The Shifting Border: Legal Cartographies of Migration and Mobility[*]

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From the Great Wall of China to the Berlin Wall, fortified manifestations of the border have long served as a powerful symbol of sovereignty, real and imagined.[1] In 1989, the fall of the Berlin Wall led many to predict that barbed wire and sealed entry gates would become relics of a bygone era. Over a quarter of a century later, we find a very different reality. Today, new walls are erected at an unprecedented pace the world over.[2] Around Spanish enclaves in Morocco, between South Africa and Zimbabwe, India and Bangladesh, Hungary and Turkey, and along the US–Mexico border and Norway's arctic border barrier with Russia, menacing border walls and steel fences continue to signal that even in supposed post-Westphalian era physical barriers are still considered powerful measures to regulate migration and movement.

At the same time, a new and striking phenomenon—the shifting border —has emerged. The notion that legal circumstances affecting non-members change substantively only after they "pass through our gates" is well entrenched in both theoretical debates and regulatory practice.[3] The remarkable development of recent years is that "our gates" no longer stand fixed at the country's territorial edges. The border itself has become a moving barrier, an unmoored legal construct. As I will show in this essay, the fixed black lines we see in our world atlases do not always coincide with those comprehended in—indeed, created

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[*] This paper is drawn from Ayelet Shachar, The Shifting Border: Legal Cartographies of Migration and Mobility (Manchester University Press, 2020).

[1] For a critical exploration of border walls, see Wendy Brown, Walled States, Waning Sovereignty (Cambridge: Zone Books, 2010). Definitions of sovereignty may vary, but legally there are three enduring constituent features: people, territory, and political authority exercised over that territory and its people. As Robert Jackson observes, "[s]overeignty is an idea of authority embodied in those bordered territorial organizations we refer to as 'states'." Robert Jackson, Sovereignty: The Evolution of an Idea (Cambridge: Polity Press, 2007), pp. ix, 1. In international law, Convention on the Rights and Duties of the State (Montevideo Convention) art. 1, 26 December 1933, 165 L.N.T.S. 19 echoes the traditional Westphalian view, stating that: "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relation with other states." In international politics, the centrality of territory to sovereignty is acknowledged as a basic norm of the Westphalian order. See Michael Zürn, Martin Binder, and Matthias Ecker-Ehrhardt, 'International Authority and Its Politicization', *International Theory* 4 (2012): pp. 69–106.

[2] Ron E. Hassner and Jason Wittenberg, 'Barriers to Entry: Who Builds Fortified Boundaries and Why?', International Security 50 (2015): pp. 157–190

[3] Shaughnessy v. United States ex rel. Mezei, 345 U.S. 206 (1953) (United States); Zadvydas v. Davis, 533 U.S. 678 (2001) (United States). For a critical exploration, see, for example, Linda Bosniak, 'Being Here: Ethical Territoriality and the Rights of Immigrants', *Theoretical Inquiries* in Law 8 (2007): pp. 389–410; Leti Volpp, 'Imagining of Space in Immigration Law', *Law, Culture and the Humanities* 9 (2012): pp. 456–474.

by—the words of law.[4] Increasingly, prosperous countries utilize sophisticated legal tools to selectively restrict (or, conversely, accelerate) mobility and access by detaching the border and its migration-control functions from a fixed territorial marker, creating a new framework that I call the shifting border strategy that strives, as official government policy documents plainly and tellingly explain, to "'push the border out' as far away from the actual [territorial] border as possible."[5] The idea, enthusiastically endorsed by governments in relatively rich and stable regions of the world, is to screen people "at the source" or origin of their journey (rather than at their destination country) and then again at every possible "checkpoint along the travel continuum—visa screening, airport check-in, points of embarkation, transit points, international airports and seaports."[6] The traditional static border is thus reimagined as the last point of encounter, rather than the first.[7] In this way, the shifting border strategy makes it harder and harder for unwanted and uninvited migrants to set foot in the greener pastures of the more affluent and stable polities they desperately seek to enter. Conversely, wealthy migrants wishing to deposit their mobile capital in these very same countries find fewer and fewer restrictions to fast-tracked admission.[8] The shifting border is the key pillar in a wholesale agenda to strategically and selectively sort and regulate mobility as prosperous countries seek to "regain" control over a crucial realm of their allegedly waning sovereign authority.

This shifting border, unlike a reinforced physical barrier, is not fixed in time and place. It relies on law's admission gates rather than a specific frontier location. Just as the shifting border extends the long arm of the state, ever more flexibly, to regulate mobility half the world away, it also stretches deeply into the interior, creating within liberal democracies what have been variably referred to as "constitution free" zones or "waiting zones" (*zones d'attente*), where ordinary constitutional rights are partially suspended or limited, especially in relation to those who do not have proper documentation or legal status.[9] Each of these spatial and temporal contractions and protrusions bears dramatic implications for the scope of rights and protections that migrants and other non-citizens may enjoy, revealing the violence that may be deployed through legal acts that ascribe meaning to bodies in relation to (shifting) borders, prescribing or

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[4] This is so even as politicians frequently revert to images of a fixed legal spatiality when it comes to the rhetoric surrounding the exercise of sovereign authority, as in Donald Trump's election promise to build an "impenetrable, physical, tall, powerful, beautiful . . . border wall."

[5] Canada Border Services Agency, Department Performance Report 2008–09 , Section II: Analysis of Program Activities by Strategic Outcome (Ottawa: CBSA, 05 November 2009); Office of the Auditor General of Canada, Report of the Auditor General of Canada to the House of Commons , Ch. 5: Citizenship and Immigration Canada—Control and Enforcement (FA1-2003/1-5E, 2003), ch. 5.8.

[6] Government of Canada, Preamble, Canada US Statement of Mutual Understanding (SMU) (Canada), online www.canada.ca/en/immigration-refugees-citizenship/corporate/ mandate/policies-operational-instructions-agreements/agreements/statement-mutualunderstanding-information-sharing/statement.html .

[7] My reference here is to the current legal situation which holds, in the words of the ECtHR, that "[s]tates enjoy an undeniable sovereign right to control aliens' entry into and residence in their territory." Saadi v. UK , App. No. 13229/03, Eur. Ct. H.R. (2008), sec. 64 (internal references omitted). Contemporary political theorists have, however, questioned the justice and legitimacy of this current legal situation. For this fast burgeoning literature, see, for example, Sarah Fine, 'The Ethics of Immigration: Self-Determination and the Right to Exclude', Philosophy Compass 8 (2013): pp. 254–268.

[8] I discuss these developments in detail elsewhere. See Ayelet Shachar, 'Citizenship for Sale?', in Ayelet Shachar et al., eds, *The Oxford Handbook of Citizenship* (Oxford: Oxford University Press, 2017), pp. 789–816.

[9] For a concise overview, see Tugba Basaran, 'Legal Borders in Europe: The Waiting Zone', in J. Peter Burgess and Serge Gutwirth, eds*, A Threat against Europe: Security, Migration and Integration* (Brussels: VUB Press, 2001), pp. 63–74.

denying them access and setting people in new relations of power in political spaces of im/mobility.[10] In a world of mounting inequality and migration pressures, governments frantically search for new ways to expand the reach of their remit, both conceptually and operationally, inward and outward, in the process reinventing one of the classic dimensions of sovereignty in the modern era: namely, territoriality.

Philosophers and jurists are only now beginning to come to terms with these deep currents, which are reshaping the terrain of law and mobility in ways we might not yet fully recognize or understand. When it comes to today's shifting border, we are, to borrow a metaphor from Seyla Benhabib, like travelers navigating a new terrain with the help of old maps; while the terrain has radically changed, our maps have not. Thus, we stumble upon streams we did not know existed, and climb hills we have never imagined.[11]

Despite its striking implications for human dignity, democratic accountability, and disparities in attaining access to territory and membership, the "near obsession" of wealthier countries with reimagining migration and reinventing border control through sophisticated legal (not extralegal) shifting-border techniques and innovations, we currently lack the basic conceptual language to capture, describe, and critique these rapid changes.[12] This book begins to fill this lacuna.

<u>The theoretical landscape and the road ahead</u>

The shift in perspective I propose—from the more familiar locus of studying the *movement of people across borders* to critically investigating the *movement of borders to regulate the mobility of people* — reveals a paradigmatic and paradoxical shift in the political imagination and implementation of the sovereign authority to screen and manage global migration flows in a world filled with multiple sources of law: formal and informal, hard and soft, local, national, supranational, transnational, and international. Scholars in multiple disciplines have creatively explored borders as processes or methods.[13] My analysis builds on some of these insights but seeks to both deepen and sharpen them by emphasizing the core role of law and legal institutions in reconfiguring the border in the brazen exercise of governmental authority. I further explore whether there are limits on such authority, and if so, how to activate them and who should do so.[14]

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[10] The theme of legal interpretation occasioning the imposition of violence upon others is central to the work of Robert Cover. See, for example, Robert M. Cover, 'Violence and the Word', *Yale Law Journal* 95 (1986): pp. 1601–1629.

[11] Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004).

[12] The "near obsession" term is drawn from James Hathaway and Thomas GammeltoftHansen, 'Non-Refoulement in a World of Cooperative Deterrence', *Columbia Journal of Transnational Law* 53 (2015): pp. 235–284. For a theoretical framework in which to locate the shifting-border phenomenon and a nascent description thereof, see Ran Hirschl and Ayelet Shachar, 'Spatial Statism', *International Journal of Constitutional Law* 17 (2019): pp. 387–438.

[13] Borders-studies scholars have creatively explored borders as processes or methods. See, for example, Thomas Nail, *A Theory of the Border* (Oxford: Oxford University Press, 2016); Sandro Mezzadra and Brett Neilson, *Border as Method, or, the Multiplication of Labor* (Durham: Duke University Press, 2013). My analysis complements these accounts by emphasizing the legal dimension of the reinvention of the border and the key challenges posed by these developments. Placing greater emphasis on territoriality and borders is part of a broader spatial turn in the social sciences, humanities, and law, to which critical and progressive geographers have significantly contributed. See, for example, Stuart Elden, *The Birth of Territory* (Chicago: The University of Chicago Press, 2013); Edward W. Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (London: Verso, 1989).

[14] In legal and political theory, recent years have witnessed significant debates about whether—and if so, according to what grounds—states have the right to exclude. For influential accounts, see, for example, Arash

In a world where borders are transforming, but not dissolving, I will aim to show that the question of legal spatiality— where a person is barred from onward mobility and by whom —bears dramatic consequences for the rights and protections of those on the move, as well as the correlating duties and responsibilities of the countries they seek to reach and the transit locations they pass through. And here lies the deep paradox of the shifting border: when it comes to controlling migration, states are willfully abandoning traditional notions of fixed and bounded territoriality, stretching their jurisdictional arm inward and outward with tremendous flexibility; but when it comes to granting rights and protections, the very same states snap back to a narrow and strict interpretation of spatiality which limits their responsibility and liability, by attaching it to the (illusionary) static notion of border control. This duality is perhaps most profoundly pronounced in the case of asylum seekers who trigger protection obligations only once the destination country's soil is firmly under their feet, yet access to these territorial spaces of protection is increasingly unreachable. Those on the move are shut out long before they reach the gates of the promised lands of migration and asylum.[15]

By charting the logic of a new cartography (or legal reconstruction) of borders and membership boundaries I seek to show both the tremendous creativity and risk attached to these new legal innovations and the public powers they invigorate and propagate. I further seek to establish that debates about migration and globalization can no longer revolve around the dichotomy between open and closed borders. Instead, the unique and perplexing feature of this new landscape is that countries simultaneously engage in both opening and closing their borders, but do so selectively, indicating, quite decisively, whom they desire to admit (those with specialized skills, superb talents, or, increasingly, deep pockets), while at the same time erecting higher and higher legal walls to block out those deemed unwanted or "too different."[16]

This dialectical relationship between restrictive closure and selective openness is what makes the study of the new legal gates of admission ever more vital; this is also where the reformulation of basic democratic conceptions of membership boundaries become entangled with profound questions of justice and distribution about how, by whom, and according to what principles access to membership should be allocated, whether at birth or later in life. It further reveals, quite vividly, the recalibration of new immigration and border regimes as "public statements," as a recent study put it, "about who we are now,

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Abizadeh, 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders', *Political Theory* 36 (2008): pp. 37–65; Fine, 'The Ethics of Immigration' (n 7); Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013). For a wide-ranging and illuminating analysis, see Sarah Song, 'Why Does the State have the Right to Control Immigration?', in Jack Knight, ed., *NOMOS: Immigration, Emigration, and Migration* (New York City: NYU Press, 2017), pp. 3–50.

[15] There is some disagreement in the literature regarding whether the exclusion of asylum seekers is an indirect and unintended side effect of these new bordering techniques or one of its causes. Most scholars writing in the vein of human rights law and protection tend to express the latter view, as reflected in the work of Cathryn Costello, James Hathaway, Thomas Gammerltoft -Hansen, Matthew Gibney, Guy Goodwin-Gill, Jane McAdams, and Violeta Moreno-Lax, to name but a few. The contending view is articulated, among others, by legal academics and political theorists such as Kay Hailbronner and David Miller.

[16] Ayelet Shachar and Ran Hirschl, 'On Citizenship, States and Markets', Journal of Political Philosophy 22 (2014): pp. 231–257; Ayelet Shachar, 'Selecting by Merit: The Brave New World of Stratified Mobility', in Sarah Fine and Lea Ypi, eds, *Migration in Political Theory: The Ethics of Movement and Membership* (Oxford: Oxford University Press, 2016), pp. 175–202; Shachar, 'Citizenship for Sale?' (n 8). On the unequal mobility effects of such selective visa and admission policies, see, for example, Steffen Mau et al., 'The Global Mobility Divide: How Visa Policies Have Evolved over Time', *Journal of Ethnic and Migration Studies* 8 (2015): pp. 1192–1213.

who we want to become, and who is 'worthy' to join us."[17] This idea of a border that is in flux—operating in a quantum-like fashion, simultaneously both fixed and fluid, stationary and portable, exerting influence over those coming under its kaleidoscopic dominion—is at the heart of my inquiry. This reinvention of the border facilitates unequal access to desired destinations and the life chances they offer. As such, it touches on some of the most delicate and contentious issues that must be addressed by any membership regime that falls short of a global reach: defining who belongs (or ought to belong) and on what basis.

The shifting border is not a disappearing border, however. Although theorists and activists have prophesied the imminent demise of states and borders, the new reality explored in this study tests and challenges such conclusions. The examples I provide throughout the discussion show quite vividly that sovereign authority over migration is neither dissipating nor vanishing. Today's brusque encounters of moving bodies and shifting borders provide concrete illustrations of both deeper and broader tensions, such as those between sovereignty and human rights, statists and cosmopolitanists, local and global obligations, and the right of the state to exclude and its duty to protect. Instead of rehearsing these influential debates, I wish to initiate a discussion that disrupts some of these familiar dichotomies while simultaneously investigating the grounds on which they stand, literally and conceptually. My intervention adds a crucial legal dimension to these pressing debates, focusing on the often-neglected dimension of how the spatial and regulatory reinvention of borders matters dramatically to how we think about justice, equality, and the "crisis" of migration.[18] In a rapidly changing system, freeing up sovereignty from a rigid and static "Westphalian" understanding of fixed territoriality is a powerful transformation.

This is the case because relaxing the relationship between law and territoriality and blurring the distinction between "inside" and "outside" opens up a whole new purview for exercising power in the name of securing the integrity of the home territory and vigilantly protecting its membership boundaries. The sheer reach and magnitude of the shifting border thus calls for revisiting the age-old question of how to tame menacing governmental authority. Today, states, localities, and supranational entities such as Frontex (Europe's border and coastguard agency) increasingly rely upon a complex web of national, subnational, supranational, transnational, and international instruments to profoundly reconceptualize and "de-territorialize" the classic Westphalian manifestation of sovereignty as an activity that may potentially take place *anywhere* in the world.[19]

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[17] David Cook-Martin and David FitzGerald, 'Culling the Masses: A Rejoinder', *Journal of Ethnic and Racial Studies* 38 (2015): pp. 1319–1327. See also Cass R. Sunstein, 'On the Expressive Function of Law', *University of Pennsylvania Law Review* 144 (1996): pp. 2021–2053.

[18] The term "crisis" is charged, but I have chosen to use it here to follow the current reference in most academic and public debates. Standard accounts in international migration point to the untenable life conditions in countries of origin as push factors, whereas the promise of a better life in destination countries is perceived as a pull factor, yet this analysis does not focus specifically on forced migration or the plight of refugees, who are entitled to international protection, whereas others fleeing dire circumstances, such as extreme poverty (as defined by the UN), for example, are not. Furthermore, it is not entirely clear what precisely is meant by the crux of the present "crisis" as it manifests in Europe: is it the very act of irregular entry by potential asylum seekers, which formally breaches states' border controls and standard documentary requirements for international travel? The size and volume of the inflow? The failure of member states to devise and implement a shared policy, which can be seen as a governance crisis, or a value crisis (as some EU officials have labeled it)? Another interpretation is that we are witnessing a crisis of solidarity and governability. Depending on how the crisis is defined, both politically and legally, we can expect different interpretations of its best resolution.

[19] On the legal authorization establishing the new European Border and Coast Guard Agency as an enhanced variant of Frontex, see Regulation (EU) 2016/1624 of the European Parliament and of the Council on the European

The shifting border is at once multidirectional and slippery, but not in the transnational, open, and tolerant variant that demise-of-the-state or post-Westphalian theories had foreseen. Instead, a darker, more restrictive, orientation has emerged. Far from the dream of a borderless world that emerged aft er the Berlin Wall came down, today we find not only more border walls erected on the global fault lines that divvy up the "have" and "have nots," but also the rapid proliferation of moveable legal barriers, which may appear anywhere but are applied selectively and unevenly, with fluctuating degree, intensity, and frequency of regulation, as prosperous countries turn to increasingly sophisticated measures of pre-emption, containment, and control in their quest to prevent "spontaneous" migrants, including asylum seekers, from accessing their bounded legal spaces of rights protection and relative safety and stability.[20]

The rise of the shifting border is contemporaneous with growing anxiety over immigration domestically and a surge in the numbers of "people out of place" globally.[21] This new constellation gives added impetus to addressing some of the most profound and arduous questions of our time. Is it legitimate for states to exclude non-members? If so, on what basis? Does the nascent multilevel architecture of global law assist, or paradoxically constrict, the protected rights available to people out of place? In a world of growing interdependence and strife, whose duty is it to assist those who are escaping harm's way? Do such obligations extend to providing safe passage and temporary protection, or do they entail a right to resettlement and to embark on the road to citizenship? How much of a role should accidents of geography, such as a country's proximity to war zones or regions of civil strife, play in determining which political communities are asked to shoulder the greatest responsibilities to "people out of place"? The arrival of the migration crisis (as it is known) at Europe's borders has exposed the urgency of

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Border and Coast Guard, O.J. (L 251/1) September 16, 2016 (EU). See also Home Office, *Securing the UK Border: Our Vision and Strategy for the Future*, March 2007 (United Kingdom), point 1.4; Canada Border Services Agency, Department Performance Report (n 5), p. 1; *Department of Homeland Security*, Designated Aliens for Expedited Removal, 69 Fed. Reg. 58.877, 11 August 2004 (United States)

[20] I owe the phrasing of this point regarding the fluctuating degree, intensity, and frequency of regulation to Derek Denman.

[21] I intentionally use the term "people out of place," which is broader than the legal definition of asylum seekers and refugees. See Alison Brysk and Gershon Shafir, eds, *People Out of Place: Globalization, Human Rights, and the Citizenship Gap* (New York: Routledge, 2004). The legal definition of a "refugee" under the 1951 Convention Relating to the Status of Refugees, article 1, is a person who: "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" is fleeing his or her country of nationality, or if stateless, is unwilling or unable to return to the country of his or her former habitual residence (UN General Assembly, *Convention Relating to the Status of Refugees* , July 28, 1951, United Nations, Treaty Series, vol. 189, p. 152, online www.refworld.org/docid/3be01b964.html). Today, migration scholars and international agencies readily acknowledge that the existing definitions, such as "voluntary" verses "forced migration" fail to recognize the more complex reality of human mobility across borders, which is better captured by terms such as "mixed migration" or "people out of place," which aim to highlight the mixed motives and multiplying drivers of mobility and displacement (escaping persecution, political instability, hunger, dire poverty, extreme environmental conditions, and so on). A debate is now brewing about whether the privileged legal protection granted to those fleeing a well-founded fear of persecution (the pinnacle of the internationally recognized definition of a refugee, emanating from the 1951 Refugee Convention) captures the full range of just claims for asylum, and whether additional instruments of international cooperation should be introduced in order to address the plight of displaced persons who do not meet the legal definition of refugee. For further elaboration, see Jill I. Goldenziel, 'Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States', *Berkeley Journal of International Law* 35 (2017): pp. 47–89; Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca: Cornell University Press, 2013); Matthew Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge: Cambridge University Press, 2009).

addressing these very questions, but this same crisis also immediately reveals the impossibility of formulating any easy answers.

A new road map is required to decipher the emerging code of the shifting border in a world in which prosperous "islands" of high standards of human rights, affluence, and democratic governance are increasingly protected through the operation of "portable" legal walls that may appear, disappear, and reappear in variable coordinates of space and time. This shifting border changes form depending on how it is approached and by whom. The better we comprehend the new logic and codebook informing these conceptual changes and policy instruments, the better positioned we will be to develop counter narratives and to carve out new theoretical and applied pathways to oppose their deleterious effects. I seek to fill an important gap in the refined scholarly and policy discourse by offering a grounded analysis, a fine-grained inquiry into the causes and consequences, explanatory and interpretive resources required to grasp the constitutive features of this new paradigm. After exploring the core implications of these recent transformations, I will develop innovative, real-world democratic and institutional responses to counter the rights-restricting dimensions of the shifting border.

The discussion proceeds in three parts, and it operates on three interrelated levels: diagnostic, interpretive, and prescriptive. I begin by painting a picture of the complex, multilayered, and ever transforming border, one that is drawn and redrawn by the words of law. To comprehend the novelty of the shifting border, I will contrast it with contending models: the classic, clearly demarcated, territorial border that serves as the frontline for setting barriers to admission; and the alternate, globalist, vision of a world in which extant borders are, or soon will be, traversed with the greatest of ease, to the extent that they become all but meaningless. In combination with the sheer number of people on the move, this has led some scholars to argue that the grip of borders, or the even the fundamental principle of territoriality itself, is waning in a world "where agency (individual choice) takes precedence over structures (the laws and rules of territorial states)."[22] As a corollary, it has been argued that in the current age of globalization, sovereignty is waning and states are losing control over their authority to determine whom to include and whom to exclude.[23] The actual legal practices and exercise of authority by governments operating under the shifting-border framework, alas, refute this narrative of global, unidirectional progression toward a borderless world. Instead, we witness a more dynamic process of change whereby states—acting alone or in concert—are reinventing and reinvigorating their borders and membership boundaries in profound

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[22] James F. Hollifield, 'Sovereignty and Migration', in Matthew J. Gibney and Randall Hansen, eds, *Immigration and Asylum from 1900 to the Present* (Santa Barbara: ABC-CLIO, 2005), pp. 574–576, p. 575.

[23] Among those defending the post-national claim that universal personhood has surpassed the significance of national belonging, see Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago: University of Chicago, 1994); David Jacobson, *Rights across Borders: Immigration and the Decline of Citizens* (Baltimore: Johns Hopkins University Press, 1996). Political theorists have advanced a justice argument for more open borders as a challenge to the prevailing legal situation, according to which states may legitimately exercise their authority to restrict mobility and control access to their territorial jurisdiction. The full list is too vast to cite. For an early influential article, see Joseph H. Carens, 'Aliens and Citizens: The Case for Open Borders', *The Review of Politics* 49 (1987): pp. 251–273. See also Abizadeh, 'Democratic Theory and Border Coercion' (n 14). For contrasting views justifying the right of states to exclude, see Christopher Heath Wellman, 'Immigration and Freedom of Association', *Ethics* 119 (2008): pp. 109–141. More critical accounts have emphasized the themes of immobilization, entrapment, the tightening of entry controls, and the emergence of a paradigm of suspicion. The last term is drawn from Ronen Shamir, 'Without Borders? Notes on Globalization as a Mobility Regime', *Sociological Theory* 23 (2005): pp. 197–217. For rich empirical evidence to support these claims, see, for example, Eric Neumayer, 'Unequal Access to Foreign Spaces: How States Use Visa Restrictions to Regulate Mobility in a Globalized World', *Transactions of the Institute of British Geographers* 31 (2006): pp. 72–84, 2006; Mau, 'The Global Mobility Divide' (n 16)

ways.[24] By locating the shifting border as an alternative to the established theoretical poles of "static" and "disappearing" boundaries, I aim to show that the proposed framework of analysis more fully captures and accounts for the profound patterns of change that we are witnessing in the world around us. To substantiate these claims about the multidirectionality of the shifting border, I will focus on the legal innovations adopted by the world's leading immigrant-receiving countries that have spearheaded the shifting border paradigm: the United States, Canada, and Australia. I will also demonstrate how the European Union and its member states have also rewritten pages—if not chapters—of the shifting-border book in the context of re-bordering mobility through extensive "externalization" strategies. These case studies provide a rich empirical foundation upon which the rest of the discussion relies.

Next, I place the analysis within a broader range of pressing debates, from the recent "methodological turn" in political theory to revisiting the demise-of-the-state thesis to evaluating how the ability of major actors to "shift" the level and timing of regulation in the service of the everywhere-and-nowhere border strains earlier predictions that supranationalism and transnationalism will, almost necessarily, contribute to emancipatory developments. I further highlight the role of private third parties and the growing reliance on cooperation agreements with transit and host countries that create "buffer zones" around affluent democracies in exchange for material and infrastructure investments. Such processes of externalization are enthusiastically pursued by the European Union and its member states, raising real concerns about human rights abuses and "outsourcing" responsibility. Any attempt at theory building that seeks to move beyond idealized discussions of borders and membership boundaries must engage more directly with these empirical observations. This is vital if we want our non-ideal theories of migration, mobility, justice, multilevel governance, and democratic legitimacy to have relevance to the here and now.

Lastly, I revisit the relationship between law and territoriality, space and political responsibility, including the classic writings of Hannah Arendt, before engaging in the always perilous act of seeking pragmatically minded responses to seemingly intractable dilemmas. This part of the discussion brings together insights from law, political philosophy, and institutional design to explore innovative ways in which to "internalize" the costs of the extraterritorial dimensions of migration control. Moving from the interpretive to the aspirational, I will argue that the dramatic reconception of the border requires an equally radical reinvention of our responses to these new realities on the ground. To realign the almost boundless reach of migration control in the age of shifting borders with adherence to human rights norms by state actors (or their delegates, public and private), this final section will explore fresh ideas for crafting participatory and contestatory political responses to, as well as legal remedies for, today's new paradoxes of border control. In order to tame the rights-restricting tendencies documented in this study, we must not only decipher but also seek to "rewrite" the code of the everywhere-and-nowhere shifting border, infusing it with a migrant- and mobility-centered perspective that recognizes that states will continue to be key players in the current world order while at the same time de-centering them. One such promising direction for change is to amend the bases for attributing responsibility in a world of de-territorialized migration control. Instead of focusing on where the act of border regulation takes place, a more consistent and fair approach requires adopting a functional or jurisdictional test according to which obligations to protect are activated as soon as "effective control" occurs by official agents of states, acting

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[24] While in some cases operating unilaterally, states are also devising increasingly complex and multilayered mobility-control regimes that require extensive interstate cooperation. For an excellent exploration of bilateral cooperation in the North American context, see Matthew Longo, *The Politics of Borders: Sovereignty, Security, and the Citizen after 9/11* (Cambridge: Cambridge University Press, 2018).

alone or in concert, or their delegates.[25] The idea is to acknowledge the restless agility and multi-scalar operations of the shifting border as eliciting a set of rights-enhancing protections from the restricting states, which hitherto have relied on this new "technology" of governance and spatiality to escape accountability and constrain rights. This line of response incorporates the very logic of de-territorialized migration control that lies at the heart of the shifting border, while at the same time subverting it, and relies on two prongs: expanding the extraterritorial reach of human rights and relaxing the fixation on territorial access. While not a panacea, the endeavor is to break the current deadlock and refute the claim that applicable solutions are beyond reach or impossible to imagine.

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Stretching and contracting space and time: the individualized border.

In disrupting the Mondrian-like precision of clearly delineated and jurisdictionally exclusive territorial states that has undergirded (at least in principle) the Westphalian international system of nation-states, the shifting border tacitly and covertly redefines the relationship between membership, territory, and sovereignty. Governments, for their part, are quick to assert that the core motivation for "dispatching" the shifting border outward is functional: to "identify and intercept illegal and undesirable travelers" as remotely as possible before they embark on their journey toward the lands of migration and prosperity.[26] As the Canadian Border Service Agency explains, the ubiquitous shifting border can, in principle, operate at " any point at which the identity of the traveler can be verified," giving full meaning to the notion of a border that is simultaneously nowhere and everywhere. Th e integrated border-management strategy, devised by the European Union, similarly relies on a multi-tiered control model that seeks to track the movement of non-EU citizens, known as third-country nationals, "from the point of departure in countries of origin, all throughout transit, and to arrival in the EU."[27] Within the European Union, inland control measures, including detection, investigation, and return, are applicable to third-country nationals deemed to lack status (they are regularly referred to as illegal immigrants), as are futuristic iBorder control strategies that "re-engineer" the system of border crossing and migration control.[28] Pilot projects funded by the European Union will enable "automatic control" procedures, as they are known, which involve pre-registration, whereby "[t]travelers preform a short, automated, non-invasive interview with an avatar, undergo a lie detection and are linked to any pre-existing authority data." This data will be stored in large databases and connected with "portable, wireless connected iBorderCtrl units that can be used inside buses, trains or any other point [to] verify the identity of the travelers . . . [and] calculate a cumulative risk

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[25] This position is shared by many human rights organizations and is also the theory that guided the ECtHR in the landmark *Hirsi v. Italy*, [GC], App, No. 27765/09, Eur. Ct. H.R. (2012). For an early defense of the position that "[n]arrow territorial interpretation of human rights treaties is an anathema to the basic idea of human rights, which is to ensure that a state should respect human rights of persons over whom it exercises jurisdiction," see Theodor Meron, 'Extraterritoriality of Human Rights Treaties', *American Journal of International Law* 89 (1995): pp. 78–82, p. 82.

[26] Canada Border Services Agency, Department Performance Report (n 5), p. 1. For a comprehensive and comparative analysis, see Bernard Ryan and Valsamis Mitsilegas, eds, *Extraterritorial Immigration Control: Legal Challenges* (Leiden and Boston: Martinus Nijhoff, 2010).

[27] Violeta Moreno-Lax, *Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law* (Oxford: Oxford University Press, 2017), p. 3. For further discussion, see Council of the European Union, Integrated Border Management: Strategy Deliberations, 13926/06 Rev 3, November 21, 2006.

[28] See, for example, Return Directive 2008/115/EC of the European Parliament and of the Council, O.J. (L 348/98) December 16, 2008 (EU) on common standards and procedures in member states for returning illegally staying third-country nationals. For an early analysis of these trends, see Samers, 'An Emerging Geopolitics' (n 77).

factor for each individual." [29] Here, the once fixed territorial border is not only shifting but also multiplying and fracturing into an operational individual-control system, where each person "carries" the border with her as she moves across space and place. The border attaches to her pre-arrival, at crossing stations, and wherever she travels within the protected and surveilled territorial space—today, within the area of free movement in Europe; tomorrow, potentially the world. [30]

The underlying objective of ensuring that all legal requirements are met by entrants here takes on a new social, political, and technological meaning, transforming not only the regulation of movement prior- and post-arrival but also potentially sliding toward and morphing into a "society of control," where everyone (non-citizen and citizen alike) is tracked and encoded. [31] A further concern is that these new surveillance techniques, while in theory "blind" and universal, may end up producing divergent and discriminatory results—for example, by reaffirming and intensifying practices of racial profiling and uneven geographies of policing, through a combination of algorithmic machine learning and human vetting. [32]

Such global ID systems have long been the dream of law enforcers, but they are now closer to becoming a reality. Even the United Nations has teamed up with leading technology firms to explore plans for creating a digital ID network running on blockchain technology to provide tamper-resistant legal documents for refugees and other displaced persons who lack them, creating a "'stamp'—a unique identifier between the refugee and the data on the servers—that proves they have been authenticated for each service they receive" at refugee camps or from official aid organizations. [33] While informed by benevolent intentions, such initiatives may violate privacy and restrict the freedom of mobility of such global ID bearers, especially if their "stamp" indicates passage through a third country deemed safe but which may prohibit onward travel or trigger return if it signs readmission agreements with the ID bearers' countries of origin.

Sought-after destination countries, then, beyond reinventing and replanting the "moveable" border while selectively opening and closing its multi-tiered gates of admission, are developing and implementing

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[29] L3 Research Center, 'iBorderCtrl', online www.l3s.de .

[30] I am indebted to Irene Bloemraad for suggesting that I explore the imagery of the shifting border as "transported" to individual bodies. There is a growing line of research in feminist geography that emphasizes the body as a site of bordering and migration control. See, for example, Rachel Silvey, 'Borders, Embodiment, and Mobility: Feminist Migration Studies in Geography', in Lise Nelson and Joni Seager, eds, A Companion to Feminist Geography (Oxford: Blackwell, 2015), pp. 138–149; Alison Mountz, 'Embodying the Nation State: Canada's Response to Human Smuggling', Political Geography 23 (2004): pp. 323–345, 2004; Robyn Sampson, 'Embodied Borders: Biopolitics, Knowledge Mobilization, and Alternatives to Immigration Detention', PhD dissertation, La Trobe University (2013).

[31] The term "society of control" is drawn from the work of Gilles Deleuze but has since been applied more broadly in the literature. See, for example, Shamir, 'Without Borders?' (n 23), p. 201ff. The loss of civil liberties is not restricted to non-citizens. In the United Kingdom, for example, draconian "control orders" that provided the state with legal authority to indefinitely detain non-citizens without trial, if a trial put secret or sensitive intelligence information at risk, were challenged before the courts as discriminatory. In response, the UK government did not rescind such powers. Instead, it equally applied them to citizens. For related examples whereby the deprivation of rights of non-citizens foreshadows a similar deprivation of the liberties of citizens, see Eric A. Ormsby, 'The Refugee Crisis as Civil Liberties Crisis', Columbia Law Review 117 (2017): pp. 1191–1229.

[32] This set of concerns is receiving growing attention in the literature. See, for example, Margaret Hu, 'Algorithmic Jim Crow', Fordham Law Review 86 (2017): pp. 633–696; Alpa Parmar, 'Policing Belonging: Race and Nation in the UK', in Mary Bosworth, Alpa Parmar, and Yolanda Vázquez, eds, Race, Criminal Justice, and Migration Control: Enforcing the Boundaries of Belonging (Oxford: Oxford University Press, 2018), pp. 108–124.

[33] BBC Technology, 'Accenture and Microsoft Plan Digital IDs for Millions of Refugees', BBC, June 20, 2017, online www.bbc.com/news/technology-40341511 .

futuristic surveillance technologies that cross time and space as well as bilateral and multilateral agreements with countries of origin and transit that treat the latter as migration "buffer zones" (often in exchange for capacity building and material assistance in the form of development aid). This new conception of the shifting border has coincided with the rise of "big data" and propagated the creation of enormous databases that store biometric information and electronic passenger-name records—a treasure trove for artificial intelligence analytics.[34] Sharing these records prior to travel has replaced traditional interactions between the individual and state officials at the actual, territorial border, because, as the UK Home Office revealingly put it, this encounter "can be too late—they [unauthorized entrants] have achieved their goal of reaching our shores."[35] To achieve this ambitious yet Orwellian vision, the location, operation, and logic of the border has to be redefined through a complex conceptual and operational framework that allows government officials or their delegates (increasingly operating transnationally and in collaboration with third parties and private-sector actors) to screen and intercept travelers at continuous and multiple eBorders, iBorders, or "automated gates," en route to their desired destinations and within their territories as well.[36] Pre-travel electronic clearance is now required as a matter of course, even for those in possession of "high-value" passports, including travelers hailing from EU member states.[37] It must be applied for and approved by the government of the destination country before the traveler embarks on their journey, and it is linked electronically to the traveler's passport.[38]

Without such authorization, it is impossible to board a plane heading to the United States, Canada, Australia, or to enter these countries. This additional layer of preclearance and information gathering creates a powerful yet invisible electronic border that applies everywhere (adjusting itself to the location and risk-profile of the traveler) and is intentionally detached from and sequentially precedes the act of

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[34] Following a protracted political and legal battle between Brussels and Washington about levels of data protection, a new US–EU PNR agreement was signed in 2011 and approved and adopted by the European Parliament in 2012. The Agreement between the United States of America and the European Union on the use of transferred passenger-name records to the United States Department of Homeland Security came into eff ect on July 1, 2012. In 2016, aft er years of debate, the European Parliament approved the Directive (EU) 2016/681 of the European Parliament and of the Council, O.J. (L 119/132) May 4, 2016 (EU).

[35] Home Office, *Securing the UK Border* (n 19), point 1.4.

[36] For a now classic article that observed some of these transformations, see Guiraudon and Lahav, 'A Reappraisal of the State Sovereignty Debate'. A "network of state organizations for whom immigration enforcement is a central or defining part of their purpose" increasingly operates collaboratively at the local, national, or supranational levels. Third-party actors also play a role. Beyond the familiar example of airline carriers that have come to serve as "surrogates" for border control and migration screening, successive governments have further "'deputized' third parties for immigration enforcement, such as trade unions, employers, landlords, school teachers, doctors, labor inspectors, police officers, universities and welfare service. Those actors do not have immigration control as defining purpose, but have increasingly been brought into the control matrix." For further discussion, see Lea Sitkin, 'Coordinating Internal Migration Control in the UK', *International Journal of Migration and Border Studies* 1 (2014): pp. 39–56; Ana Aliverti, 'Enlisting the Public in the Policing of Immigration', *British Journal of Criminology* 55 (2015): pp. 215–230.

[37] On high-value passports and migrants, see Shachar, 'Citizenship for Sale?' (n 8).

[38] As Australia's Department of Immigration and Border Control explains, the next generation of border security will require further analytics-based capabilities, including "a state-of-the-art risk scoring engine developed by departmental analysts [that] uses complex statistical models to process large amounts of data in real time, to identify higher than acceptable levels of risk" as well as "a real-time risk identification system that scans information collected through the department's advance passenger processing system. All inbound travelers are screened and travelers representing potential risk are more closely examined.

territorial admission, facilitating mobility for approved or trusted travelers while denying access to all others.

While these high-tech borders are designed to keep out unwanted and uninvited entrants, even trusted travelers—those who benefit from the highest level of flexibility and mobility in crossing borders—must now have their identities verified before embarking on international travel and again at airports and other regulation points. "Smart" and automated-entry gates have iris scans or other biometric readers that run through multiple national and global databases which cross-reference and authenticate the trusted traveler's identity, low-risk status, and un-flagged profile. In an increasing number of airports, the initial decision on whether the golden gates of admission will open wide or shut tight is determined not by a human agent but by "smart machines" and automated eGates that are coded to identify risk factors based on sophisticated algorithms (themselves hardly ever the subjects of open, democratic review).[39] The "open sesame!" incantation in the age of big data and shifting borders has given Ali Baba's phrase a new magic and mythos.

Yet only those with a golden key know this magic formula; the shifting-border strategy makes it increasingly hard for those disadvantaged by the birthright lottery to lawfully set foot in the more affluent polities they desperately seek to enter.[40] This raises serious questions of justice in allocation, not only of membership affiliations but also mobility opportunities.[41] Coupled with restrictive admission categories and limited travel visas, especially for those entering from poorer and less stable countries, the shifting border may have the unintended effect of pushing unauthorized mobility further "underground." This, of course, triggers concerns about the rise of a lucrative black market for increasingly sophisticated human-trafficking and smuggling networks.[42] These concerns may help explain (although they do not justify) why and how governments seek to sever the knot that has traditionally tied a fixed territorial border to migration control: by attempting to cover the globe with "transportable" regulation and surveillance they may head off asylum seekers, refugees, and other uninvited entrants before they begin their journey.[43]

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[39] Such transformations are explored by Costica Dumbrava, 'Citizenship and Technology', in Shachar et al., eds, *The Oxford Handbook of Citizenship* (Oxford: Oxford University Press, 2017), pp. 767–788. The transfer of responsibility to machines in lieu of human border guards is extensively elaborated by Longo, *The Politics of Borders* (n 24). Such regulation is more intertwined with and partly dependent upon private-sector providers and developers of sophisticated biometric-data-collection and verification technologies

[40] Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge: Harvard University Press, 2009). Some have argued for open borders as the solution. For a classic account, see Joseph Carens, 'Aliens and Citizens' (n 23). As critics have noted, even adopting a policy of open borders (which is still a pipedream in most parts of the world) may not be sufficient to provide equal opportunity given structural and economic barriers to mobility that go beyond border controls. See, for example, Aveek Bhattacharya, 'Does Justice Require a Migration Lottery?', *Global Justice* 5 (2012): pp. 4–15.

[41] Such a "global mobility divide" is evident in the context of visa-free travel, for example. For an innovative and comprehensive study, see Steff en Mau et al., 'The Global Mobility Divide: How Visa Policies Have Evolved over Time', *Journal of Ethnic and Migration Studies* 8 (2015): pp. 1192–1213. On the unequal value of passports, see Shachar, 'Citizenship for Sale?' (n 8).

[42] Anne T. Gallagher and Fiona David, *The International Law of Migrant Smuggling* (Cambridge: Cambridge University Press, 2014). See also David Kyle and Rey Koslowski, eds, Global Human Smuggling: Comparative Perspectives, 2nd edition (Baltimore: Johns Hopkins University Press, 2011).

[43] It is part of broader suite of measures to "quarantine" wealthy countries from the quicksand of civil strife, disease, abject poverty, or environmental crises frequently associated with mass mobility from the world's less developed countries. See Bimal Ghosh, 'Toward a New International Regime for Orderly Movements of People', in Bimal Ghosh, ed., *Managing Migration: Time for a New International Regime?* (Oxford: Oxford University Press, 2000), pp. 6–26, p. 10.

[…]

In a world of regulated mobility, migrants considered undesirable will continue to face significant obstacles. With this in mind, the two-pronged response I have outlined seeks to mitigate vulnerability and offer protection and empowerment to those who need it most. As with any proposed change, such a transformation cannot happen in a vacuum, nor can it rely exclusively on adjudication and advocacy. To stand a fighting chance of success, significant political mobilization is required of critical civil publics, acting locally, nationally, and transnationally, in order to resist what they see as unjust and unjustifiable acts of border control, especially those stretching inward and outward with no limit in sight, infringing the basic human rights and dignity of the migrants caught in the whirling kaleidoscope of the shifting border.

Governments and their voters detest irregular movements of people across borders. An idealist can ignore such realities, but the non-idealist cannot.[44] We are thus in search of a system that, under current conditions, recognizes states' pro tanto sovereign authority to regulate movement across borders, while at the same time re-spatializing their law and justice obligations in line with their ever more creative and multi-scalar migration-regulation operations. The path I have advanced emphasizes the jurisdictional link as a basis for expanding and extending responsibility beyond borders. This is complemented by the basic human rights idea that "[e]veryone has the right to recognition everywhere as a person before the law" (a formulation drawn from the New York Declaration for Refugees and Migrants), especially at the encounter at the border, wherever the capricious shifting border may reach her.[45] Such recognition is based on personhood, not membership, and thus applies equally to non-citizens irrespective of their legal status in relation to the given place or particular political community whose border, shifting or static, fortified or erased, they encounter.[46] It offers a minimal baseline of protection and dignity for each person, irrespective of place and time, when encountering the exercise of coercive governmental power that affects their basic interests.[47]

As the reach of the shifting border has expanded, so have new spaces for democratic contestation been created, stretching the boundaries of the political, both above and below the nation-state level. These changed scales provide room for resistance and protest, both local and transnational, against the encroaching shifting border in its various spatial manifestations.[48] As Michael Walzer recently observed,

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[44] Here I share Rainer Forst's observation that "[i]f we do not understand how norms and interests intermesh to generate and reproduce power, we are condemned to failure" in our efforts to understand political, legal, and normative orders, let alone transform them. See Rainer Forst, *Normativity and Power: Analyzing Social Orders of Justification* (Oxford: Oxford University Press, 2017), p. 143.

[45] This formulation is drawn from the United Nations General Assembly, Resolution (n 205). The process for developing the global compact for migration and the global compact for refugees is well underway, under the auspices of the United Nations and the UNHCR respectively, and will be presented in 2018 with a view to their adoption. For a comprehensive discussion of the potential promises and pitfalls of such international instruments, see Klaus Günter, 'World Citizens between Freedom and Security', *Constellations* 12 (2005): pp. 379–391.

[46] On this account, the rule of law "defines the parameters of permissible government action wherever, and toward whomever, the government acts." See Keitner, 'Rights beyond Borders' (n 182), pp. 66–67 (emphasis added).

[47] Similar conclusions can be drawn from a variety of theoretical perspectives, as developed in recent years by scholars focusing on the claims of non-domination, the right to justification, or the all-affected or all-subjected principles, to mention but a few such sources.

[48] For an excellent representative of this new line of scholarship, see Peter Niesen, 'Reframing Civil Disobedience: Constituent Power as a Language of Transnational Protest'*, Journal of International Political Theory* 15 (2019): pp. 1–48

"[s]uddenly, everyone . . . is talking about resistance."[49] In the United States, for example, we witness acts of resistance to sweeping migration enforcement measures by civil society activists, cities and municipalities, colleges and universities, local authorities, faith-based communities, various professional and non-governmental organizations, advocacy groups, and undocumented migrant networks, to name but a few examples, galvanizing their multiple voices into action, mobilizing protests, filing law suits, planning sit-ins, accompanying irregular migrants to their deportation hearings, offering shelter, food, legal aid, and medical care in houses of worship, and providing "sanctuary" in cities, campuses, and workplaces.[50] As the shifting border operates in increasingly invasive ways to identify individuals "out of place," local jurisdictions and sanctuary cities have developed counter-policies that limit cooperation with federal immigration authorities and offer protection for immigrants at the local level by issuing ID cards irrespective of legal status, creating a new spatiality of subnational membership informed by ideas of "rooted cosmopolitanism" and transnational human rights discourses. Across Europe, new networks and cross-border solidarities have emerged from pro-migrant groups resisting the production of a "Europe of borders."[51] In Australia and Canada, refugee advocates have taken the lead in challenging detention and contesting the rhetoric of bogus claimants and queue jumpers. The politics of contestation and resistance is on the rise, providing a vital companion and catalyzer for any progressive legal and conceptual change along the lines I have advocated here.

<div align="center">Coda</div>

The train of extraterritorial border control has already left the station— the classic functions of regulating entry, admission, settlement, and membership demarcation are no longer contained within a fixed and clearly delineated geopolitical space and instead take place *beyond* territory and long *before* travelers can reach the political community in which they wish to settle or seek refuge. Yet these tools can be repurposed to help those they currently keep out.

The analysis I have offered—especially the emphasis on territory's malleability under the shift ing-border conception, now routinely and instrumentally used to help states control migration and admit the few but not the many—points to a previously unexplored path. Instead of a menacing obstacle and tool to restrict access to asylum, we can rethink the shifting border as a creative resource in the service of advancing human rights across borders. As we have seen, the shifting border is a powerful tool, and states are unlikely to cede their authority over migration regulation any time soon—and especially not in the current

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[49] Michael Walzer, 'The Politics of Resistance', Dissent, March 1, 2017, online www.dissentmagazine.org/online_articles/the-politics-of-resistance-michael-walzer . While offering a full account of these developments falls beyond the scope of this work, it is worth noting that we are witnessing such an awakening.

[50] Time will tell the effects of the politics of resistance and its ability to reverse the course of harsh governmental action against immigrants in an age of resurgent populism and border-worshiping politicians. On this point, see Naomi Paik, 'Abolitionist Futures and the US Sanctuary Movement', *Race and Class* 59 (2017): pp. 3–25. For critical and comparative accounts, see, for example, Randy K. Lippert and Sean Rehaag, eds, *Sanctuary Practices in International Perspectives: Migration, Citizenship and Social Movements* (Abingdon: Routledge, 2013); Robin Celikates, Regina Kride, and TiloWesche, eds, Transformations of Democracy: Crisis, Protest and Legitimation (London: Rowman & Littlefield, 2015).

[51] This vast body of literature includes, for example, Marco Giugni and Florence Passy, eds, *Political Altruism: Solidarity Movements in International Perspective* (London: Rowman and Littlefield, 2001); Helga Leitner and Christopher Struck, 'Spaces of Immigrant Advocacy and Liberal Democratic Citizenship', *Annals of the Association of American Geographers* 104 (2014): pp. 348–356. For a "dual track" approach that incorporates official and unofficial spaces for and acts of contestation, see Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton: Princeton University Press, 2002).

political environment. Under such circumstances, the two-pronged change I have proposed would offer a more sanguine future: namely, extending the extraterritorial reach of human rights provisions while simultaneously relaxing the linkage between territory and asylum. It would lay the foundation for a conceptual and paradigm shift that is long overdue.