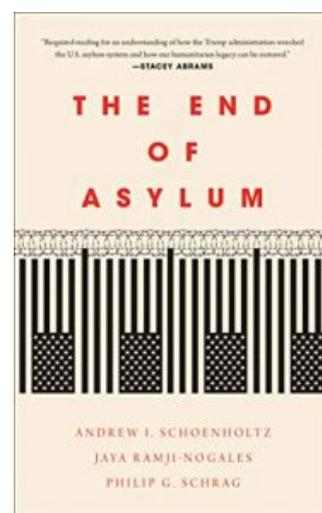


# Book Review: The End of Asylum by Andrew I. Schoenholtz, Jaya Ramji-Nogales and Philip G. Schrag

*In The End of Asylum, Andrew I. Schoenholtz, Jaya Ramji-Nogales and Philip G. Schrag offer a new study of the laws, policies and regulations adopted by the Donald Trump administration to severely restrict, if not outright remove, access to asylum. While questioning the book's positioning of Trump's treatment of asylum as an anomaly in US political history, Rémy-Paulin Twahirwa finds this accessible book a useful guide to the 'legal wall' built under Trump and an invaluable resource for all those looking for an overview of the Trump administration's immigration-related regulations, laws and policies.*

**The End of Asylum. Andrew I. Schoenholtz, Jaya Ramji-Nogales and Philip G. Schrag. Georgetown University Press. 2021.**

If there is one theme that has marked the passage of financial tycoon Donald J. Trump, there is no doubt that it is immigration. Promising his electoral base to protect them from 'drug dealers, criminals, rapists' crossing the US-Mexico border illegally by building a wall, Trump's presidency has been distinguished from other administrations by the harshness and cruelty of his treatment of asylum seekers, including [images of children separated from their parents and placed in cages](#). In addition to a physical wall, the Trump administration has also built a legal wall to limit access to asylum for thousands of people on the move from the southern part of the world. This 'legal' wall is at the centre of [The End of Asylum](#), a new 213-page book by legal scholars Andrew I. Schoenholtz, Jaya Ramji-Nogales and Philip G. Schrag.



Essentially, Schoenholtz et al's book is a study of the laws, policies and regulations adopted by the Trump administration to completely reform, if not to terminate, the asylum system born out of the Refugee Act of 1980. Specifically, the authors argue that Trump's team attempted to destroy the asylum system by making it almost impossible for migrants to apply for asylum in the US (2-3). The first chapters explore the beginning of the asylum system in the US and several decisions made under the presidencies of Ronald Reagan, Bill Clinton, George W. Bush and Barack Obama to build what the authors call a 'functional' asylum system. However, the three legal scholars focus mostly on the Trump era by collecting and analysing different materials published during that period (including policies, laws, regulations, newspaper articles, court case decisions, reports and more).

## The Rise and Fall of Asylum in the US

Schoenholtz et al start by giving an overview of the 'rise' of the asylum system in the US with the Refugee Act of 1980, which is described by the authors as a response to the Holocaust (Chapter One). After looking at different key moments in the drafting and implementation of this piece of legislation (the UN Refugee Convention of 1951 and the arrivals in the US of Vietnamese, Salvadorian and Guatemalan asylum seekers in the early 1980s), Schoenholtz et al examine the conservative era of Reagan and Bush. During the Reagan administration, with the arrival of thousands of migrants from Guatemala and El Salvador – where the US supported authoritarian regimes – the concept of 'economic migrants' was introduced into US politics to describe and invalidate the claims of some asylum seekers (12).

Among the major transformations during the Reagan and Bush era was the bureaucratisation of the Immigration Naturalization Service (INS) in the 1990s, notably with the creation of the Asylum Office and the training and hiring of asylum officers. This professionalisation depoliticised the implementation of asylum by making it a more 'neutral' (that is, administrative) process rather than a political one (13). By the time Clinton and Obama enter office, a functional and independent asylum system was in place. In fact, contrary to the Cold War era where asylum was mainly granted to the ideological allies of the US, the post-1980s asylum system was developed to identify and grant asylum to people who meet the 'well-founded fear' of persecution standard (12).

From Chapter Three, the authors' argument becomes stronger. In 2016, when Trump officially ran as the Republican candidate in the presidential election, the businessman made immigration his focus, promising to protect America from '[rapists](#)' and '[criminals](#)' illegally crossing the US-Mexican border. The Trump administration's subsequent attacks on the US asylum system focused on three aspects: substantive asylum law; asylum adjudication process; and the asylum process itself (31-32). In the first case, Schoenholtz et al discuss the implications of restrictions adopted by Attorney Generals Jeff Sessions and William Barr in the first years of the Trump administration. For instance, in June 2018, Sessions delivered a decision which limited access to asylum for victims of domestic violence and gang violence (33).

In addition to administrative obstacles which make it harder for applicants to successfully claim asylum (such as application fees, employment restrictions and new application rules), the Trump administration would also control the work of immigration judges by evaluating their performance and limiting the time granted to oral testimony (39-40). Additionally, the Trump administration chose to hire more immigration judges and Board of Immigration Appeal (BIA) members who would be more likely to reject an asylum claim.

Finally, among the drastic changes made under the 45th US President, the authors highlight the multiple regulations and decisions made to strengthen control at [the southern border of the US](#). For example, by speeding up case processing and deportation of applicants, it was then more difficult for the latter to get professional legal guidance to make their application (48). Also, during the screening process, the applicant had less time to provide evidence for a 'credible fear of persecution' to support their claim, which made it more likely to be rejected. In this process, it is important to note the increasing role of Border Patrol officers in the interviews of applicants where, in the past, it was mainly officers highly trained in asylum policies and laws that would oversee interviews (51).

Another obstacle put in place by the Trump administration concerns treaties with neighbouring countries to limit the entry of asylum seekers into the US (for example, the Migrant Protection Protocols with Mexico which force 10,000 migrants to wait in Mexico for their immigration hearings) (62). Finally, the Trump administration would go so far as to specifically ban applications from South American migrants (first in [November 2018](#) and then in [July 2019](#)) (66).

The penultimate chapter focuses on the 'end of asylum' announced by the Omnibus Asylum Rule of June 2020 (Chapter Five). In fact, after the 2020 electoral defeat, the Trump administration would design, modify and/or deploy various legal and administrative instruments to '*eviscerate* a system that the previous five Republican and Democratic administrations had all implemented under the refugee law' (87, emphasis added). This chapter is particularly important for the reader as it touches on the main argument made by the authors. They suggest that the Trump administration is somehow different to other presidencies in the repeated, targeted and frontal attacks on the US asylum system.

The Omnibus Asylum Rule is portrayed as the most important and devastating of these assaults. Among the proposed changes, the authors note the end of gender-based analysis of applications, particularly in relation to domestic violence (90-92). Similarly, the new regulation does not allow for a death threat to be taken as a legitimate reason; the applicant must survive such a threat before being able to apply in the US (92). The authors highlight how the Trump administration would introduce various pitfalls into the asylum system, particularly in the application form where the applicant would be more likely to make a mistake that would ultimately result in the application being rejected (98-99).

Schoenholtz et al conclude with a list of recommendations for the new presidency (Chapter Six), including reversing decisions made by the Trump team through new regulations and policies, as well as resolving legal disputes that began under the previous administration. Indeed, throughout the book, the authors mention that many of the decisions made by the Trump administration have been challenged in court. This is vital because, despite all the attempts made by President Trump and his team, their policies still had more or less limited effects in the long term, particularly because they were challenged either by civil society organisations or by the federal states.

### **Looking the Empire in the Eyes**

Despite their meticulous work at highlighting the Trump administration's multiple legal attacks on the US asylum system, the authors seem to have failed to look the US empire in the eyes. In fact, in my opinion, *The End of Asylum* does not provide a critical understanding of either the society, the history nor the global context that has sown the seeds of the Trump administration's anti-asylum measures.

First, although the title suggests a global analysis (why not name the book 'The End of Asylum *in the US*', for instance?), by framing their analysis strictly in the US context, they deny readers a global understanding of the so-called end of asylum. [Alison Mountz](#), for instance, has made such a contribution by examining 'the death of asylum', not only in the US, but around the world. Indeed, the UK, Canada, Australia and other EU countries have adopted measures to create 'hostile environments' for migrants, notably through the use of islands to detain and deport asylum seekers. Of course, the Trump administration stands out in terms of the harshness of the measures put in place, but overall it is part of a global trend where the 'migrant' is constructed as a threat to the nation state.

Second, Schoenholtz et al participate in the propagation of what [Lucy Mayblin](#) calls the 'standard narrative' and [B. S. Chimni](#) has called the 'myth of difference'. Briefly, this is the idea that post-Cold War migrations were different in nature and volume. This type of discourse obscures the histories of political, religious and economic exiles that characterise the US to this day. For example, how is the arrival of the Huguenots in the sixteenth century or the Irish during the Great Famine in 1845 and 1852 different from Syrian or Haitian refugee exiles? Schoenholtz et al fall into the trap of limiting asylum to a post-Cold War phenomenon when, in fact, populations have always been on the move: fleeing war, pandemics, economic disaster or poverty. As legal scholars, it makes sense that their focus is entirely dedicated to the development of the legal regime of asylum and how the Trump administration undermined it. However, laws are the sum of the historical, political, economic and social tensions of the groups that make up a society and unfortunately, the book is rather silent on this aspect.

Finally, and this is probably the biggest flaw in the book for me, it promotes a narrative that presents Trump as an anomaly in US political history and the current president as a 'return' to the norm and as even offering the possibility of strengthening the asylum system. The problem I see with this reading is that it obscures the role played by Democrats in the detention and deportation of many thousands of foreign nationals, particularly during [the Clinton and Obama administrations](#) – Joe Biden was Vice President in the latter. In doing so, the authors essentialise the Trump administration's attacks on the US asylum system as the hallmark of a presidency out of touch with US society, history, politics and economics.

Even with Biden in office, calls to limit the entry of migrants into the US and to continue operating the 'deportation machine' developed under previous administrations are still very vocal. For example, it was revealed that since the beginning of the 46th President's term, [the number of deportations of Haitians has increased, reaching a higher number than under Trump](#). Moreover, [several reports suggest that the construction of the 'Trump wall' will not end under a Biden presidency](#). In sum, by 'looking Empire in the eye', the authors would indeed have been able to demonstrate [how the history of asylum in the US is fundamentally embedded in imperialism and colonialism](#). Thus, the Biden administration inherits not just a failed asylum system, but an empire that continues to support regimes responsible for the very conditions of the displacement of millions.

Overall, *The End of Asylum* is still a useful guide to the legal 'wall' built by the Trump administration. Its wide accessibility makes it an invaluable resource for the general public as well as for researchers and students who wish to have an overview of the immigration-related regulations, laws and policies adopted under the Trump presidency.

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## Additional Resources

[Jaya Ramji-Nogales, Andrew I. Schoenholtz and Philip G. Schrag present 'The End of Asylum'](#)

Netflix's [Immigration Nation](#)

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*Note: This article first appeared at our sister site, [LSE Review of Books](#). It gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics. Featured image credit: [Levi Meir Clancy](#) on [Unsplash](#)*

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