

The Ethics of Migration Policy Dilemmas

Do firewalls create social fog?

A response to [Schmid \(2024\)](#)

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Lukas Schmid's article "Responding to Unauthorized Residence: On a Dilemma Between 'Firewalls' and 'Regularizations'," explores the ethical dilemmas faced by policymakers as they seek policy solutions to the presence of unauthorized immigrants. Schmid's analysis is premised on two widely shared assumptions. First, as sovereign states, liberal democracies have the right to control immigration and face strong political incentives to do so. Second, despite states' interests in border control, effective immigration control remains an elusive policy goal. This tension makes unauthorized migration one of the most challenging issues for policymakers to address.

Schmid shifts our focus from the literature's emphasis on "hard" ethical dilemmas involving competing values to ethical dilemmas stemming from competing policy options rooted in the same ethical commitments. He identifies a dilemma between two key policy approaches to the presence of unauthorized migrants: firewalls and regularizations. Firewalls are policies that prevent organizations and institutions from cooperating with immigration enforcement, thereby allowing unauthorized immigrants to access essential services without fear of identification and deportation. Regularizations, on the other hand, grant legal status to unauthorized immigrants. Because of the state's vested interest in immigration control, regularization programs are conditional and, often, time-limited, and go hand in hand with the expulsion of those migrants who do not qualify for regularization. This is where Schmid identifies an ethical dilemma. Despite the importance of removal for the political viability of regularization programs, strong firewalls create a "social fog" that impedes state efforts of locating and expelling unauthorized immigrants. Schmid then proposes mitigating this dilemma by designing regularization programs that are continuous and have minimal conditions, thus reducing the need for extensive enforcement and allowing firewalls to function more effectively.

In my work on the ethics of migration ([Ellermann 2014](#); [Ellermann and Goenaga 2019](#)), I share the basic assumptions underpinning Schmid's article, which are driven by a commitment to developing policy prescriptions within the fundamental constraints of the

current political order. I also align with the value commitments that support both firewall and regularization policies. I am persuaded that Schmid's proposal to develop regularization programs characterized by minimal conditionality and continuity over time is both ethically and politically desirable.

However, I remain unconvinced by the assertion of the ethical dilemma that underpins Schmid's article. Referencing Bommers and Sciortino (2011), Schmid (2024, 2) argues that "firewalls ensconce unauthorized immigrants in a 'social fog' – a layer of protection that hides some of their traces from immigration law enforcement – which stifles efforts to forcibly remove those deemed ineligible for regularization." In other words, Schmid asserts that the presence of firewalls hinders the implementation of removals of unauthorized immigrants who are ineligible for regularization, thus threatening to undermine political support for regularization programs.

Firewalls are designed to protect unauthorized immigrants from potentially hostile environments. By preventing private and public entities from reporting individuals without legal status to immigration enforcement officers, firewalls ensure that unauthorized immigrants can access essential services and public goods, such as housing, transportation, medical care, and public schooling without the risk of detention and deportation. However, recognizing the power of firewalls in supporting the welfare of unauthorized immigrants does not mean that firewalls will necessarily hinder immigration enforcement efforts. While it is true that firewalls can obscure some aspects of unauthorized immigrants' lives from law enforcement, this does not automatically translate into a hindrance to the overall enforcement of immigration laws.

Schmid's argument suggests that immigration enforcement officers are more likely to identify and deport unauthorized immigrants in jurisdictions without firewalls compared to those with firewalls. However, this argument relies on an "all else equal" logic, which overlooks the crucial role of immigrants' agency in responding to immigration enforcement efforts. My research (Ellermann 2010) has demonstrated that, given the high stakes involved, unauthorized immigrants actively develop resistance strategies to evade detection and deportation in response to immigration enforcement efforts. In contexts that lack the safety provided by firewalls, unauthorized immigrants are not necessarily more detectable. Instead, they will adopt resistance strategies that increase their invisibility. This is a recurrent finding in the literature. For example, Engbersen and Broeders (2009) examine the impact of the removal of firewalls and the tightening of internal immigration controls in the Netherlands during the 1990s and 2000s. The Linkage Act of 1998, for instance, excluded unauthorized immigrants from access to social security benefits, housing, welfare, and medical care. The authors find that unauthorized immigrants developed a range of survival strategies. As they shifted their employment to the unregulated informal labor market, the growth of intermediary organizations facilitated the matching of unauthorized workers with jobs. A burgeoning "illegal paper market" enabled unauthorized workers to acquire fake documents and identities. Additionally, unauthorized immigrants increasingly made themselves unidentifiable by destroying all documentary evidence of their identity. This tactic ensured that, if apprehended, the Dutch state would be unable to deport them. Instead of reducing social fog, the dismantling of firewalls actually thickened social fog. Returning to the work of Bommers and Sciortino (2011, 221-22), cited by Schmid, they

conceptualize “social fog” as the social structures produced by unauthorized immigrants to survive and “evade control and identification by hiding from the state in their modes of working and living.” Rather than being the result of firewalling—policies that allow unauthorized residents to access essential services without the fear of being reported to immigration authorities—these structures emerge as immigrants hide their modes of working and living from the authorities, creating a layer of obscurity. It is the exclusion of unauthorized immigrants from resources and benefits that drives the creation of these alternative, “foggy” structures to ensure their survival.

Firewalls, by contrast, reduce social fog rather than thickening it. When children without legal status have the right to attend school, when unauthorized immigrants can access basic healthcare and housing, and when they can report crimes and labor violations without the fear of deportation, the need to hide in social fog is significantly reduced. The creation of firewalls facilitates a degree of visibility and integration, enabling unauthorized immigrants to participate in society more openly and securely. This participation, in turn, reduces the need for them to develop hidden, alternative structures.

If firewalls do not thicken the social fog that complicates immigration enforcement, then pursuing firewall policies and regularization programs do not have to stand in tension with each other. Not only is there, as Schmid acknowledges, no “hard” ethical dilemma arising from conflicting values, but there may also be no “soft” ethical policy dilemma either.

References

- Bommes, Michael and Giuseppe Sciortino (Eds.). 2011. *Foggy Social Structures: Irregular Migration, European Labour Markets and the Welfare State*. Amsterdam: Amsterdam University Press.
- Ellermann, Antje. 2010. “Undocumented Migrants and Resistance in the Liberal State.” *Politics & Society*, Vol. 38, No. 3, pp. 408-429.
- Ellermann, Antje. 2014. “The Rule of Law and the Right to Stay: The Moral Claims of Undocumented Migrants.” *Politics & Society*, Vol. 42, No. 3, pp. 293-308.
- Ellermann, Antje and Agustín Goenaga. 2019. “Discrimination and Policies of Immigrant Selection in Liberal States,” *Politics & Society*, Vol. 47, No. 3, pp. 87-116.
- Engbersen, Godfried and Dennis Broeders. 2009. “The State versus the Alien: Immigration Control and Strategies of Irregular Immigrants.” *West European Politics*, Vol. 32, No. 5, pp. 867–885.
- Schmid, Lukas. 2024. “Responding to unauthorized residence: on a dilemma between ‘firewalls’ and ‘regularizations’.” *Comparative Migration Studies*, Vol. 12, No. 22, pp. 1-18.

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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