

# The Ethics of Migration Policy Dilemmas

## Responding to critics

### T. Alexander Aleinikoff and David Owen

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We are grateful for the engagement of the commentators with our original paper and would like to briefly respond to some of their arguments.

Our commentators have taken issue with the ‘here’ versus ‘there’ distinction. Cathryn Costello and Ashwini Vasanthakumar note, as does Matthew Gibney, that, as the Ukraine situation shows, it does not map onto a Global North/Global South distinction. And Eleonora Milazzo helpfully urges us to think beyond ‘here’ and ‘there’ to consider ‘protection elsewhere.’

We are persuaded by Milazzo’s (2022) suggestion that our analysis should be expanded to consider (the increasing recourse to) ‘protection elsewhere.’ And she helpfully sketches out how that analysis might run, in terms we find compatible with our approach. We think there is no easy answer here. Protection elsewhere, as currently practised, is largely about enforcing a ‘not here’ strategy. But it could also be the basis for a global responsibility sharing system that is sorely needed if the current regime is to be improved. In any event, it needs consideration on its own.

Likewise, we accept Costello’s and Vasanthakumar’s (2022, 3) critique that the empirical framing of our distinction between Global North and Global South fails to “account for Europe’s role in refugee protection” (where Europe is construed as including Turkey): “If the ‘Global North’ frame suggests that states can effectively keep refugees away, then it scarcely fits the reality of European states, notwithstanding their attempts to do so.” But whether or not the protection here or there distinction perfectly fits the North/South distinction is of course not the issue. The question we are addressing is whether we would find acceptable an ideal or realistic world in which the vast majority of the world’s refugees are limited to receiving protection in countries of first asylum.

The more important claim of Costello and Vasanthakumar is that the part of our critique of ‘protection there’ proposals (and its here/there framing) that focused on the treatment of the supposed policy dilemma in realistic terms “obscure[s] the harms of containment, in that it does not examine policies that prevent refugees from moving to seek protection, the costs they entail and the harms they inflict” (ibid, 4). To Costello and Vasanthakumar, it’s as if

we are sitting at a table of global policymakers deciding, in neutral and wonkish language, how best to maximise the utility of refugees and states.

But we do not simply take things as they are and ask what is to be done. Rather, the questions that motivate us arise because the developed world—that is, that part of the world most able to absorb large numbers of forced migrants—has adopted policies that dramatically restrict refugee agency and impose huge costs on developing states. Containment is the cause of the policy dilemmas we discuss, as well as the often-unspoken basis for arguments about providing protection ‘there.’ Any fair and just resolution of the matters at hand—as with questions of social justice in general—demands a reckoning with the past, recognition of how those with power have exercised it to their advantage, and an exclusion of unjust reasons for action. Our paper details the harsh measures adopted by developed states; and it does not seek to examine reasons for those measures, but rather to think through to a better world.

Costello’s and Vasanthakumar’s arguments lead them to the following conclusion: that “it would be more fruitful to focus on engaging in and supporting the sorts of activism, alliances and institutions that support refugee rights in all states, rather than dividing the globe in a way that enables the richest states to shirk their obligations” (*ibid*, 6). We agree that this is a fruitful approach, but this complaint fails to recognise a central aim of our discussion, namely, to show that we do not have reason to endorse the ‘protection there’ proposals (and the framing they operate with) even if we hold everything else (including the operation of containment policies) constant, that is, even if we work with a scenario which seems most advantageous to the advocates of ‘protection there.’

We noted in the original piece that we reached our shared conclusions through occasionally diverging routes. In a sharply focused contribution, Gibney argues that each of the authors confronts a problem with their preferred ideal theory views. He is sceptical that Owen’s legitimacy view can rule out as “unacceptable (as opposed to impractical) for states to agree upon an arrangement where some states did the bulk of the incorporating” (*Gibney 2022*, 2). If limited to the case of (most) sanctuary-refugees, this seems right. Although Owen argues that, as a matter of principle, the distributional effects of membership-composition should be fairly shared across states, his view also allows for states to engage in responsibility-exchanges which would, in principle, allow for the kind of variable distribution that we currently see. However, two points can be noted in response. First, this would not apply to asylum-refugees nor to that sub-section of sanctuary-refugees who have special needs that cannot be addressed in neighbouring states. Second, even if the view allows this possibility in principle for most sanctuary-refugees, it places the power to determine such distributions in the hands of the relevant states and does not limit itself to the contingencies of geography.

Gibney takes issue with Aleinikoff’s position that a ‘solution’ to refugee situations might better focus on mobility and guarantee of rights than ultimate membership in a political community. He states that “a realistic utopian position simply must, at a minimum, rule out the possibility of long term, de facto statelessness” (*ibid*, 4). Aleinikoff does not disagree. In *The Arc of Protection: Reforming the International Refugee Regime*, co-authored with Leah Zamore, he argues that “a “fair and just international regime for the forcibly displaced” would “in effect amend article 34 of the Convention to provide a right to citizenship—or

at the very least, permanent residence status—after a lengthy stay as a refugee with no prospect of return in the foreseeable future” (Aleinikoff and Zamore 2019, 80).

## References

Aleinikoff, T. Alexander, and Leah Zamore. 2019. *The Arc of Protection: Reforming the International Refugee Regime*. Stanford: Stanford University Press.

Costello, Cathryn, and Ashwini Vasanthakumar. 2022. “Refugee Containment and the Costs of Creating False Dilemmas. A Response to Aleinikoff and Owen (2022). Commentary for ‘The Ethics of Migration Policy Dilemmas’ Project, Migration Policy Centre (MPC), European University Institute (EUI), pp. 1-7.

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Milazzo, Eleonora. 2022. “Protection Here, There or Elsewhere? Why We Need to Consider How Non-Arrival Policies Complicate the Dilemma. A Response to Aleinikoff and Owen (2022). Commentary for ‘The Ethics of Migration Policy Dilemmas’ Project, Migration Policy Centre (MPC), European University Institute (EUI), pp. 1-5.

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### **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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