

The Ethics of Migration Policy Dilemmas

Regularizations and firewalls are compatible if we grasp the best justifications for each: A response to [Schmid \(2024\)](#)

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In his interesting and challenging paper, Schmid (2024) proposes that there is a serious tension between two familiar liberal policy approaches to the presence of unauthorized immigration, namely ‘firewalls’ and ‘regularizations’. I’ll begin by explaining the dilemma he proposes, considering some different potential sources of tension he exposes between the two policies. I’ll argue that these tensions arise only because of some widely shared assumptions that Schmid makes about the proper basis for regularization policies. I’ll suggest that if we adopt an alternative, and in my view superior, basis for regularization—what I call the ‘autonomy argument’—Schmid’s dilemma does not arise. His paper thus provides some indirect support for the autonomy argument, since it suggests that only that approach allows us to reconcile important liberal policies.

Definitions

Let me begin with a reminder of what ‘firewalls’ and ‘regularizations’ are. ‘Firewalls’ introduce separation between the institutions responsible for immigration enforcement and other institutions in society, such as schools, hospitals, employers, and so on. To see the purpose of the firewall, suppose that hospitals are required to investigate someone’s immigration status when they access services and to report that status to immigration authorities. Those authorities may then use the reports to initiate removal proceedings against unauthorized migrants. This would plainly deter authorized migrants from accessing the hospitals, since doing so could result in deportation. The result is that the migrants will be denied the essential good of access to emergency health care. Non-migrants can also be impacted, since, for example, lack of access to vaccination on the part of migrants can create problems of public health. Firewalls block the flow of information between the relevant institutions and thus protect access to an essential good.

While firewalls are put in place to protect all unauthorized migrants, regularizations grant special protections to unauthorized migrants who are present for the longer-term.

Regularizations provide these people with a ‘right to remain’ if they can demonstrate continued presence for a certain period and, perhaps, the absence of a criminal record, stable employment, and so on. That right to remain shields them from any risk of removal for at least some designated period of time (say, five years). The most robust regularization programs, which I’ll focus on here, provide access to a permanent status—such as ‘permanent residence’ or citizenship—that offers a permanent shield from removal.

What is the justification for regularization? There are several possible arguments ([Hosein 2014, 2016, 2019](#); [Song and Bloemraad 2022](#)), but here are two that play a crucial role in Schmid’s discussion. One, the ‘social ties’ argument, says that regularization is an appropriate recognition of the social bonds and contributions these migrants have developed ([Carens 2013](#)). The other, ‘anti-subordination’, argument says that there is something inherently unacceptable in a liberal society about having a permanent underclass of people whose lack of permanent status will always keep them separate from the mainstream of society ([Fiss 1999](#)). Regularization is a means of bringing these people into the mainstream of society and out of second-class status.

The Dilemma Explained

On the face of it, both firewalls and regularizations reflect some familiar liberal values and so it is unsurprising that theorists and policy makers who endorse one of the policies tend to endorse the other as well. Yet, Schmid makes the challenging claim that the two policies are in fact in tension with each other, creating a dilemma for policy makers of which to support. Why does the dilemma arise? There are really two quite different kinds of tension presented by Schmid and I’ll explain them in turn. The first tension arises due to the potential evidentiary burden of regularizations. To go through the regularization process, and thus receive a right to remain, a migrant must prove that they meet the relevant criteria. Let’s suppose that these criteria are relatively extensive—that they include showing not just continued presence but also stable employment and so on—on the grounds that a migrant must prove they have developed the social ties and contributions that would make them deserving of regularization. This means, Schmid (2024, 13) argues, that the firewall may be threatened because

“when authorities must assess the validity of a large number of diverse documents submitted by regularization applicants – proof of residence and employment, language certificates, and so on – they may require access to databases that firewalls should have sealed off from their view, such as those of housing or education providers.”

Let’s call this the ‘evidentiary dilemma’: that regularization may require state access to evidence that is sealed off by firewalls. It’s a dilemma, we have seen, that arises on the assumption that the criteria for regularization include having to prove various social ties and contributions: an assumption backed by the social ties argument for regularization.

The second tension identified by Schmid is quite different. It arises, he argues, because a demand for regularization of qualifying long-term authorized migrants tends to be accompanied by a demand for removal of those who do not qualify. As he puts it:

“the idea is often that regularization be applied to those whose presence is considered

most beneficial or who are deemed most deserving, and that those ineligible (usually the bulk of unauthorized residents) will be dealt with through enforcement” (Schmid 2024, 12).

Thus, to regularize some, a policy maker must remove others. And such removals are made more difficult with a firewall in place that makes it harder to find those who are eligible for removal. Thus, regularization and firewalls are in tension. Why exactly should a decision to regularize some people be accompanied by a demand to remove others? There is clearly no necessary connection between the two, so why does Schmid claim that they tend to go together? It could be that in political terms it’s hard to push through measures granting rights to immigrants in some areas without also taking away rights in others. Liberalism here must be offset by harshness there. And in practice we do often see regularization accompanied by removals. But if this is the only connection between regularization and removals, it would not be a deep one that reveals any special tension between regularization and firewalls. Lots of other liberal policies, such as better healthcare access for people on temporary work visas or an expansion of family migration opportunities, might also create a countervailing demand for increased enforcement and thus be in tension with firewalls. So, we should see if there is anything special about regularization in particular that creates a tension.

Schmid suggests that there is indeed a deeper connection between regularization and removals, namely that the very same values that support regularization tend to also demand removals. He points in particular to the anti-subordination case for regularization: “reasons for regularizations, such as the importance of avoiding the creation of subordinated castes, may often also be interpreted as reasons for removals”. Why exactly would anti-subordination values tell in favor of both regularization and removals? The rough idea, I take it, is that the presence of a subordinated class is a kind of blight on the social fabric that states must take pains to abolish. One way to abolish it is through regularization—thus making sure that the unauthorized migrants present are no longer part of a subordinated class—and another way to abolish it is through removals—thus making sure that the unauthorized migrants who might become part of such a class are no longer present at all. On this way of thinking, the goal, as Schmid (2024, 11) puts it, “is not primarily the welfare of the unauthorized but that of the liberal-democratic social order.” The blight of subordination is to be prevented not because it is bad for or unjust to the migrants themselves but because it is a stain on a liberal society to have certain kinds of inequality present. Regularization and removals might both be needed in conjunction to erase that stain and any potential for it. Let’s call this ‘the expulsion dilemma’.

The Dilemma Diffused

To summarize the most important findings of the previous section, we saw that Schmid’s dilemmas both arise from particular understandings of the core arguments for regularization. If we adopt a social ties/contribution argument for regularization, then we are pushed towards wanting the state to collect more substantial information from migrants, such as their employment history, and thus violating firewalls. For as Schmid notes, weaker criterion for regularization, such as sheer length of presence would not require such extensive documentation or confirmation from social institutions. It is the social ties/contribution argument for regularization that drives the evidentiary dilemma. And if we adopt an anti-subordination argument for regularization, then we are led to the expulsion dilemma, because

both regularization and removals might be needed to fully expel any trace of possible subordination. The question arises, then, of whether these arguments for regularization—the social ties/contribution argument and the anti-subordination argument—are in fact the best arguments for the policy.

I don't have space here to explain the objections to these arguments that I have developed in full elsewhere (Hosein 2016, 2019). But I will briefly indicate here some reasons for rejecting these arguments. And I will show that my preferred argument for regularizations, the autonomy argument, does not lead to Schmid's dilemmas.

The social ties argument suggests that an unauthorized migrant becomes more deserving of regularization to the extent that they have developed social bonds and contributions, such as participating in neighborhood associations and in the economy. The thought is that having become part of society their belonging should be legally recognized and their contributions rewarded. This argument misses a crucial form of burden placed on unauthorized migrants. Precisely because of their unauthorized status, it can be difficult for them to form extensive social ties, to participate fully in the economy, and so on. For their very unauthorized status and vulnerability makes it difficult for them to become full participants in the receiving country. If you know that you are vulnerable to sudden removal at any time, it is reasonable for you to avoid putting down as many roots and (as noted earlier) to avoid any activities that might potentially draw the attention of the authorities. Firewalls can mitigate these dynamics but not quash them entirely, since even if there are not formal connections between immigration authorities and other institutions one is still always vulnerable to being discovered directly by the immigration authorities or reported informally by another member of society. The social ties argument fails to notice the burdens that may lead migrants to avoid social ties and instead holds it against them if they fail to make those ties.

The anti-subordination argument has the attraction of recognizing some of the burdens of precarity. The uncertainty unauthorized migrants face is precisely what makes them live in more in the 'shadows' and become a potential subordinated underclass. But the argument does not robustly justify regularization. For reasons already seen, it says that both removal and regularization are potential ways to remove the social 'stain' of having an underclass present.

And these removals might be targeted on long-term unauthorized migrants as well as recent arrivals. So, the state has the option of choosing to prioritize removal as its preferred solution to the problem.

My preferred justification, the autonomy argument, begins by recognizing the great burden of long-term precarity (Hosein 2014, 2016, 2019). Autonomy requires the ability to make plans, stretched out in time, in life. Humans can potentially 'hedge their bets', living with uncertainty for a certain period. But to live indefinitely under precarious conditions is destructive of autonomy. States owe it to long-term unauthorized migrants to secure the conditions for this autonomy. One reason is humanitarian: the sheer burden of living without autonomy. The other reason is that states make demands of those migrants, claiming a right to control everyone within their borders and compel them to obey the law. This control, which is more extensive the longer someone is present, can only be justified if it is offset by positive efforts to ensure the conditions for autonomy, including by granting a right to

remain. Unlike the social ties argument, the autonomy argument thus treats mere length of presence as the key condition for regularization: no-one should be left living in uncertainty beyond a certain length of time. So, there is no need for invasive inquiries into employment and so on. And unlike the anti-subordination argument, the autonomy argument treats this regularization as something owed to the migrants, so it cannot be substituted with removals and need not carry with it any demand for removals at all.

Now, the autonomy argument may still permit the removal of some people who are not present for a substantial period. But that alone doesn't create any tension with firewalls. The two policies—regularizations and removals—would just put two somewhat independent constraints on the actions of liberal states with respect to unauthorized migrants.

In sum, the dilemmas Schmid identifies arise only if we assume certain arguments for regularization. If we adopt my preferred argument, the autonomy argument, the apparent tensions between regularization and firewalls start to dissolve. And perhaps this is further, indirect, evidence that the autonomy argument is the best one. No doubt many objections to that argument have occurred to the reader, but I hope to have addressed central ones elsewhere (2014, 2016, 2019).

References

- Carens, Joseph H. 2013. *The Ethics of Immigration*. Oxford: Oxford University Press.
- Hosein, Adam Omar. 2014. "Immigration: The argument for legalization." *Social Theory and Practice*, Vol. 40, No. 4, pp. 609–630.
- Hosein, Adam Omar. 2016. "Arguments for Regularization." In Alexander Sager (ed.), *The Ethics and Politics of Immigration: Core Issues and Emerging Trends*. Rowman & Littlefield, pp. 159–179.
- Hosein, Adam Omar. 2019. *The Ethics of Migration: An Introduction*. London: Routledge.
- Fiss, Owen. 1999. "The Immigrant as Pariah." In Joshua Cohen and Joel Rogers (eds.), *A Community of Equals: The Constitutional Protection of New Americans*. Boston: Beacon Press, pp. 3–21.
- Schmid, Lukas. 2024. "Responding to unauthorized residence: on a dilemma between 'firewalls' and 'regularizations'." *Comparative Migration Studies*, Vol. 12, No. 22, pp. 1-18.
- Song, Sarah and Irene Bloemraad. 2022. "Immigrant Legalization: A Dilemma between Justice and the Rule of Law." *Migration Studies*, Vol. 10, No. 3, pp. 484–509.

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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