticism, on the other hand, lands on the problem of his day—credibility.

Morally involuntary action, including the trespass of vagabonds and the entry of refugees into foreign land, is one way in which that need for evidence of authenticity of affect, in some narrative form, first manifested. How do we tell whether refugees are lying?

The Legalization of Necessity

When Defoe theorizes the refugee with necessity in mind, he introduces the worry over insincerity that keeps the liberal subject vacillating between hospitality and malicious suspicion. In one of the early uses of the word “refugee” in the English language, Defoe's *Roxana*, herself a proud daughter of Huguenot refugees, expresses contempt of those who seek asylum under the guise of necessity:

I have indeed heard my father say that he was pestered with a great many of those who, for any religion they had, might e'en have stayed where they were, but who flocked over hither in droves, for what they call in English a livelihood . . . My father, I say, told me that he was more pestered with the clamours of these people than of those who were truly refugees, and fled in distress merely for conscience.³⁶

The passage manifests both acceptance and malice, embracing her father while denigrating the false refugee as a louder, parasitical parody of true refugees. Droves are driven as a pack and do not operate under their own volition. This mass of pests who lack individuality but also seem to embody selfishness contrast with the conscientious, whose faithfulness and authenticity manifest in economic success. Paradoxically, legitimate refugees are voluntarist subjects. Her father's financial precautions and early investment demonstrate that his need for asylum was legitimate; his flight to England was not motivated by calculating acquisitiveness, and his arrival enriched England.

Judgments about motivation depend on whether actions were decided upon consciously or were driven by greater forces or ancient instincts. The concept of necessity became fully legalized during the seventeenth and eighteenth centuries. In explanations for why law should not coerce imperiled wrongdoers, classical thought's oblivious instinctual subject was replaced by a thoughtful, calculating individual. Jerome Bickenbach writes that, from the eighteenth century onward, the “legal view is that the defence points to a choice of the lesser evil—a choice to sacrifice an interest in order to protect an interest, to commit a criminal offence or intentional tort in order to prevent a greater evil.”³⁷

Hobbes mathematized necessity, treating it as a calculation—a moment of clear reason within a context of terror. He ties decision-making in extremis to self-conscious rebellion when he extends the right of self-defense to include one's right to kill one's executioner.³⁸ His calculation balances imminent death against deferred threat to conclude that any longevity is an essential moral good, and it treats kinds of harm as being sufficiently measurable to balance against one another. He consistently portrays opposition to a deformed social compact as a moral imperative since life must always be prized over law.

The eighteenth-century jurist William Blackstone similarly categorized crimes of necessity as “the result of reason and reflection.”³⁹ The excuse of necessity goes to the heart of criminal responsibility, which is intent, for, although the will that initiated the crime had reasoned and reflected, this “will cannot be said freely to exert itself, being rather passive, than active; or, if active, it is rather in rejecting the greater evil than in chusing the less.”⁴⁰ As Simon Stern observes, Blackstone regards understanding as central to criminal wrong, but he also sees necessity as one of those defenses that exonerate on the basis of capacity rather than will. Because will is the result of calculations favoring the lesser evil, the perpetrator cannot be said to have freely chosen to commit evil. Blackstone claims that we can act wrongfully in service to a greater good (for example, injuring or killing a criminal who is about to escape). He inverts Hobbes’s example by positing necessity as the justification for police brutality rather than as an act of resistance to police power.

We can understand what Blackstone was trying to get at by using the Plank of Carneades scenario classically used to illustrate the defense of necessity. In this scenario, two men are on a plank, each of whom knows that he must kill the other in order to survive. It is not that the survivor necessarily intended to kill the other man; but, in Blackstone’s view, he *could not have intended not to* kill his victim. On this basis, Blackstone categorically rejects exonerating vagabonds for wrongdoing that they attempt to justify by using economic considerations. The defense of necessity is not available to the poor who steal to survive, because the state provides alternative, legally permissible forms of poverty relief.

In the eighteenth century, Hobbes and Blackstone provided two different ways to understand this relationship between the failure of the state and capacity. In Blackstone’s view, we do not punish morally involuntary wrongdoing because it results when the state has neglected to make the defendant capable of rightful action. Blackstone’s view of necessity treats the state neutrally; it simply has not provided the means by which one can act rightfully. The other view holds the state liable; the state has stranded the wrongdoer and has abandoned its promises of security. Even worse, in its prosecution, it seeks to punish the wrongdoer for actions that result from that abandonment.

It is not always clear where Defoe stands on this matter. Blackstone was born in the year after the *Journal*’s publication, but Defoe seems familiar enough with the logic Blackstone uses to describe the common law explanation of necessity. In his second sequel to *Robinson Crusoe*, Defoe appears to reject the Hobbesian indictment of the state. *Serious Reflections During the Life & Surprising Adventures of Robinson Crusoe, With His Vision of the Angelic World* (1720) was an exercise in moral reflection wherein Defoe describes a hypothetical incidence of cannibalism at sea to explore the justification for the defense of necessity:

What shall we say to five men in a boat at sea, without provision, calling a council together, and resolving to kill one of themselves for the others to feed on, and eat him? . . . And yet this has been done by honest men, and I believe the most honest man in the world might be forced to it; yet here is no manner of pretence, but necessity, to palliate the crime. If it be argued it was the loss of one man to save the four, it is answered, but what authority to make him die to save their lives?⁴¹

Defoe differentiates legal from moral sanction. For Defoe, that necessitous action can be legally forgiven does not mean that it is morally justified. He distinguishes what is legally rightful from what is morally rightful. For instance, referring to how courts grant mercy for minor crimes like trespass and petty theft he writes, “necessity makes the highest crimes lawful, and things evil in their own nature are made practicable by it. From these extremes of necessity, we come to lighter degrees of it, and so let us bring our honest man to some exigencies.”⁴² Cannibalism is only an extreme version of trespass, says Defoe, and because the British generally overlook cannibal murders at sea, a rationale for excusing these much more minor crimes takes shape.⁴³ Necessity is a legal fiction that can be used to arrive at a predetermined outcome—exoneration. Because the sailors could not choose otherwise, what they did was necessary, and so the state may simultaneously deem them guilty and equitably release them unpunished. *Serious Reflections* is not a realist novel and more closely resembles the philosophical reflections in vogue in eighteenth-century France, but the *Journal*, published a year later, integrates his earlier, more philosophical musings on necessity into a plot-driven structure.⁴⁴ How in the year-long gap between the two works did Defoe move from treating necessitous conduct like a legal technicality that we reserve to show leniency to those who commit minor crimes to H.F.’s valorization of the refugees’ necessitous conduct as morally paradigmatic?

Two years after *Serious Reflections*, Defoe dropped his proto-Blackstonian understanding of necessity and moved toward the Hobbesian view most likely as a result of his effort to write a decisional proof that echoed Hobbes’s evocation of the lepers of Samaria. In Hobbes’s account of necessity, the decision of Charles II and Parliament to flee the plague becomes a key element of necessitous decision-making. When the liberal state’s infrastructure fails to provide its citizens with the choice of rightful action, citizens naturally resist; wrongdoing becomes their only way out. Thus, the decision to do wrong indicts the state.

Lauren Berlant argues that in transitional times, we can know infrastructural failures as “an interruption within a transition, a troubled transmission.”⁴⁵ Defoe saw a glitch in the movement from the Roman Empire to contemporary aspirations, namely in the failure of our ability to rely upon infrastructure. In “Essay Upon Projects” (1696), he differentiates Rome from England by virtue of Rome’s ability to build infrastructure in an organized way and to use its military to reverse breakdown:

The Romans, while they governed this island [England], made it one of their principal cares to make and repair the highways of the kingdom, and the chief roads we now use are of their marking out; the consequence of maintaining them was such, or at least so esteemed, that they thought it not below them to employ their legionary troops in the work; and it was sometimes the business of whole armies, either when in winter quarters or in the intervals of truce or peace with the natives. Nor have the Romans left us any greater tokens of their grandeur and magnificence than the ruins of those causeways and street-ways which are at this day to be seen in many parts of the kingdom.⁴⁶

The grandeur of Rome is visible in its now-decayed roads, according to Defoe. Whereas the Romans would put military force into the upkeep of highways, Defoe in that same essay will recommend that criminals, especially highwaymen, be made responsible for the repair and upkeep of the national highways: “a proper work for highwaymen and such

malefactors, as might on those services be exempted from the gallows.⁴⁷ Defoe envisions English roads and those who commit crimes on them as negative reflections of imperial Rome; that is, eighteenth-century England is Rome in breakdown and malefactors have the potential to rebuild the state. This has the effect of casting England and its criminal classes as the failed promise of the Roman Empire, a kind of ghost civilization; the criminal's wrongdoing perversely signals necessitous circumstances in the failed state.

Justifying Criminal Conduct

The inverse of the highwaymen on these Roman roads are the refugees that Defoe takes up in the *Journal*, who, when asserting their right of necessity, resist the state's failure. Keep in mind, refugees are not only required to fear an objective imminent threat, but that threat must either be at the hands of their home-nation or issue from third parties against whom the state cannot or will not protect its citizens. The events of the *Journal* are set two years after the "Act for enlarging and repairing the highways" (1662), in which Parliament created the position of Surveyor who was drawn from every parish, a bailee enjoined to take custody of the highways and responsibility for their repair without ownership having transferred to the parishes. Country parishes could abuse the highways out of self-interest rather than maintain them for the common good, and, in the *Journal*, the caravan becomes victim of the state's assignment of negligent guardians. Defoe dramatizes the necessary decision of the refugee in the following dialogue between John and Thomas about whether to break the law out of necessity in order to obtain safe passage.

John. But the next town behind me will, by the same rule, deny me leave to go back, and so they do starve me between them. Besides, there is no law to prohibit my travelling wherever I will on the road.

Thomas. But there will be so much difficulty in disputing with them at every town on the road that it is not for poor men to do it or undertake it, at such a time as this is especially.⁴⁸

John believes that it is their right to demand passage, but is corrected, while the doubting Thomas observes that a right without force does them little good. Thomas's point contrasts the parishes' "rule" (i.e., control) over the roads with the law that lets him travel on national highways—a right that could only be enforced by a local authority. His reminder that their rights are unenforceable justifies a collective decision to trespass onto the commons of a nearby town and to obtain food by threat of violence and infection. At Walthamstow, the caravan is rebuffed by barricades and constables manning them. John orders his men to cut wood from the nearby trees and carve guns out of them, and he mounts them above a fire meant to obscure the small number of members of the caravan, giving the impression that they are a large group. Hidden by the smoke, John flows into his second namesake—John the Baptist—as a voice crying out in the wilderness: "We wonder how you could be so unmerciful!" he demands.⁴⁹ It is true that, as John observes, the town threatened the caravan with violence first, whereas the caravan never overtly threatens the town; however, John manufactures an imaginary mob to intimidate and to flout the law. Yet, when introducing him, H.F. refers to John as a model. In this perverse economy, Christian men are led to act contrary to the law and their values to intimidate and commit thievery.

Defoe's core concerns with regard to necessity are clearer where he writes of compelled (morally involuntary) wrongdoing. In "The Manufacturer" (1719), as Max Novak notes, Defoe expressed sympathy for weavers who rioted in response to legislation that restricted the import of cotton textiles into England. The conflict over the Calico Acts may have in part prompted the writing of the *Journal*: Chloe Wigston Smith observes that "Defoe compares the calico trade to a plague: "'Tis a Disease in Trade; 'tis a Contagion, that if not top'd in the Beginning, will, like the Plague in Capital City, spread itself o'er the whole Nation.'"⁵⁰ One implication of this comparison is that the *Journal* was written in support of the Calico Acts. But Defoe's opinion vacillated. According to Novak, Defoe had "unusual attitudes" in sympathy with the impoverished rioters, but they later waned.⁵¹ Once a new Calico Act was passed in June 1720, he refers to them as "desperate jades": "With the new law, the public acquired legal means of punishing people who wore the offending fabric. Rioting was no longer justified as the weavers' only course of action."⁵² Defoe's sympathies were with the weavers when they had no legal way to protest; however, once law provided alternate economic opportunities, he no longer countenanced riot and trespass.

Information and Volition

The *Journal* is thematically concerned with invisible secondary causes that drive otherwise good people to criminality. Persecution and threat need not come in the form of overt violence. During a plague year, the communication of information has profound material effects; "[the plague] secretly and unperceived by others or by themselves, communicated death to those they conversed with, the penetrating poison insinuating itself into their blood in a manner which it is impossible to describe, or indeed conceive."⁵³ Everett Zimmerman describes the narration as "an analysis of the failures of public information."⁵⁴

One of the themes of the *Journal* is that the choices of refugees are deformed by distorted public information. H.F. interpolates the parish death bills, tallying them into statistics that show the rise and fall of the death count in the various parishes. The text does not treat this information as objective, however. H.F. describes how the public's trust in these figures provided by the death bills actually exacerbates the spread of the disease. Thanks to misreporting, the city believed that the rate of infection had stabilized: "We continued in these hopes for a few days, but it was but for a few, for the people were no more to be deceived thus," and a search of homes reveals that "the plague was really spread every way."⁵⁵ H.F. indicates that, at this crucial moment, the pandemic could have been stymied, but that self-interested parishes instead had proceeded through concealment, "knavery and collusion." The parish of St. Giles, for example, had hidden plague deaths under other causes. And as it was only plague deaths that were published to guide decision-making, figures of an abnormally large death count were obscured from public view. Defoe blames the parish authorities for endangering the populace through bad information.

Defoe's depiction of perverse public information is largely indebted to John Graunt, who, in 1662, published *Natural and Political Observations Made upon the Bills of Mortality*, which was the first work to use demography in the service of political economy. Graunt came to the conclusions that he did by surveying death bills from plague years. But what is usually disregarded is that the majority of this book is a meditation on the chaotic methods by which they were compiled.

Graunt believed in the importance of these bills for decisions made in extremis: their purpose is “so the Rich might judge of the necessity of their removal” from London and, in the numbers, he saw a “design” to express the “Wisdom of the City.”⁵⁶ His objection is that this wisdom has been distorted. Graunt’s work inspired Defoe to represent the death bills posted by the parishes as records of a collusion between empiricism and narrative that resulted in harm rather guidance. The effect of the bills was administrative blockage and hyper-transmission:

This hurry of the people was such for some weeks that there was no getting at the Lord Mayor’s door without exceeding difficulty; there were such pressing and crowding there to get passes and certificates of health for such as travelled abroad, for without these there was no being admitted to pass through the towns upon the road, or to lodge in any inn. Now, as there had none died in the city for all this time, my Lord Mayor gave certificates of health without any difficulty to all those who lived in the ninety-seven parishes.⁵⁷

In this account, the parishes’ efforts to statistically misrepresent information deceives the mayor and sets into motion an exodus that eventually results in the mistreatment of London’s refugees by towns in the country that illegally blockade roads and bar refugees from entry.

Nancy Armstrong characterizes the way that the *Journal* treats the function of information as gothic. The *Journal* dramatizes the “dissolution of individual boundaries, preternatural animation of part objects, and the co-mingling of the living with the dead.”⁵⁸ She notes an irreconcilable contradiction between individual health and the focalization of narration through H.F., which transforms him into a conduit for information: “[H.F.] tries to withdraw into his home, seal off his body prophylactically by means of vapours, lozenges and protective clothing, regulate what comes into his mind through the senses, and still collect information from the outside world for his journal.”⁵⁹ The commingling of living individuals with dead effected by the *Journal* is amplified by the mass media effect of mortality bills, which are not only posted on the doors of the church, but also produced, printed, and sold throughout the city by the Hall of the Company of Parish Clerks.

In the *Journal*, John and his caravan become stranded as refugees because, without good informational infrastructure, they are denied rightful relations with others down to the level of sensory perception. As physical infrastructure also fails them, the choice to become refugees turns out to offer an ever-narrowing range of licit options and the eventual recourse to unilateral coercion. Defoe, however, offers no explicit exculpation for his refugees. He sidesteps the question of culpability and, instead, offers an idealized counterexample to the kind of decision-making that his refugees enact.

State of Indecision

The ideal refugee decision-maker is Moses, about whose flight from Satan Defoe writes in *The Political History of the Devil* (1726). This depiction of Moses aligns with the terms with which Defoe writes of John’s caravan as well as with Roxana’s reflections on inauthentic Huguenot refugees. In a section devoted to deducing the Devil’s powers, Defoe wonders whether the Devil has the power of foresight. Defoe writes of Moses’s flight across the

Red Sea in a proof that is designed to logically conclude that the Devil's access to information is imperfect:

Indeed Satan was outwitted by Moses, so far as it appeared to be a humane Action, for he little thought of their going dry footed thro' the Sea, but depended upon having them all cut in Pieces the next Morning by the Egyptians; an eminent Proof, by the Way, that the Devil has no Knowledge of Events, or any Insight into Futurity; . . . for had Satan known that God intended to Ford them over the Sea . . . he would have certainly prevented the Escape . . . But the blind short-sighted Devil, perfectly in the Dark, and unacquainted with Futurity, knew nothing of the Matter, was as much deceiv'd as Pharaoh himself, stood still.⁶⁰

In Moses, Defoe combines his arguments about sincerity, information, and rightful guidance. Moses comes to represent a vehicle for pure will, whose decisions align with righteous action due to access to perfect information. Yet, in a world where people are deceived into believing that they are agentive subjects, the Devil and the Pharaoh stand in for the rest of us who, unlike Moses, must learn to make choices under circumstances of radically constrained agency.

Moral righteousness contrasts with the plight of refugees. H.F. similarly achieves righteousness, though instead of divine tablets, he enacts a ritual bibliomancy to access the perfect information of the Word, an option John and his caravan do not think to exercise. "It entered into my mind warmly," he declares about a religious awakening that compelled him to remain in London. This tactile sensation is the finger of God entering into him in order to cast out doubt, and it represents H.F.'s awakening to his calling. There is, however, no direction in this feeling; it is an awakening of a passion, and so, H.F. is left to wonder about its content. He does not know which choice to make, just that God wills one of them. To solve this problem, H.F. resorts to bibliomancy by pressing his finger onto a random page of his Bible, in a worldly imitation of God's placement of his finger within H.F.'s soul, and pleads to God to direct him. Yet, he does not do this before he first considers "the care due from me for the preservation of my effects, which were, as I might say, my estate."⁶¹ H.F. is engaged in a chain of metonymic equivalences wherein his calling is his place in life; and his place in life is his place of business; his place of business is his property; and his property is in London. His calling is, thus, to remain in London in order to preserve the value of his property. The place where he ends up placing his finger is Psalm 91: 9–10, which deals directly with the question of whether to flee the plague. It reads, "Because thou hast made the Lord, which is my refuge, even the most High, thy habitation; there shall no evil befall thee, neither shall any plague come nigh thy dwelling." H.F. glosses this to mean that there is refuge in his dwelling. He takes it to be a Biblical guarantee—the one possible unimpeachable guarantee, a source of truth beyond any statistical figure and beyond manipulation, that economist's dream of "full information"—that to dwell in his estate is the right course of conduct.

The preoccupation of the *Journal* is hesitation and immobility in the face of unknown quantities. The words resolve and resolution appear fifty-one times in Defoe's account of the plague. Characters do not act; they struggle to decide to act. When H.F. confesses, "I now began to consider seriously with myself concerning my own case, and how I should dispose of myself; that is to say, whether I should resolve to stay in London or shut up my

house and flee,” actions, such as shutting up his house and fleeing, or inactions, such as staying, become the occasions of decisional reasoning. That decisional reasoning is a space of intensity that we will one day come to call subjectivity. For Defoe, this reasoning always occurs amidst encroaching threats. The purpose of these casuistic proofs with their if/then clauses is to model ways of deciding in extremis without supplying the decision itself. For H.F., the right choice, the way in which he evaluates the authenticity or sincerity of a choice, is not in the consequence reached in the “then” clauses, but rather comes out in the self-deliberations that take the form of the entire casuistic proofs. What he tries to reveal is the ultimate purpose behind the action—not its immediate intention.

Even as characters stipulate to their reasoning, the facts on which they base their decisions are in doubt. Bibliomancy allows for the representation of an experience of pure sincerity where the information that flows in, subjectivity, and action remain faithfully uniform. The tragedy for the rest of us, however, is that there is no fidelity between divine will, the self, and the world; we cannot achieve a state of grace. The rest of us rely on the fallible mediation of state infrastructure to guide our choices, and that fallibility exposes us to threat. The *Journal* struggles to ascribe liability to the consequences of those choices. Its ambivalences foreshadow today’s public conversations about actions committed in extremis. These are the conversations refugees are likely to have in some form or another to explain why they had no choice but flee into the arms of asylum.

Conclusion

In “We Refugees,” Hannah Arendt takes pains to differentiate the modern refugee from the early modern refugee: “A refugee used to be a person driven to seek refuge because of some act committed or some political opinion held.”⁶² Whereas Arendt’s modern refugee is assertively forward looking, asylum procedures appear to retain the Enlightenment’s retrospectivity and the association of the refugee with a legally wrongful status. Enlightenment conceptions of hospitality explored this backward exculpatory element, one that looks back on past actions and narrates them to read into events a principled moral content based upon necessity.

In modernity, necessity is understood as a limitation upon the capacity to choose, where there is no choosing otherwise than the decision to commit a criminal wrong. Excuses offered in the stable of established defenses of criminal wrong are subject to questions about the defendant’s sincerity. Defoe came to associate refugees with the defense of necessity on the basis that vagabonds lack the infrastructure to make decisions in accordance with the law at the same time that they have been deprived of the infrastructure that would protect them from persecution.

NOTES

I am grateful to the many readers of early drafts of this paper including Jonathan Freedman, Adam Sitze, Pat Chu, Jordy Rosenberg, Simon Stern, Doran Larson, Rivka Swenson, Richard Menke, Amelia Worsley, Ayesha Ramachandran, Jonah Siegel, Alan Brudner, Marshall Brown, Angela Naimou, Lee Morrissey, Mi Kyung Kim, Ryan Vu, Shayda Schilleman, Ishan Chakrabarti, and my colleagues at Ashoka University, Johannes Burgers, Aparna Chaudhuri, Mandakini Dubey, Alexander Phillips, Mali Skotheim, and Alexandra Verini.

1. Daniel Defoe, *Lex Talionis, or, An Enquiry into the Most Proper Ways to Prevent the Persecution of the Protestants in France* (London printed: 1698); Daniel Defoe and William Andrews Clark Memorial Library, *A Brief History of the Poor Palatine Refugees (1709)*, Augustan Reprint Society; No. 106 (Los Angeles: William Andrews Clark Memorial Library, University of California, 1964).

2. Sal Nicolazzo, *Vagrant Figures: Law, Literature, and the Origins of the Police* (New Haven: Yale University Press, 2021).

3. Rebecca Hamlin has written the leading work on international status determination regimes, *Let Me Be a Refugee* (Oxford University Press, 2014).
4. Anthea Vogl, "The Genres and Politics of Refugee Testimony," *Law and Literature* 30, no. 1 (n.d.): 82.
5. Joseph R. Slaughter, *Human Rights, Inc: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007).
6. Hannah Arendt, "We Refugees," in *Altogether Elsewhere: Writers on Exile*, ed. Marc Robinson (Winchester, MA: Faber and Faber, 1994).
7. *Model Penal Code: Official Draft and Explanatory Notes: Complete Text of Model Penal Code as Adopted at the 1962 Annual Meeting of the American Law Institute at Washington, D.C., May 24, 1962* (Philadelphia, PA.: The Institute, 1985), sec. 1(a).
8. Most nations today are signatories to the 1951 United Nations "Convention Relating to the Status of Refugees," which distinguishes between asylum-seekers and those disqualified from refugee status. Nevertheless, for the purposes of this article, I use the looser catch-all term *refugee*, even for figures that have not yet been designated as refugees by the UN or been granted asylum.
9. Elizabeth Cohen, "If Not Idealism, At Least Pragmatism," *Daily Nous* (blog), November 25, 2015, <http://dailynous.com/2015/11/25/philosophers-on-the-syrian-refugees/>.
10. Hereinafter, *Journal*.
11. Daniel Defoe, *A Journal of the Plague Year* (New York: W. W. Norton & Company, 1992), 100.
12. Defoe, *Journal*, 101–02.
13. Bruce M. Metzger, ed., *The New Oxford Annotated Bible with Apocrypha: New Revised Standard Version*, 4th ed. (New York: Oxford University Press, 2010), pt. 7(2).
14. Steve Hindle, *On the Parish?: The Micro-Politics of Poor Relief in Rural England, c. 1550–1750* (New York: Oxford University Press, 2004), 82–83.
15. Peter Lawson, "Property Crime and Hard Times in England, 1559–1624," *Law and History Review* 4, no. 1 (1986): 107.
16. Thomas Hobbes, *Leviathan; or, The Matter, Forme and Power of a Commonwealth, Ecclesiasticall and Civil*, ed. Michael Oakshott, Blackwell's Political Texts (Oxford: Blackwell, 1947), 197.
17. Henri Crèvecoeur, *Letters from an American Farmer* (Oxford: Oxford University Press, 1999), 196.
18. *Ibid.*, 201.
19. Crèvecoeur, *Letters*, 205.
20. *Ibid.*, 215.
21. Max Cherem, "Understanding the Structural Issues," *Daily Nous* (blog), November 25, 2015, <http://dailynous.com/2015/11/25/philosophers-on-the-syrian-refugees/>.
22. Immanuel Kant and Allen W. Wood, "Toward Perpetual Peace (1795)," in *Practical Philosophy*, ed. Mary J. Gregor (Cambridge: Cambridge University Press, 1996), 311–52, 59.
23. Immanuel Kant, *The Metaphysics of Morals*, trans. Mary J. Gregor (New York: Cambridge University Press, 1996), 59.
24. Christopher St. German, *Doctor and Student or Dialogues between a Doctor of Divinity, and a Student of the Laws of England*, ed. Henry Lintot (Lincoln's Inn, 1751), 44.
25. *Ibid.*, 45.
26. Homi Bhabha, "The Right to Narrate," *Harvard Design Magazine* 38, no. 1 (Spring/Summer 2014), <http://www.harvarddesignmagazine.org/issues/38/the-right-to-narrate>.
27. Kent Roach, "Moral Involuntariness | Irwin Law," <https://www.irwinlaw.com/cold/moral-involuntariness>
28. *Weaver v. Ward*, No. Eng. Rep. 284 (1616). On *Weaver v. Ward's* role in the history of exculpatory defenses, see Richard A. Epstein, "Inevitability in Law and Literature: A Strained Relationship," *Modern Language Quarterly* 76, no. 2 (June 1, 2015): 271–84.
29. These were famously the facts in *State v. Rusk*. Jeannie C. Suk discusses the problem of mutual mistake in "'The Look in His Eyes': The Story of Rusk and Rape Reform," in *Criminal Law Stories*, ed. Robert Weisberg and Donna Coker (New York: Reuters Foundation Press, 2012).
30. Ferguson uses stipulation for testimony, blurring the difference between a statement made by a party to or witness in a case and a consensus proviso by both parties before the court. Perhaps, Ferguson's thinking follows René Wellek's observation that expressions in literature are not propositional and are overdetermined by literary convention, but this is an unhelpful blurring of a legal concept with the function of literary form. Instead, I refer to dramatic expressions, utterances, or statements rather than to stipulations of fact. See René Wellek, *Theory of Literature* (New York: Harcourt, Brace & World, 1956).
31. Frances Ferguson, "Rape and the Rise of the Novel," *Representations* 20 (Autumn 1987), 92.
32. E. M. Forster, *Aspects of the Novel*, Clark Lectures, 1927 (New York: Harcourt, Brace & company, 1927), 63.
33. Georg Lukács, *The Theory of the Novel: A Historico-philosophical Essay on the Forms of Great Epic Literature*, trans. Anna Bostock (Cambridge: MIT Press, 1971).
34. Ferguson, "Rape and the Rise of the Novel," 98–99.

35. See Aaron R. Hanlon, "Toward a Counter-Poetics of Quixotism," *Studies in the Novel* 46, no. 2 (June 2014): 141–58.
36. Daniel Defoe, *Roxana*, ed. Melissa M. Mowry (Peterborough, Ontario: Broadview Press, 2009), 45–46.
37. Jerome E. Bickenbach, "The Defence of Necessity," *Canadian Journal of Philosophy* 13, no. 1 (1983): 80.
38. "A Covenant not to defend my selfe from force, by force, is alwayes voyd. For . . . no man can transferre, or lay down his Right to save himselfe from Death, Wounds, and Imprisonment, (the avoyding whereof is the onely End of laying down any Right,) and therefore the promise of not resisting force, in no Covenant transferreth any right . . . For man by nature chooseth the lesser evill, which is danger of death in resisting; rather than the greater, which is certain and present death in not resisting. And this is granted to be true by all men, in that they lead Criminals to Execution, and Prison, with armed men, notwithstanding that such Criminals have consented to the Law, by which they are condemned." *Leviathan*, Book XIV.
39. William Blackstone, *Blackstone's Commentaries with Notes of Reference to the Constitution and Laws the Federal Government of the United States and of the of Virginia*, ed. St. George Tucker (William Young Birch, and Abraham Small, 1803), 30.
40. *Ibid.*, 31.
41. Daniel Defoe, *Serious Reflections during the Life and Surprising Adventures of Robinson Crusoe: With His Vision of the Angelick World. Written by Himself* (London: printed for W. Taylor, at the Ship and Black-Swan in Pater-Noster-Row, 1720), 40.
42. *Ibid.*, 41.
43. At least until *R v Dudley and Stephens* (1884), an English case about the defense of necessity. See A. W. B. Simpson, *Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which It Gave Rise* (Chicago: University of Chicago Press, 1984).
44. These ruminations may have been why he was originally drawn to the second book of Kings, which is known for the premeditation of desperate crimes, such as when two starving women schedule the cannibalistic slaughter of their babies: "This woman said to me, 'Give up your son; we will eat him today, and we will eat my son tomorrow.'" Metzger, *The New Oxford Annotated Bible with Apocrypha*, bk. 2 Kings 6 (29–30).
45. Lauren Berlant, "The Commons: Infrastructures for Troubling Times," *Environment and Planning D: Society and Space* 34, no. 3 (June 2016): 393.
46. Daniel Defoe, *An Essay upon Projects* (London: Printed by R.R. for Tho. Cockerill . . . , 1697), 70–71.
47. *Ibid.*, 91.
48. Defoe, *Journal of the Plague Year*, 100.
49. *Ibid.*, 112.
50. Chloe Wigston Smith, "'Callico Madams': Servants, Consumption, and the Calico Crisis," *Eighteenth-Century Life* 31, no. 2 (Spring 2007): 32.
51. Maximillian E. Novak, "Defoe and the Disordered City," *PMLA* 92, no. 2 (March 1977): 246.
52. Robert B. Shoemaker, "The London 'Mob' in the Early Eighteenth Century," *Journal of British Studies* 26, no. 3 (July 1987): 299.
53. Defoe, *Journal of the Plague Year*, 187.
54. Everett Zimmerman, *The Boundaries of Fiction: History and the Eighteenth-Century British Novel* (Ithaca: Cornell University Press, 1996), 92.
55. Defoe, *Journal of the Plague Year*, 9.
56. John Graunt, *Natural and Political Observations Mentioned in a Following Index, and Made upon the Bills of Mortality by Capt. John Graunt; with Reference to the Government, Religion, Trade, Growth, Air, Diseases, and the Several Changes of the Said City.*, Early English Books, 1641–1700 (London: Printed by John Martyn . . . , MDCLXXVI, 1676), 8.
57. Defoe, *Journal of the Plague Year*, 11.
58. Nancy Armstrong, "A Gothic History of the British Novel," in *New Directions in the History of the Novel*, ed. Patrick Parrinder, Andrew Nash, and Nicola Wilson (New York: St. Martin's Press, 2014), 103.
59. Armstrong, "Gothic History," 103.
60. Daniel Defoe, *The Political History of the Devil*, ed. Irving N. Rothman and R. Michael Bowerman (New York: AMS Press, 2003), 119.
61. Defoe, *Journal of the Plague Year*, 15.
62. Arendt, "We Refugees," 264.