

The Ethics of Migration Policy Dilemmas

Refugees and the Right to Citizenship...Somewhere.

A Response to [Aleinikoff and Owen \(2022\)](#)

Matthew J. Gibney

Matthew J. Gibney is Director of the Refugee Studies Centre and Professor of Politics and Forced Migration at the University of Oxford. He has written widely on the ethical and political issues raised by asylum, migration and citizenship.

We all owe a debt of gratitude to David Owen and Alex Aleinikoff for their thoughtful reflections on the desirability and practicality of proposals and practices that divide the world between refugee hosting states (in the Global South) and refugee protection financing states (in the Global North). Given the way the winds have blown over the last decade, with Northern states assembling numerous measures to contain refugees in the South and to prevent them from accessing their territory, there can be few issues more important to the future of refugee protection. It is important to understand the costs and desirability of schemes, like those proposed by Betts and Collier ([2017](#)), which aim to harness the interests of Northern and Southern states and entrench this kind of division of labour to ensure refugee protection.

That said, as I write, just this way of conceptualising asylum is being thrown into question. The war in Ukraine has made European states host to millions of refugees. The distinction between a part of the world that generates and receives refugees and one that simply funds them is looking rather problematical, to say the least. What does this new found receptivity to refugees in Europe tell us about how responsibility for refugees and forced migrants might be divided between states? It's too early to tell. Europe's response may still sour and reset to its default position. Yet the Ukrainian situation does drive home the point that the barriers to more inclusive responses to refugees in the North are largely political rather than demographic or economic.

In this response I want to focus on the question of the desirability of proposals for what we might call differentiated responsibility between Northern and Southern states, the part of Aleinikoff and Owen's discussion that considers whether 'over there' approaches might be acceptable from a realistic-utopian perspective. This is, of course, only a section of their paper, but it is one that reveals important differences between the authors.

According to Owen and Aleinikoff a major problem of the kind of "over there" schemes proposed by Betts and Collier (and endorsed, in varied forms, by many states and implicitly

in the recent Global Compact on Refugees) is that they condemn refugees to a situation of 'civic limbo': they confine refugees to neighbouring host states for indefinite periods where their economic and basic security needs are met, largely through access to work, but deprive them of political rights and other means to shape a future according to their own aspirations and values. The authors argue that any normatively defensible account of what refugees are owed must take us out of this situation of civic limbo. But how? Here the authors, revealing refreshing honesty, differ.

Owen draws upon his influential international legitimacy account of asylum to argue that states must provide refugees with citizenship, either immediately, in the case of refugees from persecution, or after a period of residence, in the case of what he terms 'sanctuary' refugees. The international system of states lacks legitimacy unless it provides each of its denizens with effective state membership, and this is just what has been lost in the case of refugees.

I have long found Owen's position a powerful one. It offers a rebuke to the acceptability of approaches that see economic zones and basic rights protections as a morally sufficient response to refugees. However, I'm less sure that Owen's approach deals a killer blow to the idea of corralling refugees in the Global South. While the legitimacy view demands that refugees be reincorporated into citizenship, it's unclear why this reincorporation could not be done primarily "over there". Owen does try to argue against this possibility. He suggests, first of all, that the distributional effects of membership-composition should be fairly shared across states and, secondly, that states ought to respect refugees' own decisions on where they wish to be a member (it is, he proposes, "desirable that members of a state identify the conditions of their own autonomy") ([Aleinikoff and Owen 2022, 7](#)). But, in terms of the first argument, it is not obvious why it would be unacceptable (as opposed to impractical) for states to agree upon an arrangement where some states did the bulk of the incorporating (and were perhaps compensated for doing so). In terms of the second argument, that of refugee preferences, Owen now seems to be appending a new standard (viz., that the refugee should identify with their citizenship country) to his legitimacy account. Or perhaps not. He simply says that an individual's identification with their country of citizenship is 'desirable'. Perhaps so, but it's unclear just what kind of constraint this desirability criterion provides once it comes up against the considerations of what is realistic.

Aleinikoff offers a quite different view of how to escape the problem of civic limbo. He argues that refugees should ideally have a right to enter, work and live in any country of their choosing, via a modern Nansen-passport-type regime. This right would not be unlimited; states could impose reasonable quotas to prevent refugees congregating in any single country. Importantly, citizenship does not appear to be on the table. Instead, refugees would be protected by the rights enshrined in the 1951 Refugee Convention, and states would similarly be constrained by their obligations set up thereunder. Aleinikoff's preferred approach would enable to refugees to do what, he believes, they clearly already want to do: to move to countries of their choosing to join family, compatriots and seek out welcoming environments in which to live and work.

The timing seems right for Aleinikoff's proposal, realistic utopian though it claims to be. Ukrainian refugees are currently being offered something like a Nansen scheme, through the EU's temporary protection directive which offers many of the benefits of such a scheme

within a framework of secure rights accorded by the EU. However, it's worth noting that what is currently on offer is regional free movement, not a global right to settle and move anywhere. And, a sceptic might ask, if regional free movement is an acceptable arrangement and consistent with refugee autonomy, why could it not be regional free movement within the Global South, providing certain standards of security and stability were met? Refugee autonomy (and the escape from 'civic limbo'), as Aleinikoff sees it, may not be inherently inconsistent with an 'over there' approach.

While I am sympathetic to the practical arguments he marshals along with Owen, Aleinikoff doesn't say much about why Northern states are morally required to promote refugee autonomy. If state obligations to refugees are humanitarian in nature, they would seem to be limited to ensuring that refugees enjoy their basic rights, something that may be compatible with the Betts/Collier proposal. Arguably a more fruitful moral basis by which to challenge the 'over there' position is obliquely alluded to by Aleinikoff when he notes that what is 'arbitrary' (a political theorist might say, 'unjust') about the 'over there' response is that "[i]t pushes burdens onto states that usually are not responsible for the conditions in a neighbouring state that produce refugee flight" (Aleinikoff and Owen 2022, 8). We might turn this around and say that where Northern states are implicated, as they sometimes are, in causing the generation of refugees (through, for example, military intervention or, perhaps, contributing to global warming), they have a special duty above other states to compensate the refugees concerned. This duty would include hosting them and providing refugees with the conditions necessary to rebuild their lives (Souter 2022). More generally, any realist-utopian arrangement should, I believe, make some allowance for the special responsibilities states incur when refugees emerge as a result of their actions.

For all this, perhaps the most controversial aspect of Aleinikoff's proposal is the way it omits citizenship as a necessary feature of a realistic utopian response to refugees. Aleinikoff's account contrasts then not just with Betts and Colliers' approach that keeps refugees in the region, but also with Owen's membership reincorporation approach. Aleinikoff seems to be motivated here by the need to provide a realistic position that states might embrace, as well his belief that citizenship is becoming less important due to the emergence of new forms of municipal membership (though he offers no detailed discussion of the character of these new membership arrangements).

Aleinikoff is surely right that in most situations refugees care more about gaining the opportunity to enter a country of their choosing than they do about acquiring citizenship. Yet this might tell us more about the dire trade-offs that refugees are forced to make than what a morally acceptable state of affairs might look like. More importantly, the very things refugees look for when they move between societies are most firmly guaranteed when citizenship is held, largely because it is a status that protects individuals from expulsion and provides unique possibilities for political voice and recognition in national politics (Gibney 2008; Buxton 2021). Because they do not possess effective citizenship elsewhere, refugees have a singular interest in just this kind of security where they reside. My worry is that for all that Aleinikoff's proposal does to expand the sphere of refugee opportunities, without political and national membership rights it simply doesn't do enough to combat the 'civic limbo' of the Betts/Collier proposal. The problem is simply displaced to a larger, international stage.

Where does that leave us? It seems to me that a realistic utopian position simply must, at a minimum, rule out the possibility of long term, de facto statelessness. The movement rights that Aleinikoff helpfully focusses on must be fused with clear pathways to citizenship, or at least some kind of formal political inclusion (cf. [Ziegler 2017](#)). Of course, refugees should be free, if they want, to decline citizenship, if, like Aleinikoff, they feel that their rights can be adequately protected outside it, or if they do not wish to have the corresponding identity (though, cf. [De Schutter & Ypi 2015](#)). But taking seriously the autonomy of refugees seems to me to require that they at least be given the choice.

References

- Aleinikoff, T. Alexander and David Owen. 2022. "Refugee Protection: 'Here' or 'there'?" *Migration Studies*, mnac002, pp. 1-20.
- Betts, Alexander and Paul Collier. 2017. *Refuge: Transforming a Broken Refugee System*. London: Penguin.
- Buxton, Rebecca. 2021. "The duty to naturalise refugees." *Critical Review of International Social and Political Philosophy*, EarlyView, pp. 1-21.
- Gibney, Matthew. J. 2008. "Who should be included? Noncitizens, conflict and the constitution of the citizenry." In Frances Stewart (ed.), *Horizontal Inequalities and Conflict*. London: Palgrave Macmillan, pp. 25-40.
- De Schutter, Helder, and Lea Ypi. 2015. "The British Academy Brian Barry Prize Essay: Mandatory Citizenship for Immigrants." *British Journal of Political Science*, Vol. 45, No. 2, pp. 235-251.
- Souter, James. 2022. *Asylum as Reparation: Refuge and Responsibility for the Harms of Displacement*. Cham: Springer.
- Ziegler, Ruvy. 2017. *Voting Rights of Refugees*. Cambridge: Cambridge University Press.

About the “Dilemmas” project

This commentary contributes to the [‘Dilemmas’ project](#) at the EUI’s Migration Policy Centre. Dilemmas analyses and debates fundamental ethical dilemmas in policy-making on migration and refugee protection.

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Contacts

Website: <https://www.migrationpolicycentre.eu/>

Twitter: @MPC_EUI

Facebook: Migration Policy Centre

E-mail: migration@eui.eu

Address: Convento di San Domenico
Via delle Fontanelle 19

I-50014 San Domenico di Fiesole (FI)