The Ethics of Migration Policy Dilemmas
Do liberal states facilitate or undermine ethical immigration policy? A response to Schmid (2024)

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In this article, Lukas Schmid (2024) thoughtfully outlines an ethical dilemma for immigration policymakers. He proposes an alternative approach to immigration policies in major immigrant-receiving countries. To build his case, he distinguishes (and explains the relationship) between "firewall" policies, which mitigate the harmful effects of internal immigration policies, and regularization policies, which provide immigrants with secure legal status and thus broader access to societal benefits and less insecurity about their rights. He carefully delineates the pros and cons of each approach, speaking from a commitment to maintaining the core institutions of liberal democratic societies, where the rule of law and equality principles are fundamental. From this perspective, Schmid argues for an approach to immigration policy that upholds basic liberal democratic principles, particularly the obligation to prevent the creation of a permanent underclass of immigrants and their families, a risk posed by some current laws and policies. However, Schmid's argument extends beyond immigration policy; advocating for the application of equality principles to all members of society includes anyone who in one way or another is affected by harsh immigration policies, such as those that undermine immigrant labor rights.

In centering his proposed approach on liberal-democratic ideals of equality, Schmid argues that such alternative policy aligns with regularization. Regularization ensures immigrants' entitlements to basic rights, minimizes the risk of discriminatory practices, reduces the number of unauthorized immigrants, guarantees the application of other aspects of the rule of law, and allows immigrants to live free of the looming threat of deportation. Based on these considerations, Schmid recommends a larger policy alternative—continuous and non-conditional regularization, with minimum residence requirements, of which firewall policies are part but not the goal. Significantly, the audience for his proposal is not the wider public or even all policymakers. Schmid addresses this policy dilemma to a conscientious migration policymaker who is open to research-based solutions and dedicated to upholding basic democratic principles.

I fully agree with Schmid's main arguments and find the connections he draws across various aspects of immigration policy important and relevant to most immigrant-receiving contexts today. I welcome his efforts to highlight these ethical dilemmas for a conscientious

policymaker who wants to do the right thing, which invites serious reflection. Given how strongly Schmid's comments resonate, I would like to add some considerations outside the specific purview of immigration policy that may pose some challenges in implementing thoughtful recommendations.

I appreciate the emphasis on policymakers who are committed to doing what is right. There are many elected officials for instance who run for office precisely to right policy wrongs. However, these individuals often face conflicting demands and considerations that can clash with each other and undermine even the most well-intentioned, evidence-based policy measures. Like everyone else, policymakers operate within a complex web of social, political, and economic forces, never alone or in a vacuum. To shed light on the challenges they may face, I offer some thoughts that focus on state power and the role of government—both receiving and sending—in shaping conditions within which conscientious policymakers must navigate. It highlights the challenges they may encounter as they respond to the competing interests of multiple constituencies and contingencies in addition to the goals and missions of diverse state agencies.

The bureaucratic labyrinths that policymakers must navigate when proposing and getting policies approved can easily derail the best-intentioned proposals. The government itself, along with the politics of running it, can contribute to undermining basic principles of liberal democracy, as we have seen in recent years in the U.S. case. Government structures often make passing laws difficult, and when political parties are polarized, it becomes nearly impossible for policymakers to work on any policy solutions. Additionally, individual policymakers may be influenced by powerful groups whose interests contradict their intentions for sound policy. A prime example is the case of the private corporations that run detention facilities in the United States. These corporations lobby elected officials and donate to their political campaigns, ensuring the continued expansion of lucrative detention facilities (Gómez Cervantes, Menjívar, and Staples 2017), which significantly undermines efforts to reduce immigration detentions. All these factors, tied to the politics of government, can either sabotage or support the viability of sound policy, depending on the political climate of the moment. However, I want to draw attention to larger considerations, both internal to governments and external factors, that directly impact the decisions and operations within which policymakers do their work.

First, I want to mention an internal factor to the workings of the state and functioning of government, that is, the bureaucratic entanglements that can create obstacles to efficient policymaking. We know that states are not homogenous entities but instead are constituted by a constellation of agencies that pursue different, often conflicting goals. I am referring to the "many hands of the state" (Morgan and Orloff 2017), which I consider key in considering policy proposals. To accomplish their goals, each state agency creates its regulations, and each administrative unit can therefore pose obstacles or facilitate policy design and implementation (Menjívar 2023). For instance, as Galli (2023) observes, when entering the U.S. asylum system, undocumented immigrant minors face contradictory logics: as minors, one agency categorizes them as deserving of protection; as undocumented people, another agency subjects them to the enforcement system. These are just two agencies pulling in different directions. In the face of "incoherence of government," as Bialas (forthcoming) describes these agency misalignments around immigration, what does a conscientious

policymaker do? Such tensions also reveal the hierarchy of institutional power embedded in state agencies, as not all state agencies have the same bureaucratic status and decision-making power, which will impact which agency's policies are supported and which are ignored.

Second, policymakers do not work independently of larger issues, such as foreign policy demands and international obligations, which structure policy responses to immigration, especially to humanitarian flows. In the case of the United States, as in other receiving countries, it would be incorrect to assume that all asylum seekers are classified equally, even if the same set of rules and regulations presumably apply to all. Some are welcomed with open doors while others are not even allowed to apply for protection, a difference with roots in foreign policy and political considerations on the world stage, including the interests of the sending country, instead of the plight of those seeking protection. For instance, U.S. foreign policy has played a fundamental role in the dramatically different treatment of two Latin American groups of migrants seeking protection: For over four decades, Central Americans arriving at the U.S. southern border have been classified and reclassified over time as economic migrants, "feet people," or criminals to avoid extending them asylum protection (Menjívar 2023, 2000). In contrast, for over six decades, Cubans have received the most generous treatment of any immigrant group in the United States, with a special Congressional Act (Eckstein 2022). This distinct treatment has placed these groups on considerably divergent paths of integration, with long-term effects across generations, creating significant inequalities across immigrant groups (Menjívar 2023), and thus contradicting fundamental liberal democratic principles. The contrasting receptions across Europe and North America to Afghans and Ukrainians have been examined through the lens of race and/or religion, with arguments that Afghan identity is perceived as a threat and thus these asylum seekers have not been as welcome as Ukrainians (De Coninck 2023). It is difficult to ignore, however, the role of foreign policy considerations; formally recognizing a group's need for protection outside their countries because their government cannot or would not protect them is a political act that condemns the sending country (Menjívar 2000). These highly uneven receptions to asylum seekers today highlight the import of larger pressures on policymakers though, as FitzGerald (2019) argues, the Global North has used legal and political structures to deter the migration of unwanted groups since the nineteenth century, doing so in earnest since World War II. A conscientious policymaker would take these larger pressures into account in formulating ethical immigration policy thus preventing the creation of castes and second-class citizens.

My last consideration relates to certain domestic demands that directly or indirectly impinge on how policymakers respond to their multiple constituencies. Perhaps one of the most critical issues today is the anti-immigrant backlash and expressions of racism around the globe. Anti-immigrant sentiments seem everywhere, leading Kustov (2024) to start a response in this series by observing that, "many people in the United States, Europe, and other rich democracies don't like immigration." It is unclear if anti-immigrant backlash puts pressure on elected officials to adopt harsh immigration policies or, conversely, whether elected officials' hostile anti-immigrant rhetoric rationalizes the harmful policies they pass. However, there seems to be a confluence of these factors, with one amplifying the other. This is how immigration issues, especially efforts at containment with punitive and anti-democratic measures, occupy center stage in major political campaigns in immigrant-

receiving countries around the globe today. Although wealthy receiving countries historically have welcomed immigrants, either because immigrants fulfill labor needs across sectors and occupations or because they serve a humanitarian purpose (FitzGerald 2019), they have kept a half-open door ready to be closed when politically (or economically) expedient. Round-the-clock media images today contribute to keeping "immigration crises" on the radar of constituents. This saturation of information does affect candidates' and elected officials' policy agendas as they strive to address voters' concerns about the perceived threats that immigrants presumably pose. In the U.S. case, for example, the two major parties have largely converged on policies likely to undermine principles of equality and the rule of law, often competing to propose the most punitive and exclusionary measures. Given these immense pressures, a conscientious policymaker would need to take this political landscape into consideration in policy planning even if they are not motivated by political gain but by a genuine desire to uphold liberal democratic principles.

To conclude, I want to reaffirm my agreement with Schmid's thoughtful and well-crafted essay. Beyond proposing a sound regularization policy, he rightly emphasizes that ethical immigration policies are not independent of policies that ensure equality, access to rights, and legal protections for everyone in society. His arguments about the relationship between firewalls and regularization, along with the benefits of regularization, are compelling and deserve widespread attention. The concerns I raise above, reflecting my interests in the workings of the state and state power, are intended to acknowledge the pressures conscientious policymakers face as they navigate multiple, often conflicting, demands. My comments are meant to encourage further reflection and discussion on this critical and enduring issue.

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About the "Dilemmas" project

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