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# From Redress to Prevention: How the International Politics of "No Safe Haven" Became the Politics of "Not in My Backyard"

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> "The concept of justice is a moving target. Who are we trying to get justice for? For violators, for victims, for American citizens?"
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> Interview, US Homeland Security Investigations Special Agent (12 July 2017)

**ABSTRACT**

The norm of "No Safe Haven" has developed into a global policy regime aimed at preventing suspected human rights violators and war criminals from receiving immigration benefits in host states. This article uses a comparative institutional approach drawing on data collected in the Netherlands, Canada, and the United States to analyze the policy's origins and evolution. Despite a Global North consensus around the norm of No Safe Haven and international cooperation around enforcement, the focus has shifted from redress to violence prevention, and the policy has become closely aligned with the politics of border control and security, compromising other human rights goals.

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## I. INTRODUCTION

Since 2016, each 23 May has been declared the European Union (EU) Day Against Impunity for genocide, crimes against humanity, and war crimes. In 2018, that date coincided with the biannual meeting of the Genocide Network in The Hague, where prosecutors from across the Global North met for two days to discuss best practices for identifying, excluding, and possibly prosecuting human rights violators who have sought safe haven within their territories. In addition to hosting the Genocide Network meetings, the Netherlands' domestic No Safe Haven policies are viewed by many as a model for how to deny immigration benefits to people who have been involved in mass violence. Yet, during the 2018 meeting, the Netherlands was facing a dilemma. A few weeks earlier, the Court of Justice for the European Union (ECJ) had issued a ruling that required the Netherlands to revisit its exclusion policy. The Court found that the country must balance its security needs with immigrants' rights to freedom of movement.[1] The ruling represented a human-rights check on a policy that promotes itself as human rights enforcement.

The ECJ ruling is striking because No Safe Haven seems like an easy issue through which to build consensus. The concept is politically appealing because human rights violators and war criminals are not sympathetic characters. Rather, they are viewed as having undercut, ignored, and flouted the public commitments the world has made since the Second World War to both an international human rights regime and international criminal law and court infrastructure. Because human rights violators and war criminals are generally viewed as "bad people," the public and policymakers alike tend to agree that they should not be among the immigrants to receive a coveted spot in a Global North country. In fact, this point is one of the rare areas in which the human rights community and immigration enforcement enthusiasts track together on a policy goal. For many, it is viewed as

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1. The ECJ decision combined the cases of two individuals who had been denied entry to the Netherlands on the grounds that they represented "a genuine, present, and sufficiently serious threat to public security and international relations." Joined Cases C-331/16 K. & C-366/16 H.F., (CJEU 2018), https://www.asylumlawdatabase.eu/en/content/cjeu-%E2%80%93-joined-cases-c-33116-k-and-c-36616-hf-2-may-2018. The ECJ affirmed that member states have the general right to make decisions regarding public security, but it concluded that individuals being excluded from residency also had rights that must be proportionately balanced against the interests of the state. In this case, the state's interests related to security as well as the immigrants' blameworthiness. The Court concluded that

> overall assessment must also take account of the time that has elapsed since the date when the crimes or acts were allegedly committed and the subsequent conduct of that individual, particularly in relation to whether that conduct reveals the persistence in him of a disposition hostile to . . . the peace of mind and physical security of the population.
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> *Id.*

a zero-sum game—exclude an undeserving perpetrator, free up a spot for a deserving refugee.

Despite its widespread appeal, however, implementing the seemingly uncontroversial norm of No Safe Haven is complex, and can lead to difficult human rights dilemmas. Implementation combines two different human rights principles, one geared towards the punishment of human rights violators, and the other towards the protection of vulnerable people. As the ECJ decision revealed, the goal of exclusion, related to security and accountability, can bump up against other fundamental human rights related to due process and freedom of movement.

This article helps illuminate these human rights tensions. It is the first study of how No Safe Haven has evolved from an idea focused on redress to a regime complex focused on prevention. The analysis uses a historical, comparative institutional approach, drawing on data collected in the Netherlands, Canada, and the United States: three major immigration destination countries that played an important role in developing and promoting No Safe Haven policies. The analysis reveals that No Safe Haven is a multi-faceted concept. First, it is a norm that has taken hold across the Global North, bringing together the strange bedfellows of immigration law enforcement and human rights advocacy. Second, it is a legal regime that combines international criminal law, international refugee law, and domestic immigration and criminal laws in complex ways. Third, it is a policy regime that includes every stage of the immigration process and every actor in immigration bureaucracies. Finally, it is a global network of people committed to the belief that whatever happens to war criminals and human rights violators, they should not be allowed to move to desirable immigration destinations. As such, No Safe Haven is now part of both the global security and the international human rights regimes, involving institutions tasked with police powers as well as non-governmental organizations focused on victim advocacy and evidence collection.

The analysis presented below reveals that as the norm of No Safe Haven has expanded into a major global law enforcement network, it has gained a security focus and a close alignment with the politics of border control and the War on Terror. At the domestic level, the politics of No Safe Haven have morphed into the politics of "Not in My Backyard' (NIMBY). This desire by states to keep "bad people" out is not always compatible with the goal of accountability for mass violence or with ensuring that "deserving" immigrants are granted safe haven. Beyond elaborating on the specific human rights dilemmas that emerge out of the evolution from redress to prevention, this detailed case study of the international politics of No Safe Haven also serves to illustrate broader points about the reciprocal relationship between policies and politics and the difficulties of security-informed human rights efforts.

## II. STUDYING THE HUMAN RIGHTS DIMENSIONS OF "NO SAFE HAVEN"

Despite the existence of a robust network of institutions that are focused on implementing the No Safe Haven policy, the academic literature on the exclusion of war criminals and human rights violators consists almost entirely of jurisprudential studies. The legal basis for exclusion in international law comes from Article 1F of the 1951 Refugee Convention, which outlines an exception to refugee protection for those who have "committed a crime against peace, a war crime, or a crime against humanity" (§ a), those who have "committed a serious non-political crime" in their home country (§ b), or those who have "been guilty of acts contrary to the purposes and principles of the United Nations" (§ c).[2] Article 1F was not controversial at the time of the Convention's adoption and did not receive much attention for the first few decades of the international refugee regime. The concept rose to prominence in the late 1970s and early 1980s, as it came to light that a significant number of Nazis had been able to find refuge in the Americas.

Since that time, legal scholars have examined whether domestic interpretations of the exclusion clauses match the guidance issued by the United Nations High Commissioner for Refugees (UNHCR) and whether interpretation has shifted as a result of the war on terror.[3] For example, Rikhof compared five leading refugee receiving countries' application of the exclusion provisions in great detail. He concluded that the United States, Canada, Australia, the United Kingdom, and New Zealand all have similar jurisprudence, despite the fact that the US has charted its own course and

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2. Convention Relating to the Status of Refugees, §§ a-c, *adopted* 28 July 1951, U.N. Doc. A/CONF.2/108 (1951), 189 U.N.T.S. 150 (*entered into force* 22 Apr. 1954).
3. *See* Sarah Singer, Terrorism and Exclusion from Refugee Status in the UK: Asylum Seekers Suspected of Serious Criminality (2015) on the UK application of 1F; James C. Simeon, *Exclusion under Article 1F(a) of the 1951 Convention in Canada*, 21 Int'l J. Refugee L. 193 (2009); Asha Kaushal & Catherine Dauvergne, *The Growing Culture of Exclusion: Trends in Canadian Refugee Exclusions*, 23 Int'l J. Refugee L. 54 (2011) on Canada; Maarten P. Bolhuis & Joris Van Wijk, *Alleged Terrorists and Other Perpetrators of Serious Non-Political Crimes: The Application of Article 1F(b) of the Refugee Convention in the Netherlands*, 29 J. Refugee Stud. (2016) on the Netherlands. While the United States is not a signatory to the 1951 Refugee Convention and does not use Article 1F, it does have "bars" to admission embedded in its immigration statutes. For analysis of the application of these bars, see Kate Jastram, *Left out of Exclusion*, 12 J. Int'l Crim. Just. 1183 (2014); Gregory F. Laufer, *Admission Denied: In Support of a Duress Exception to the Immigration and Nationality Act's "Material Support for Terrorism" Provision*, 20 Georgetown Immigration L. J. 437 (2006); Jordan Fischer, *The United States and the Material-Support Bar for Refugees: A Tenuous Balance between National Security and Basic Human Rights*, 5 Drexel L. Rev. 237 (2012); Glenna MacGregor, & Jessica C. Morris, *Human Rights Enforcement in U.S. Immigration Law: A Missed Opportunity for Engagement with International Law*, 5 John Marshall L. J. 467 (2012). On UNHCR soft law guidance, see Jennifer Bond, *Excluding Justice: The Dangerous Intersection between Refugee Claims, Criminal Law, and "Guilty" Asylum Seekers*, 24 Int'l J. Refugee L. 37 (2012).

claims not to rely on international law or developments in other jurisdictions.[4] In a critical look at Canada's interpretation of Article 1F post 9/11, Asha Kaushal and Catherine Dauvergne concluded that decision makers:

> [A]re engaged in backdoor reasoning, slipping concerns about terrorism into existing categories by conflation and blanket characterizations. This fails to conform to the humanitarian requirements of international refugee law and international human rights law, and it ignores the fact that many of the excluded claimants have never participated in violence or specific crimes, and would not have been excluded a decade ago.[5]

These jurisprudential studies provide an important starting point for understanding the international politics of No Safe Haven, and highlight the need for an analysis of the production and implementation of the law through national and international agencies and organizations. There is very little scholarship examining how immigration exclusion, investigation, and removal intersect, and how countries working towards these goals balance competing human rights goals.[6]

Filling this important gap, we start with the premise that No Safe Haven is an idea that has taken hold both internationally and domestically as a policy regime complex. This study of regime complexes emphasizes that ideas such as No Safe Haven are "the coalitional glue" built from shared commitments.[7] However, ideas do nothing without institutions to enforce them. To further their interests, states build international institutions, also known as "regimes," to help them realize the benefits of cooperation.[8] Such institutions help states achieve their objectives through reducing contracting costs, providing focal points, enhancing information and therefore credibility, monitoring compliance, and assisting in sanctioning deviant behavior. As these institutions grow, policy regimes form and can ultimately become regime complexes, with different institutions implementing different parts of the policy goals at the international and domestic levels.

The literature on the diffusion and domestic implementation of international law helps illustrate the challenge of realizing human rights goals

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4. Joseph Rikhof, *War Criminals are Not Welcome; How Common Law Countries Approach the Phenomenon of International Crimes in the Immigration and Refugee Context*, 21 Int'l J. Refugee L. 453 (2009).
5. Kaushal & Dauvergne, *supra* note 3, at 91.
6. Recent exceptions are Jamie Rowen & Rebecca Hamlin, *The Politics of a New Legal Regime: Governing International Crime through Domestic Immigration Law*, 40 Law & Pol'y 243 (2018) on the US, and Maarten P. Bolhuis, *Narrowing the Impunity Gap? How Host States Deal with Alleged Perpetrators of Serious Crimes Excluded from International Protection: A Case Study of the Netherlands*, (Dissertation Vrije Universiteit Amsterdam) (2018), https://research.vu.nl/en/publications/narrowing-the-impunity-gap-how-host-states-deal-with-alleged-perp, on the Netherlands.
7. Ian Hurd, How to Do Things with International Law (2018).
8. Robert O. Keohane & David G. Victor, *The Regime Complex For Climate Change*, 9 Perspectives on Pol. 7 (2011).

through regime complexes.[9] For example, comparative institutional studies of the implementation of international refugee law reveal how bureaucratic demands foster strikingly different outcomes in different domestic contexts.[10] Similarly, studies of international criminal tribunals highlight how politics shape the institutionalization of legal norms.[11] Transitional justice interventions such as courts and truth commissions take on a distinctly domestic character when being implemented, and are largely shaped by advocacy organizations and political opportunities.[12] There are also a number of dilemmas specifically related to using legal interventions to ensure accountability and justice in the aftermath of war.[13] Analyses of war crimes tribunals reveal how challenging it can be to get to the bottom of international crimes due to evidentiary issues and the complex nature of mass atrocity.[14] Social scientists and historians suggest that part of the problem with international criminal justice policy implementation lies in the nature of violence itself, and the ways in which mass violence is dependent on social context as much or more than individual action.[15] There is also a more practical challenge related to creating legal institutions that protect due process for perpetrators while providing redress to victims.[16]

These literatures suggest that the work of identifying and screening potential war criminals and human rights violators in a domestic legal context is fraught due to the inherent challenge of identifying responsibility for mass violence. Further, they show that intersecting regimes are required to ensure that those identified as human rights violators actually face a consequence without sacrificing other human rights goals.

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9. Charli Carpenter, *Studying Issue (Non)-Adoption in Transnational Advocacy Networks*, 61 Int'l Org. 643 (2007); Martha Finnemore, National Interests in International Society (1996).
10. Rebecca Hamlin, Let Me be a Refugee: Administrative Justice and the Politics of Asylum in the United States, Canada, and Australia (2014).
11. Beth A. Simmons & Allison Danner, *Credible Commitments and the International Criminal Court*, 64 Int'l Org. 225 (2010); John Hagan, Justice in the Balkans: Prosecuting War Crimes in the Hague Tribunal (2003); Richard Ashby Wilson, Writing History in International Criminal Trials (2011); Victor Peskin, International justice in Rwanda and the Balkans: Virtual Trials and the Struggle for State Cooperation (2008).
12. Jamie Rowen, Searching for Truth in the Transitional Justice Movement (2017).
13. Ruti G. Teitel, *Transitional Justice Genealogy*, 16 Harvard Hum. Rts. J. 69 (2003); Maxine Clarke Kamari, Fictions of Justice: The International Criminal Court and the Challenges of Legal Pluralism in Sub-Saharan Africa (2009); Erin Daly & Jeremy Sarkin, Reconciliation in Divided Societies: Finding Common Ground (2003).
14. Nancy Amoury Combs, Fact-Finding without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions (2010); Mark A. Drumbl, Atrocity, Punishment, and International Law (2007).
15. Mahmood Mamdani, When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda (2001); Lee Ann Fujii, Killing Neighbors: Webs of Violence in Rwanda (2011); Max Bergholz, Violence as a Generative Force: Identity, Nationalism, and Memory in a Balkan Community (2016); Drumbl, *supra* note 14.
16. Peskin, *supra* note 11; Eric Stover, Victor Peskin & Alexa Koenig, Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror (2016).

In order to understand how the contemporary policy regime complex of No Safe Haven balances competing goals, this article examines the development of both the transnational network that enforces No Safe Haven on a global scale, and the implementation of the norm of No Safe Haven in the domestic contexts of the Netherlands, Canada, and the United States. Each country is actively engaged in the work of No Safe Haven, with a robust but distinct policy implementation approach. Each country was also involved in the early stages of this international policy regime's development. Studying these three countries, thus, provides insights into global and national policies and politics involved in implementing No Safe Haven.

The study relies on data collected in visits to the government agencies responsible for implementing the policies, and in-depth interviews with key policymakers and representatives of nongovernmental organization stakeholders in each country. More specifically, the research process included site visits to the Human Rights Violators and War Crimes Center in a confidential location in suburban Washington D.C., the Crimes Against Humanity and War Crimes Section of Canada's Department of Justice in Ottawa, and the 1F/International Crimes Directorate of the Asylum and Protection Division of the Immigration and Naturalization Service, in the Ministry of Justice and Security of the Netherlands, in the Hague. In total, the analysis is based on twenty-seven interviews ranging from forty-five minutes to two hours in length, as well as the relevant policy reports, parliamentary and congressional hearings, and case law for each country, and key reports and documents from the international NGOs involved in this work.

The following analysis focuses on the emergence and implementation of this international policy regime complex with multiple domestic iterations. The three countries play different roles in the international arena and vary in terms of how the norm is implemented and enforced on the ground. In part, these differences stem from the inherent challenge of deciding who might count as a human rights violator. But as this regime has shifted focus to include both redress for past violence and the prevention of future violence, the divergent domestic approaches also relate to the challenge of implementing a policy with distinct goals that are inevitably combined and prioritized differently in each country.

## III. THE ORIGINS OF NO SAFE HAVEN IN THE US AND ABROAD: REDRESSING MASS ATROCITY

In the chaos at the end of the Second World War, hundreds of thousands of people were relocated out of Germany and Eastern Europe to the Americas. Very little effort was made to examine the details of people's pasts, specifi-

cally the roles they may have played in war-time atrocities.[17] Controversy arose in the late 1970s when it came to light that a handful of high-ranking Nazis were living in the United States. The best-selling 1977 book *Wanted! The Search for Nazis in America*, by investigative journalist Howard Blum, garnered media attention. Public outrage about the fact that Nazis were growing old in peace within the United States turned into political action. Congresswoman Elizabeth Holtzman (D-NY), who was in the midst of sponsoring what would become the Refugee Act of 1980 in the House of Representatives, was one of the key players who called for the establishment of a special unit in the Department of Justice to hunt down former Nazis.[18]

In the beginning, the work was focused on the idea of providing redress for victims and survivors of the Holocaust. New institutions emerged to translate this idea into an effective policy. When the Office of Special Investigations (OSI) was created in 1979, it was done in close consultation with the American Jewish community.[19] The original vision was that the office would be temporary, and complete its work within "five or six years".[20] For those Nazis who had naturalized and become citizens, the office worked to denaturalize based on illegal procurement of citizenship, either because the person was barred from receiving immigration benefits, or had willfully misrepresented material facts in the immigration process.

However, OSI soon discovered that denaturalization was extremely difficult due to evidentiary burdens and institutional limitations. Many records had been destroyed or were located within the Soviet Union, the CIA was not always cooperative, and survivors and witnesses were quickly growing old or passing away, making eyewitness accounts less and less common or reliable.[21] The vast majority of OSI cases were camp guards, not high- ranking officers, so the evidence of wrongdoing was often limited.[22] Further, de-naturalization is a complex and time-consuming process, with high evidentiary standards. The government had to prove "beyond a reasonable doubt" that citizenship was wrongly procured. Finally, even if de-naturalization was successful, the Supreme Court required "clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true" before the person could be removed from the United States.[23]

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17. Louise W. Holborn, Refugees: A Problem of Our Time. The Work of the United Nations High Commissioner for Refugees, 1951-1972 (1975); Human Rights Watch, The Long Arm of Justice: Lessons from Specialized War Crimes Units in France, Germany, and the Netherlands (2014).
18. Judy Feigin, The Office of Special Investigations: Striving for Accountability in the Aftermath of the Holocaust 3-4 (2006), https://www.nytimes.com/interactive/projects/documents/confidential-report-provides-new-evidence-of-notorious-nazi-cases?ref=us#p=1.
19. *Id.*
20. *Id.* at 9.
21. *Id.* at 12-13.
22. *Id.* at 45.
23. Woodby v. INS, 385 U.S. 276, 282–86 (1966).

As the jurisprudence developed, the difficulty of balancing accountability goals with due process rights and international standards of criminal intent became clearer. OSI had a major early victory in their case against a man named Feodor Fedorenko. Fedorenko had misrepresented his role in the Holocaust, but the government had to prove that this misrepresentation contributed to the unlawful procurement of immigration benefits. Federenko did not disclose his role as a guard at a Nazi concentration camp. However, he had worked in this role as a Prisoner of War after being captured by the Nazis when his Russian unit lost a battle. Because he arguably worked in the camp against his will, the government initially lost their case against him, failing to convince the lower court judge that he had met the threshold for de-naturalization based on his previous actions. However, the government appealed to the Supreme Court where OSI won.

This case was significant because it created a new standard for willful misrepresentation of material fact: if someone participated in human rights abuses abroad, regardless of why or how, they could be eligible for exclusion or removal if they did not properly disclose that information. Immigration law, thus, could help ensure accountability, even if the person was forced to commit human rights abuses.[24] Fedorenko was later deported to the Soviet Union where he was tried for deserting the Soviet Army and sentenced to death at the age of eighty.[25] By finding a material misrepresentation regardless of intent for the original human rights violation, the standard for denaturalization in the US drifted away from intent standards set out to determine perpetrator guilt in international criminal law.

For the first several years of OSI, it stood alone as a unique office in the world, the only governmental outpost of the norm of No Safe Haven. However, the US agency eventually became a model for other countries with similar policy goals. By 1985, Canada followed suit and began a program of its own, designed with the goals of accountability and redress in mind. The Canadian Parliament established a Commission of Inquiry on War Criminals, headed by retired Quebec Superior Court Judge Jules Deschenes in order to investigate former Nazis now living in Canada. The work of the commission was more controversial than it had been in the United States, due to concerns that Canada's Jewish community was being pitted against its eastern European and Baltic communities.[26] The Commission investigated 774 names, but the final report (filed in 1986) found that accusations had been exaggerated. Many of the accused had not actually ended up in Canada, and some had already died. The Commission ultimately found some evidence of war crimes in twenty cases.[27]

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24. Fedorenko v. United States, 449 U.S. 490 (1981).
25. William Eaton, *Soviets Execute Ex-Nazi Guard Deported by U.S.*, L.A. Times (28 July 1987).
26. Parliamentary Research Branch, War Criminals: The Deschenes Commission 4 (1998).
27. *Id.* at 6.

Despite the government's commitment to the idea of No Safe Haven, Canada soon found that implementing a policy to redress violence from the Holocaust was difficult. The newly established Canadian war crimes unit brought its first charges based on the Deschenes report in November of 1987, but by 1992 they had failed to get prosecutions in the three cases they had tried.[28] In 1992, B'nai Brith of Canada issued their own report, highly critical of the government, saying it lacked the commitment to try war criminals. The war crimes unit defended itself, pointing to the challenge of conducting overseas investigations of forty-five-year-old crimes.

In contrast to the OSI's major victory in the Fedorenko case, the first person prosecuted in Canada was acquitted, and the acquittal was upheld by the Supreme Court of Canada in 1994. The questions were largely similar. Imre Finta had been a police officer in Hungary who was accused of assisting the Nazis, but the Supreme Court of Canada found that "the defense of obedience to superior orders and the peace-officer defense will be available in those circumstance[s] where the accused had no moral choice as to whether to follow the order."[29] After dragging on for seven years, the Finta case set a precedent making it even harder to prosecute other similar cases, a major setback for the Canadian unit.

Both of these early efforts, largely geared towards former Nazis who had emigrated to the West, revealed that determining accountability for mass violence is politically and legally challenging. Pursuing either criminal or civil charges against alleged perpetrators can bump up against human rights related to due process and freedom of movement. By the mid-1990s in both the United States and Canada, enthusiasm for the project of No Safe Haven had wound down. The difficulties of implementation were evident, and the Second World War receded into history. The OSI had also come under criticism after an expose that revealed some of its targets had been actively and knowingly admitted to the United States, either because they were intelligence assets in the Cold War, or because they had skills in aerospace engineering.[30] Critics questioned whether it was just for the US government to target and remove elderly people who had been recruited and welcomed years earlier, even if they had been associated with atrocities before they came. This history of the origins of No Safe Haven underscores the point that domestic criminal justice institutions designed to implement the policy struggled to balance competing human rights values related to accountability and freedom of movement from the earliest days. Soon, however, international institutions would emerge and provide more tools for realizing the goal of No Safe Haven.

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28. *Id.* at 4.
29. *Id.* at 6.
30. Feigin, *supra* note 18.

## IV. REINVIGORATION AND NEW INSTITUTIONS FOR ACCOUNTABILITY

In the mid 1990s, just as the work of the American and Canadian agencies seemed to be coming to an end, conflicts in the Balkans and Rwanda unfolded. These conflicts gave refugee-receiving states a brand-new motivation, as well as legal tools, for investing in the No Safe Haven policy. As international tribunals were created to investigate atrocities, immigration policymakers in host states became increasingly concerned that perpetrators of human rights abuses and even war criminals were fleeing their countries and seeking refugee protection alongside their victims. The contemporaneous nature of these refugee arrivals facilitated a security framework that would be further harnessed less than a decade later: identifying perpetrators was not just a matter of justice, it was a matter of safety.

As security concerns became coupled with accountability, immigration prevention was added to the previous work of investigation and deportation. Both Canada and the United States shifted gears and changed both the direction and energy of their work. In 1998, US President Clinton signed Executive Order 13107 calling for more deliberate implementation of human rights treaties, requiring agencies to enforce human rights issues that came under their jurisdiction.[31] The Department of Justice created a Domestic Security Section (DSS) to work alongside the OSI on prosecuting the modern cases, but this work was fairly small-scale because the majority of the cases did not result in criminal charges. Rather, the INS pursued these cases administratively, investigating people for omitting information about their involvement in human rights violations on their immigration paperwork. The FBI also created a Genocide War Crimes Unit (GWCU) in order to investigate people living in the United States who may have violated any of the applicable US laws regarding war crimes. As these separate agencies worked to enforce the idea of No Safe Haven, it became part of domestic criminal and civil law institutions.

Other countries developed similar regimes. Also in 1998, the Canadian Crimes Against Humanity and War Crimes Program was created to replace the previous iteration. The new program shifted focus away from Nazis and criminal prosecution to work with the Immigration Minister on denaturalization.[32] This growing regime dedicated to accountability through immigration prevention spread to Europe. In 1997, the Netherlands created a 1F/International Crimes Directorate within the Asylum and Protection Division of the Immigration and Naturalization Service. It specifically focused on trying to identify potential human rights violators and war criminals amongst the people applying for refugee protection in the Netherlands.

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31. Executive Order No. 13107 (10 Dec. 1998), https://fas.org/irp/offdocs/eo13107.htm.
32. Parliamentary Research Branch, *supra* note 26, at 11.

As states began implementing policies to enforce the idea that perpetrators should not be allowed to resettle, UNHCR began to issue soft law guidance on how receiving states should interpret the exclusion clauses of the Refugee Convention. UNHCR issued its first major guidelines on the interpretation of the exclusion clauses in 1997, and has released several updates and expansions on these guidelines since. UNHCR's general position has been that the "exclusion clauses help to preserve the integrity of the asylum concept" because if the Refugee Convention were used to protect people who had committed heinous acts, it would undermine state support for refugee protection.[33] However, UNHCR has also emphasized consistently that exclusion should be "an extreme measure," since it often applies to people who are otherwise eligible for refugee protection.[34] UNHCR has argued that exclusion based on Article 1F should not automatically lead to deportation, since a person who is ineligible for refugee protection could be vulnerable to torture if returned to the home country, and therefore may qualify for other forms of relief from deportation.

Beyond urging states to take a balanced approach to the exclusion clause, UNHCR provided receiving states with extensive interpretive guidance that draws heavily on the work of the international criminal tribunals, combining the legal regimes of international criminal law and refugee protection.[35] The International Criminal Court (ICC) in The Hague, criminal tribunals for both the former Yugoslavia and Rwanda, and several other bodies all worked together to create a specific and cohesive jurisprudence that defines the various international crimes and outlines standards for culpability.[36] Rikhof concluded that the "scope of Article 1F(a) has been expanded as a result of the fact that jurisprudence of the two international tribunals … provided more clarity regarding the concept of war crimes."[37] In fact, UNHCR's most recent guidelines state that Article 1F should be interpreted in accordance with the Rome Statute on the ICC, the founding statutes of the two international criminal tribunals, the Geneva Conventions, and the Genocide Convention.[38]

By the late 1990s, an international policy regime was established, one that consisted of international laws and institutions geared towards preventing perpetrators of human rights abuses from gaining immigration benefits. In addition to new judicial bodies that created jurisprudential guidance,

33. UNHCR Standing Committee, *Note on the Exclusion Clauses* (1997).
34. *Id.*
35. Bond, *supra* note 3; Joseph Rikhof, The Criminal Refugee: The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law 372 (2012).
36. Gary Jonathan Bass, Stay the Hand of Vengeance: The Politics of War Crimes Tribunals (2001), Drumbl, *supra* note 14.
37. Rikhof, *supra* note 35.
38. UNHCR, Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees, U.N. Doc. HCR/GIP/03/05 (2003).

international collaboration also gained momentum in the field of transnational policing. Beginning in the mid-1990s the International Criminal Police Organization (INTERPOL) pledged to support the newly created international criminal tribunals with its investigative capacity. It began to host regular conferences bringing together investigators from immigration destination states around the world. It has also hosted trainings for investigators to learn about best practices in collecting evidence and interviewing witnesses in situations of mass atrocity and violence.[39]

By the turn of the twenty-first century, the international policy regime was focused on preventing perpetrators from entering host countries. The goals of violence redress and prevention had been blended and conflated but had not yet been linked to terrorism. In the process, as concerns about accountability and security became elevated, rights to due process and freedom of movement became further restricted.

As in many arenas, the events of 11 September 2001, were a key turning point in the development of the international politics of No Safe Haven. Even though policymakers in all three countries included in this study insist that terrorism is a separate issue, the dominance of anti-terrorist security concerns within their immigration bureaucracies clearly influenced the implementation of the No Safe Haven policy today. As the issue of terrorism rose to global prominence, a terrorist/war criminal nexus developed, enabled by the fact that terrorism has no agreed-upon definition in international law. As the next section illustrates, No Safe Haven policies, once designed to prevent perpetrators from receiving immigration benefits, now became part of a political imperative to prevent terrorist attacks. In the US in particular, No Safe Haven has become a homeland security tool and a vehicle for exclusionary immigration politics. Its participation in a global enforcement network makes the US appear to be invested in international human rights, providing some cover for its human rights abuses in the war on terror. Conversely, states like Canada and the Netherlands, which have better international human rights reputations, end up participating in and enabling extreme vetting of potential refugees through the proliferation of regime complex objectives.

## V. FROM NO SAFE HAVEN TO NOT IN MY BACKYARD: DOMESTIC POLICY REGIMES

This section looks more closely at how the politics of No Safe Haven has shifted into a NIMBY politics in the US, the Netherlands, and Canada since the turn of the Twenty-First Century. Each case illustrates the growing protec-

39. *See* INTERPOL, War Crimes, https://www.interpol.int/Crimes/War-crimes.

tionism of the Global North and how the goals of accountability, security, due process, and freedom of movement continue to conflict. Yet, each host states implements the policy differently, balancing particular domestic political and legal opportunities and constraints.

## A. THE UNITED STATES: THE CONTRADICTORY COLLABORATIVE

Not in my backyard (NIMBY) immigration politics have firmly taken hold in the United States, bringing together a coalition of strange bedfellows in the process. Because the No Safe Haven policy is simultaneously viewed by some as a symbol of America's commitment to international human rights and by others as a sign of its commitment to tougher immigration enforcement, it has proved palatable across the political spectrum and has expanded steadily across multiple different presidential administrations. The Human Rights Violators and War Crimes Unit Chief articulated the belief that while the Department of Homeland Security (DHS) has its vocal detractors regarding the agency's general approach to immigration "regardless of your politics, no one likes war criminals."[40] Partisan divides over immigration policy, leading to the longest government shutdown in US history in late 2018 and early 2019, have not affected this broad-based support for both excluding and deporting suspected human rights violators.

DHS was created after the 9/11 Commission Report found that the US failed to identify the terrorist threat because turf battles had impeded the sharing of intelligence information across agencies. In 2001 and 2002, the Commission led efforts to consolidate the twenty-two previously disparate agencies and bureaus responsible for disaster preparedness, prevention, and response into one cabinet agency.[41] The overarching structural goals of coordination and consolidation consequently influenced the Commission's additional recommendations that DHS take responsibility for designing and implementing a a comprehensive biometric entry-exit screening.[42]

As part of the new anti-terror agenda, No Safe Haven morphed into a policy regime aligned with other efforts to use immigration law for violence prevention. In 2009, DHS Director John Morton created the Human Rights Violators and War Crimes Center as a vehicle for coordinating an "all-of-government" approach to investigating war criminals, and the budget allocation for this work was increased significantly. The Center did not replace the OSI, which still worked out of the Department of Justice, but it became the new focal point of the No Safe Haven policy in the United States. Further, in

40. Author interview (13 June 2017).
41. Thomas Kean & Lee H. Hamilton, The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States (2004).
42. *Id.*

the years following September 11, 2001, Congress expanded the jurisdiction to charge people for various international crimes, via the Anti-Atrocity Alien Deportation Act of 2004, Genocide Accountability Act 2007, Child Soldiers Accountability Act 2008, and the Trafficking in Persons Accountability Act of 2008. Though few individuals have been criminally charged under these statutes, they provided a framework for new immigration policies designed to ensure that no one who could be charged under these laws would ever make it to the US and those who did make it could be removed.

The contemporary United States approach to No Safe Haven is large in scale. In addition to a rigorous screening process for people who are applying for asylum domestically and for refugee status abroad, the United States has an extensive network of investigators and prosecutors who work to find, charge, and remove people who have committed human right violations prior to their arrival in the country. While there have been some concerted efforts at centralization through the Unit based in Washington DC, investigations and prosecutions are decentralized. The result is that outcomes are variable by regional offices and by the tools employed in each case.

The biggest barrier to the goals of the US No Safe Haven regime has been statutory, leading to an implementation strategy focused on charging suspected violators with immigration fraud instead of the human rights violation itself. Unlike Canada and the Netherlands, the United States is not a signatory to the Rome Statute, the major instrument of international criminal law. Instead, the US has incorporated some elements of this regime into its domestic statutes in an ad hoc way. Domestic criminal statutes have not always covered the behaviors that the No Safe Haven policy seeks to redress, and this issue combined with statute of limitation problems and evidentiary challenges has meant that the majority of cases have not resulted in criminal charges. While there have been several highly publicized criminal cases of individuals accused of human rights abuses, these have focused on immigration fraud for not disclosing membership in military organizations or other wartime activities when applying for refugee status. The success rates of these cases are uneven, as it can be difficult to meet the criminal law standard of guilt beyond a reasonable doubt.[43]

In response to the challenge of criminally prosecuting suspected human rights violators, many cases are now pursued administratively within DHS, as the burden of proof, due process rights, and evidentiary standards are lower. Even though the vast majority of cases are either handled administratively or through criminal immigration fraud prosecutions, the motivating rhetoric of the United States No Safe Haven policy is still very much focused on accountability, creating a tension between the goals of accountability and due process. As a former HRVWCU Chief put it in an interview: "These are

43. Rowen & Hamlin, *supra* note 6.

genocidaires. They are bad people. They need to be held accountable for what they did. And the U.S. cannot become a safe haven for people like that."[44] Not only did policymakers not express concern about deporting people who had been living without incident in the United States for some time, including naturalized citizens, they saw it as "a moral imperative."[45] As the current Unit Chief put it: "Removal is our ultimate goal" for people who have been discovered in the United States.[46] Even if criminal fraud prosecutions fail, those vindicated for criminal liability are often put into administrative hearings with a lower burden of proof and fewer due process protections.

At the same time, the HRVWCU explicitly combines the investigations side with the prevention side. The Unit is extensively engaged in screening people overseas who are seeking a visa to come to the United States, blending the two goals of violence prevention and violence redress. Thus, NIMBY politics in the US can serve both goals of security and accountability but also risk undermining freedom of movement and due process rights for immigrants who may be rejected from entering without recourse or have fewer opportunities to defend themselves in removal hearings.

### B. The Netherlands: Enforcement Paradox

More than any other country, the Netherlands has a stellar global reputation for its No Safe Haven policy. A 2014 Human Rights Watch report concluded that the Netherlands has the "most robust and well-resourced units in the world" and the author of a major comparative study of how criminal asylum seekers are treated stated that "the Netherlands are the best at this in the world."[47] Similarly, the head of the American HRVWCU offered that "the Dutch have a really great equivalent unit."[48]

Perhaps paradoxically, then, the Netherlands has the most NIMBY approach to No Safe Haven of the three countries in this study. The overwhelming focus of the No Safe Haven work in the Netherlands is on violence prevention through exclusion, with very little energy dedicated to accountability. This prioritization may stem in part from the institutional history of the Dutch unit. Unlike the US and Canadian counterparts, which have their roots in Nazi-hunting, the Dutch No Safe Haven policy was developed in the 1990s alongside the international criminal laws and institutions of that era. It is almost totally focused on using article 1F of the Refugee Convention to screen people for excludability before moving asylum applications on to

44. Author interview (30 June 2017).
45. Author interview (12 July 2017).
46. Author interview (13 June 2017).
47. Human Rights Watch, *supra* note 17, at 32; Author interview (25 June 2018).
48. Author interview (13 June 2017).

the next step. The 1F unit currently has three investigators focused solely on doing pre-investigatory evidence collection on Syria. The unit estimates that it has excluded 1000 individuals from refugee status since its work began in 1997. The Public Prosecution Service is institutionally separate and very small, with only two prosecutors working on all international crimes. In total, only five people have ever been prosecuted under criminal statutes. This number is particularly notable because the Netherlands has universal jurisdiction under the International Crimes Act of 2003 and has been the home of the International Criminal Court since 2002. Though the Netherlands would appear poised to focus on accountability, the security-focused implementing institutions have proven to be more effective.

The exclusion process uses the much lower standard of proof outlined in article 1F of the Refugee Convention: a "serious reason for considering" the person has committed an excludable offense. Thus, many, many people are excludable from refugee status, but not criminally prosecutable or deportable.[49] In these ways, the lower standards for immigration decisions facilitate restrictions on freedom of movement. A further barrier is a lack of political support for violence redress through removal. Dutch policymakers, including prosecutors, expressed serious ethical concerns about targeting people who have been in the Netherlands for a long time, and especially those who have naturalized to Dutch citizenship.

Another complicating factor in the Netherlands is that the Dutch legal system places international law, particularly the Universal Declaration of Human Rights (UDHR) and the European Convention of Human Rights (ECHR), above domestic law. Article 3 of the ECHR can prevent deportations of people who are found to be excludable by the 1F Unit. Thus, there is a clear distinction between exclusion and removal, such that exclusion does not always mean physical exclusion. A sizeable number of people who have been excluded from refugee status but who are not deportable, and who remain in the Netherlands with no access to social services or jobs. This group, known as "1F'ers," is mostly Afghani, but includes a growing number of Syrians. The situation has generated a fair amount of media attention and public sympathy, since it is difficult to live as an undocumented person in a society with a rich social safety net that relies on legal status, and the people who fall into this category are often male heads of families who are prohibited from working.

Perhaps because it is difficult to remove individuals once they have immigrated, the Netherlands works tirelessly to improve their exclusion processes. For example, in 2016 it helped found the EU Exclusion Network, which meets every six months to exchange information and best practices among the relevant agencies in each EU member state. The network serves

49. Bolhuis & Van Wijk, *supra* note 3.

as an onboarding process for countries in Europe that are new to this work, especially Eastern European countries, which are becoming more popular asylum destinations. It is in the Netherlands' interests to encourage such a network because if people gain access to the EU via a country that is not conducting careful exclusion procedures, they can find safe haven in Europe through the weakest links in the exclusion chain.

The NIMBY politics of the Netherlands illustrate how a security focus can undermine other human rights. It is for this reason that the ECJ found in 2018 that Dutch exclusion policies may violate individual rights to freedom of movement. The Dutch enforcement paradox means that it takes a broad and systematic approach to restrict access to refugee status, perhaps even to individuals with valid refugee claims. Yet, it is nowhere near as moralistic and aggressive about removing excludable people as the United States, and the legal restrictions from the European courts mean that it may be further constrained in pursuing this strategy a strategy predicated on accountability. Given these bureaucratic and legal dynamics, security takes precedence over accountability in the Netherland's NIMBY politics.

### C. Canada: The Aspirational Approach

The Canadian case is a complex hybrid of the disparate American and Dutch regimes. Although Canada has a reputation for relative generosity to refugees and asylum seekers,[50] NIMBY politics have also taken hold in Canada's implementation of No Safe Haven. Like in the Netherlands, the Canadian system is based directly on international legal standards from the Refugee Convention and the Rome Statute, which are both incorporated into domestic law. Unlike in the United States, where local immigration offices determine enforcement approaches, the Canadian system is highly centralized and more predictable. It relies on two major Supreme Court of Canada decisions from the past fifteen years which clarifed the standards to be used in exclusion cases.[51]

By default, the Canadian regime often looks a lot like the Dutch regime, because it relies on exclusion over prosecution. But, unlike in the Netherlands, this outcome is not the one desired by policymakers. Rather, their hope is to keep the robust exclusion work and greatly expand criminal prosecutions, what they see as the gold standard of accountability. Canada has only done a handful of criminal prosecutions of modern war crimes, in part because Canada's War Crimes Unit has a $15.6 million budget, which

50. Irene Bloemraad, Becoming a Citizen: Incorporating Immigrants and Refugees in the United States and Canada (2006); Hamlin, *supra* note 10.
51. Mugesera v. Canada, 2 S.C.R. 100, 2005 SCC 40 (2005); Ezokola v. Canada, SCC 40, 2 S.C.R. 678 (2013).

has not increased since 1998. According to Unit insiders, the dire financial situation is because resources have been diverted to terrorism work since 9/11. Their goals of accountability, thus, have been subsumed by the country's emphasis on security.

Canada's approach to No Safe Haven continues to shift, as do the goals of security and accountability within its policy regime. Among advocates, there is a widespread perception that focus has shifted towards broader exclusion. As one immigration advocate put it: "the government thinks that keeping the refugee and criminal regimes separate just limits the tools they have to keep people out, bad people in their view."[52] A victims' rights advocate reported a similar concern, saying: "As much as we want justice, we also don't want to sacrifice due process protections for immigrants, so we are cautious about the moves the government wants to make to have this process be more 'efficient.'"[53]

These advocates are well aware of the converging and conflicting human rights concerns, and their role in making sure that vulnerable people who need protection do not get caught in a broad NIMBY net. Their perspective underscores how No Safe Haven has converged with NIMBY politics, how an exclusion-oriented approach contrasts with Canada's reputation as a welcoming state, and how the global politics related to the War on Terror are finding their way into new policy areas.

## VI. NO SAFE HAVEN AND THE FUTURE OF HUMAN RIGHTS

While the specific dilemmas are different in each country case, taken together, the case studies illustrate the contradictory and paradoxical effects of shifting policy goals as domestic and global immigration politics change over time. Understanding No Safe Haven as both a domestic and international policy regime helps illustrate why this fragmentation is occurring. Geopolitics shifted a policy regime once aimed at violence redress towards a focus on violence prevention. In the process, inherent tensions have arisen between the rights-based goals of accountability, security, due process, and freedom of movement. These varied goals and varied legal regimes—domestic, international, criminal, immigration—mean that the implementation of the No Safe Haven norm has facilitated the creation of a policy regime complex that continues to expand and transform.

Against the backdrop of the War on Terror, the international network dedicated to No Safe Haven widened its focus and increased its collaboration. The Genocide Network now meets twice a year in The Hague, and

52. Author interview (27 June 2018).
53. Author interview (27 June 2018).

its main goals are to get each state to create a designated unit devoted to No Safe Haven work, and to ensure as much uniformity in approach across countries as possible. According to a Dutch prosecutor: "When we meet, we present on the cases we are working on, we share information on our successes and failures, and we share jurisprudence because so much of this is based on the Rome Statute, we have a lot of jurisprudence in common. The legal framework is international."[54] Further, as a Canadian official put it: "In terms of international collaboration, information sharing is essential, because we are all investigating the same events. We're all interested in the same massacre, and we step on each other's toes. Without coordination, we can't hope to do criminal prosecutions."[55] Although the immediate goal is immigration regulation, the states still contemplate using their information to prosecute perpetrators, underscoring their commitment to accountability.

Because the No Safe Haven policy regime is enforced by institutions that require legal evidence, technological developments provide new avenues for tracking people's activities prior to migrating. As a result, states are becoming more effective at exclusion, and may have more tools for removals and prosecutions should individuals get past the initial barriers to entry. The result is that a policy once geared towards accountability has become much stronger because of its convergence with security, but this strength means that rights to freedom of movement and due process are more vulnerable.

In comparison to previous conflicts in which scant paper records were often destroyed or lost, current conflicts are being documented in real-time in great detail. These rapid technological developments are already making the international politics of No Safe Haven more complicated. Some documentation is being formally collected, such as the December 2016 move by the United Nations General Assembly to create the International, Impartial, and Independent Mechanism (IIIM), a clearinghouse of information and evidence of international crimes being committed in the ongoing war in Syria.[56] Similarly, the Syrian Accountability Project is tracking events as they unfold.[57] However, much of the electronic documentation is highly informal, via the social media accounts of individuals who upload pictures and videos on the ground. As a Dutch policymaker put it: "People post pictures of themselves in uniform, with guns, doing things, they post it because they are proud. They don't think it is a crime. With terrorist organizations, they think of it as a fundraiser."[58]

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54. Author interview (25 May 2018).
55. Author interview (26 June 2018).
56. United Nations, International, Impartial and Independent Mechanism: Mandate (2016), https://iiim.un.org/mandate/.
57. Syracuse University School of Law, *The Syrian Accountability Project* (2019), http://syrianaccountabilityproject.syr.edu/.
58. Author interview (22 May 2018).

The availability of social media data may create additional barriers for those seeking to ensure that their immigration claims are treated fairly. At the same time, it is a boon for those concerned about security. Policymakers are excited about getting access to this potentially incriminating data, but it is a new frontier for the institutions tasked with enforcing immigration policy. A Dutch policymaker reported:

> It is very likely that there are Syrians who we have admitted and given asylum to that we will learn later are excludable. We have a lot of 'Facebook cases' right now, where there is some suspicious information, but it's not enough to meet the threshold. We would like to improve our technological innovation.[59]

As a Canadian policymaker described it:

> We do look at social media and online sources. It can be a great tool and a new form of evidence, but there are evidentiary issues too. I look at it like, it's a great start, but it's like Wikipedia. You wouldn't want a student paper that only cited Wikipedia. You can get information from there, and then follow the links.[60]

A US policymaker concurred with these assessments about the potential and the risks of using this data:

> We are working a lot on developing better technology. We are using social media a lot and saving tons of images of people, and working on improving our facial recognition. We are keeping images in case our facial recognition gets better.[61]

As the spread of social media widens the net cast by those enforcing No Safe Haven, youth bravado during war-time may come back to haunt individuals seeking asylum.

The availability of information, coupled with ongoing concerns about terrorism, has heightened the political salience of No Safe Haven work. It also brought new institutional partners into the enforcement landscape. For example, in 2014, INTERPOL created a designated War Crimes and Genocide Sub-directorate specifically tasked with finding fugitives that are wanted by various states and tribunals for international crimes. The Genocide Network meetings in The Hague have begun to include Google, Facebook, and YouTube, with the goal of bringing these enormous corporations into the fold of transnational criminal investigation. Governments are trying to convince these companies to work more closely with them, and not to necessarily delete disturbing material that gets posted online. As a Dutch policymaker put it: "Right now we are in a debate with Facebook, Google, YouTube, because they delete stuff and then it's gone. And I understand, they don't want that stuff out there, but we need it as evidence."[62]

59. Author interview (23 May 2018).
60. Author interview (26 June 2018).
61. Author interview (13 June 2017).
62. Author interview (25 May 2018).

Concerns about the privacy and other human rights implications of online surveillance and facial recognition, particularly the substantial disparity in accuracy of identifying darker-skinned people, seem to have little salience among those enforcing No Safe Haven policies.[63] Rather, the logic leading to support for facial recognition as a security tool is now imagining it as an accountability tool. As a Canadian policymaker explained, big technology corporations:

> [A]re developing a pro bono side to think about how to do information gathering, and creating internal procedures on how to deal with international criminal content. They want to figure out how to deal with investigatory bodies. So, they are working on developing those guidelines with government. . . . We are only just starting to see it, as states. We have been using traditional investigatory methods and these companies are way ahead of us. . . .This is a cold case world, and we worry that just like in the past with other atrocities, this stuff will just disappear if we don't work with these companies to keep it.[64]

At this point, there are few concerns about due process as these technologies expand. Given the political will to exclude undesirable immigrants, US groups tasked with identifying, finding, and removing suspected human rights violators do not face the same challenges as those trying to implement other aspects of international human rights law. As a former Human Rights Violators and War Crimes Unit Chief in the United States explained, the problem with this work is not finding the political commitment. Instead, he argued, "the biggest weakness is the intelligence gap. We can't always get the evidence and information that we want and need."[65] Multiple different institutional actors are hoping to draw on the same information to identify, exclude, and deport suspected human rights violators with the goal of prosecuting them in some forum in the future. In this way, advocates who are deeply committed to accountability for mass atrocity serve an international policy regime that draws strength from the belief (and the political strategy of suggesting) that preventing immigration will prevent violence. In this way, security and international criminal law regimes reinforce one another.

## VII. CONCLUSIONS

The contemporary politics of No Safe Haven reveal how a policy regime can shift as new institutions, interests, and technological tools develop. The above analysis underscores the ways in which the apparatuses of international

63. Joy Buolamwini, & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 Proceedings of Machine Learning Research 1 (2018).
64. Author interview (25 June 2018).
65. Author interview (30 June 2017).

human rights law are malleable and vulnerable to co-option by domestic security concerns and exclusionary immigration politics. Given the nature of mass atrocity, it is often difficult to draw a clear distinction between the victim and perpetrator of political violence. What happens to victims of violence who might get excluded from protection in the Global North because they got caught in an overly broad net that associates them with criminal acts? And what happens to victims who remain in their home country, and who get re-exposed when persecutors get returned to the scene of the crime? The contemporary politics of 'Not in My Backyard' show little concern for these eventualities, which undermine the goals of accountability and can contribute to security problems at home and abroad.

This policy landscape is further complicated by new technologies that strengthen the regime and create new dilemmas in enforcement. With new tools to identify people in their countries of origin, the No Safe Haven policy implementation will shift in ways that enhance the vulnerability of political dissidents and the victims of mass violence. The war in Syria is in many ways the first online war, and the work of identifying war criminals and human rights violators has been complicated by the dominance of social media and the seemingly endless amount of data being produced. Policymakers see these developments as exciting because they provide better access to information than ever before, but they carry some risks that will be have to be assessed.

These empirical and normative questions require further attention. As the No Safe Haven policy regime complex coheres under a security logic, it may undermine the original goal and morph into a NIMBY politics with entirely different priorities. In that evolution, rights to due process and freedom of movement may be further compromised. Despite the importance of making sure that perpetrators of mass violence do not receive immigration benefits based on fraud, the No Safe Haven policy regime may fragment as those concerned about due process and freedom of movement challenge laws that exclude or remove individuals who are themselves victims, trying to rebuild their lives in a new country. Human rights scholars and practitioners must remain vigilant in making sure that this seemingly successful policy regime does not become another device of surveillance and exclusion.