

Normative Attitudes and Selection Criteria: A Response to Hadj Abdou and Kollar (2024)

By Rufaida Al Hashmi

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Leila Hadj Abdou and Eszter Kollar (2024) present a highly insightful and compelling analysis of the dilemma between respecting the moral rights of failed asylum seekers and protecting the integrity of the asylum system. On the one hand, failed asylum seekers who have resided in the receiving country for a significant period acquire a social membership-based right to remain. On the other hand, accepting this right to remain without qualification risks undermining the asylum adjudication process. If asylum seekers can expect to stay regardless of their application's outcome, then the adjudication process appears to serve little purpose.

Hadj Abdou and Kollar reject two common policy approaches to resolving this dilemma: restricting the social and economic rights of asylum seekers and accelerating asylum procedures by fast-tracking applications with high probability of success. Instead, they propose a novel solution based on the distinction between good faith and bad faith asylum claims. According to their view, failed asylum seekers who made claims in good faith have a social membership-based right to remain, whereas those who applied in bad faith "may be subject to legitimate return" (ibid, 3).

There is much to discuss in Hadj Abdou and Kollar's rich and important piece. While I do not challenge here the existence of the dilemma they outline, I later consider whether a similar dilemma could be identified in how states deal with would-be immigrants before they even arrive. I focus first on their central claim that "beyond social membership another normatively and politically significant factor is the normative attitude of asylum claimants towards the refugee system" (ibid). This is a novel and interesting idea that deserves further exploration. Hadj Abdou and Kollar argue that the "normative attitudes" of asylum seekers towards the refugee system can be significant enough to outweigh the social membership-based right to remain. In what follows, I offer reasons to doubt whether such normative attitudes matter at all in adjudicating claims to stay.

Consider first the case of a bad faith asylum claim, which Hadj Abdou and Kollar argue may override an otherwise legitimate social membership-based claim. To explore whether this kind of normative attitude matters on its own, consider the following example. Suppose an individual arrives on a student visa with the intention of overstaying and, when necessary,

making a non-genuine asylum claim. They have a clear understanding of the refugee system and know that their reasons for staying do not meet the criteria of refugee status or subsidiary protection. However, after some time, this person receives a legitimate job offer and instead applies for a skilled worker visa. They remain in the country on this visa, put down roots, and eventually acquire a social membership-based right to stay. Even though they have always held a bad faith normative attitude toward the refugee system – they would not have hesitated to make a non-genuine claim to asylum – it would be deeply troubling if the state were to deny their right to remain purely on this basis. Their bad faith normative attitude toward the asylum system does not appear sufficient to override a claim based on social membership.

It is also unclear to what extent a good faith normative attitude should matter. For Hadj Abdou and Kollar, it is important that we attend to both parts of the dilemma: first, respecting the moral rights of the failed asylum seekers, and second, protecting the integrity of the asylum system. They claim that a bad faith asylum claim undermines the integrity of the asylum system because “it deprives genuine refugees from resources and opportunities, and it undermines the institutional purpose at its core” (ibid, 13). However, even good faith asylum seekers can be accused of this. A good faith failed asylum seeker has misinterpreted the political and legal practice of refuge, so the receiving state might similarly argue that the asylum seeker should have been better informed about the system, especially given the protection of genuine asylum seekers is at stake and resources are limited. It’s true that, unlike bad faith asylum seekers, they intended to comply with the asylum process; nevertheless, they could still be said to be ‘depriv[ing] genuine refugees from resources and opportunities.’ Here, then, a good faith normative attitude does not seem sufficient to preserve a social membership-based right to remain.

The two cases above focus on good faith or bad faith normative attitudes. But what about those who possess no normative attitude toward the asylum system? Consider a failed asylum seeker who applies with no real understanding of the refugee system. Perhaps their circumstances are desperate, yet they lack the time or resources to learn about the system. For several reasons, some of which are mentioned in the paper, it is difficult to see how the lack of any normative attitude matters very much. As Hadj Abdou and Kollar (ibid, 14) acknowledge, “insufficient or imprecise knowledge cases are to be expected given the complexity of the international legal regime, and the complex realities people are fleeing from.” While Hadj Abdou and Kollar (ibid) maintain that these kinds of cases should fall within an “interpretive grey zone,” it seems overly demanding to require asylum seekers to have a sufficient level of understanding of the asylum system on the basis of which they can then form a normative attitude. Acquiring such a level of understand often requires considerable time and resources.

Taken together, these three cases – bad faith, good faith, and the absence of a normative attitude—suggest that the normative attitudes of asylum seekers toward the refugee system may not be as normatively significant as Hadj Abdou and Kollar suggest. If this is true, then Hadj Abdou and Kollar’s attempt to resolve the dilemma via the concept of normative attitudes may not succeed.

In the remainder of this piece, I will explore the implications of their argument for how states select would-be immigrants. Hadj Abdou and Kollar are interested in policies targeting asylum seekers already within the receiving state's territory. As noted, they reject both restrictions on social and economic rights and fast-track asylum procedures in favour of an approach that is based on normative attitudes toward the refugee system. However, states increasingly seek to manage irregular migration, including by those who may eventually make failed asylum applications, before migrants even arrive (Al Hashmi 2025). The visa waiver system is a particularly relevant example. Visa policies are designed to deter irregular migration, which often occurs via visa overstay (Ellermann and Goenaga 2019). Countries such as the U.S. condition visa-free travel on a very low 'disqualification rate,' which is defined as visa violations or entry refusals of a particular nationality.

At first glance, these pre-entry selection practices might seem distinct from the dilemma that Hadj Abdou and Kollar describe. The first horn of the dilemma concerns the rights of immigrants – particularly the social membership-based right to remain that individuals acquire after living in the country, forming social ties, contributing to society, and so on. However, these selection practices apply to individuals who have not yet entered the territory and therefore have not acquired this social membership-based right. Nonetheless, one might still identify a similar dilemma: between the moral rights of would-be immigrants to be considered fairly—rights that, while less weighty than social membership claims, are still morally significant—and the state's interest in preserving the integrity of their immigration systems, especially regarding the fair allocation of limited admission slots.

Could normative attitudes also resolve this version of the dilemma? Indeed, states seem to be pursuing such an approach through the visa waiver programs that distinguish between nationalities. Would-be immigrants from countries with higher overstay rates are subjected to additional requirements, which are used to determine the true intentions of their visit – that is, whether they intend to travel as genuine visitors or as immigrants. Yet Hadj Abdou and Kollar would likely object to this practice on the grounds that this involves objectionable group-based differentiation. Consider their critique of fast-track asylum procedures, some of which place applicants on accelerated processes on the basis of 'tracks' for countries with low (or very high) protection rates. Hadj Abdou and Kollar (2024, 7) reject such policies on the grounds that they categorise would-be immigrants on the basis of groups rather than treating them as individuals. Similarly, immigrant selection practices based on overstay rates of nationalities may be morally problematic on the grounds that they rely on group-based differentiation.

This raises a further challenge for Hadj Abdou and Kollar's own proposal. In response to the objection that it might be difficult to distinguish between good and bad faith normative attitudes, they suggest that "the bad faith category should be limited to clear-cut cases, similar to the UNHCR's categorisation of manifestly unfounded cases, that have clearly no relation to the criteria of refugee status or subsidiary protection" (ibid, 14). However, here too states could be said to be differentiating in morally objectionable ways. If the problem is the "focus on categories of asylum seekers rather than individual cases" (ibid, 7), then it is difficult to see how the same problem does not arise when states rule out some asylum-seekers purely on the basis that they fit a specific category of cases. Here too we would be sorting migrants into various categories, some of which require greater scrutiny than others.

However, the kinds of categories used to manage irregular migration prior to arrival may differ in important ways from those proposed by Hadj Abdou and Kollar. Sorting would-be immigrants by nationality seems significantly different from evaluating whether an individual's situation aligns to particular types of cases. For one, the former relies on ascriptive characteristics in a way that the latter does not. That said, the rationale for these nationality-based distinctions often rests on assumptions about the likelihood of overstaying among individuals from certain countries. In this respect, they resemble an approach that assesses individuals against a set of general rules and expectations. This discussion highlights the need for a more careful examination of what methods of assessing the normative attitudes of asylum seekers count as morally objectionable. Thinking through how their arguments apply to immigrant selection practices can be helpful, both in terms of highlighting the implications of their argument for other aspects of immigration policy and in revealing some challenges to their approach.

Hadj Abdou and Kollar offer a rich analysis of an important dilemma: how to reconcile the moral claims of failed asylum seekers with the state's need to maintain the integrity of its asylum regime. They offer a novel view based on the normative attitudes of asylum seekers, and I have raised a few points that press Hadj Abdou and Kollar to elaborate on the significance of such normative attitudes. I have also explored the implications of their proposal to policies aimed at managing irregular migration, including those who may go on to make failed asylum claims, *before* would-be immigrants arrive. I argued that applying their view to the context of immigrant selection reveals some issues with both Hadj Abdou and Kollar's solution and the solutions that attempt to resolve similar dilemmas before would-be immigrants even arrive. Nonetheless, Hadj Abdou and Kollar's argument not only introduces an idea – the significance of normative attitudes towards the refugee system – that is rich and worthy of further exploration but also offers a framework for thinking about the ethics of migration not only within state borders but also beyond them.

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References

- Al Hashmi, Rufaida. 2025. "Nationality and Immigration Restrictions." In Sahar Akhtar (ed.), *The Routledge Handbook of the Ethics of Immigration*. Routledge, pp. 167-176.
- Ellermann, Antje and Agustín Goenaga. 2019. "Discrimination and Policies of Immigrant Selection in Liberal States." *Politics & Society*, Vol. 47, No. 1, pp. 87-116.
- Hadj Abdou, Leila and Eszter Kollar. 2024. "Why failed asylum seekers should have a conditional right to stay: an ethical guideline for policy debates." *Comparative Migration Studies*, Vol. 12, Article 14, pp. 1-17.

About the “Dilemmas” project

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