

Borders in the Time of COVID-19

Ayelet Shachar | March 2020



An arriving passenger places his hand on a device to take his fingerprints as Officers with U.S. Customs and Border Protection Office of Field Operations clear international travelers arriving at Dulles International Airport. In response to the COVID-19 pandemic, CBP officers have begun wearing protective gear as they interact with passengers. Photo credit: Glenn Fawcett via Wikimedia Commons

The COVID-19 pandemic has reminded us of the significance of borders. While much attention has been paid to debates surrounding Donald Trump’s campaign promise to build an “impenetrable, physical, tall, powerful, beautiful southern border wall,”¹ the current crisis reveals that governments seeking to restrict mobility rely only partly (and increasingly rarely) on brick and mortar. Instead, one of the most remarkable developments of recent years is that the border itself has become a moving barrier, an unmoored legal construct. The fixed black lines in world atlases do not always coincide with bordering functions that may potentially take place anywhere in the world. The border has broken free of the map; it may extend well beyond the edge of a territory or well into its interior. The unmooring of state power from any fixed geographical marker has created a new paradigm: the *shifting border*.²



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source” or origin of their journey—not the destination—and then again at every possible checkpoint along the way. The traditional static border is thus reimagined as the *last* point of encounter, not the first. Responses to the global pandemic have accelerated this trend.

Sealing the Border at a Distance

When a cluster of mysterious viral pneumonia cases struck in Wuhan, China in January 2020, neighboring Asian countries that had already borne the brunt of the SARS and MERS outbreaks—notably Hong Kong, Taiwan, and South Korea—wasted no time. These countries swiftly introduced public health responses that included extensive testing, isolation of patients, and quarantines. But they also quickly introduced another set of measures: travel bans that restricted access to their territories. Officials in these countries boarded planes arriving from Wuhan to screen passengers, barring admission to those with symptoms.

Despite these efforts, by March the virus had spread across the globe. In Canada, the government further extended the logic and impact of the measures seen in East Asia, announcing on March 16 that not only would passage across its borders be temporarily restricted to citizens and permanent residents but also anyone—including its own citizens—presenting with COVID-19 symptoms would be barred from boarding a Canada-bound plane.⁴ With this move, Canada is stretching its border outward both conceptually and legally. In the process, the country is also perfecting its technique of interdiction abroad, relocating much of its border-control activities to overseas gateways, primarily in Europe and Asia. The result is that regulation of entry into Canada happens in foreign transit hubs that can be located tens, hundreds, or even thousands of miles away.

The United States, too, has during this crisis extended the long arm of the state outward, ever more flexibly, to regulate mobility at a distance. This was never more evident than on March 11 with the dramatic proclamation from the Oval Office that the United States would suspend travel from twenty-six European countries for thirty days (similar restrictions were later expanded to apply to the U.K. and Ireland).⁵ These measures are far-reaching and unprecedented, but they build on a trend that has been evolving over the two decades since September 11, 2001. Even in non-pandemic times, travelers wishing to embark on a U.S.-bound flight regularly encounter its border and authorized guardians (U.S. officials located on foreign soil) far away from the coastal and land borders of the United States, in places as diverse as Freeport and Nassau in the Bahamas, Dublin and Shannon in Ireland, and Abu Dhabi in the United Arab Emirates.

On any given day, more than six hundred U.S. Customs and Border Protection officials and agricultural specialists are deployed in airports around the world, processing millions of passengers *before* they depart for the United States. Strikingly, such decisions bear the full weight of U.S. law, as though their determinations were made “at the border,” despite being

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In recent years, the United States has entered advanced negotiations to build ever more preclearance capacity at airports overseas. Crisply conveying the rationale and agility of the shifting border, the intent is to “take every opportunity we have to push our [operations] out beyond our borders so that we are not defending the homeland from the one-yard line.”⁸

Such measures may well prove to be the way of the future; they are arguably a regulator’s dream tool for deterring unwanted admission. As noted by the International Organization for Migration (IOM), “[m]any States which have the ability to do so find that intercepting migrants before they reach their territories is one of the most effective measures to enforce their immigration laws and policies.”⁹ When it comes to reinforcing borders in response to the coronavirus, countries are using a variety of legal strategies, including the invocation of emergency measures usually reserved for wartime.

Such bold measures may be justified today as a matter of urgency to combat a global pandemic. But they also reveal deeper patterns that disrupt and test assumptions about waning sovereignty, while also revealing the limits of the populist push for border-fortification. Counter to the narrative of border walls, it did not require a single sack of cement for President Trump to barricade the United States from travelers arriving from the European Union. Instead, it took simply the stroke of a pen to define who may enter (primarily American citizens and permanent residents) and who will be turned away (everyone else save diplomats and foreign nationals invited to the United States to help tackle the virus). These measures may leave a residue long after the crisis has passed.

The shifting border not only extends the reach of sovereign authority to regulate movement far beyond the country’s actual territorial edges. It also bleeds into the interior. As part of a major reform to U.S. immigration policy in the 1990s, a procedure called “expedited removal” was introduced into law. This legal provision permits frontline officers and border agents both to expeditiously return undocumented migrants at the border and to review the legal status of individuals detected up to one hundred miles away from any U.S. land or coastal border, in effect “moving” the border into the territorial interior.

This legal locus-hocus-pocus not only relocates the border but also creates what has been referred to as a “constitution lite” zone within the United States—allowing law enforcement agents to set up checkpoints on highways, at ferry terminals, or on trains that require people to provide proof of legal status. Such government surveillance of movement and mobility—traditionally restricted to checkpoints at the actual border—is now seeping into the interior. No less than two-thirds of the U.S. population—more than 200 million people—lives in this 100-mile-deep constitution-lite-zone. The bulk of the population of New York state, for example, lies within 100 miles of the land and coastal borders of the United States, as does that of Florida, another mobility and migration hub.¹⁰ Government officials have long gone on record declaring that such internal border enforcement measures may well expand “nationwide.” Until recently, such a prospect seemed to belong in the realm of dystopian science fiction. No longer. In July 2019, months before the outbreak of the coronavirus, the Trump administration issued a new rule

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Technology Trap

With the spread of COVID-19, a growing number of countries are also turning to cyber-tech measures for regulating the movement of their own citizens, deploying surveillance tools typically reserved for counter-terrorism and espionage. In Israel, Prime Minister Benjamin Netanyahu announced on March 14 that “all means” will be used to fight the spread of the new virus, “including technological means, digital means, and other means that until today I have refrained from using among the civilian population.”¹¹ The government moved ahead, bypassing parliamentary approval and oversight, to authorize emergency regulations that give power to the country’s security services to track the movements of people testing positive for the virus, geolocating their cellphones. Such information permits building databases of individual whereabouts, contacts, and social interactions. These measures are not only deeply intrusive but can also be activated *without* the consent of the affected persons, feeding into broader fears that the current moment of crisis will be used by leaders to push for controversial policy changes, citing the pandemic as a justification for such action.

This big-brother-like scheme has temporarily been halted by an injunction issued by the Supreme Court of Israel, but the concern about executive power grab remains valid, especially given that new emergency regulations have suspended most operations of the justice system. In the United States, the Department of Justice has asked Congress to grant the Attorney General power to authorize top judges in the country to pause court proceedings and to detain people indefinitely without trial.¹² These are extraordinary measures that would have to be approved by Congress. But the mere fact that they have been proposed reveals how threatening the combination of a deadly virus and the declaration of a national emergency (as was done in the United States on March 13) can be to the well-being of a democracy.

In this new fight against an invisible virus, anyone who might become infected (namely, each one of us) faces the paradox of having to rely more heavily on the government as regulator and provider of essential services, while also potentially fearing the implications of such emergency powers and intrusive mobility-monitoring provisions. Again, we can draw lessons about the latter by exploring measures that, up until now, were reserved for non-citizens in the age of shifting borders. Consider a pilot project designed to help protect Europe’s borders and funded by the European Union, known officially as iBorderCtrl and dubbed by critics a “virtual policeman.” This mobility control system is designed to prescreen incoming travelers, who are required to “perform a short, automated, non-invasive interview with an avatar [and] undergo a lie detector.”¹³ The data is then linked to any pre-existing authority data and stored in large databases that are connected with “portable, wireless connected iBorderCtrl units that can be used inside buses, trains, or any other point [to] verify the identity of each traveler ... [and] calculate a cumulative risk factor for each individual.” The calculated risk factor will appear in any future border crossing and may lead to a denial of entry or to further checks. The developers of the system have stated that the iBorderCtrl avatar is effective at “extract[ing] information from humans,” and

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mobility of citizens as well, especially in times of crisis. The once-fixed territorial border is thus not just shifting inward and outward, but also multiplying and fracturing. Each person “carries” the border with her as she moves across space and place.

Government officials foresee a future whereby arriving and departing passengers will not require any travel documents. Instead, the body will become our ticket of admission (or conversely, what marks us for denial of entry) as biometric borders expand their reach. Countries such as China, Australia, Japan, the United States, and the United Arab Emirates are leading the way. Dubai International Airport, for example, has introduced a pilot test of new “biometric borders”—known as smart tunnels—in its Terminal 3 and plans to implement the new technology in the remaining terminals later this year. The smart tunnel identifies passengers through a combination of scans of a user’s iris and face, which occurs as you walk through, meaning that no human interaction is needed. The information is then matched with the passenger’s digital profile. Once in the UAE, every citizen and lawful resident, including those on a work visa, must also carry a biometric ID card (known as the Emirates ID), which serves as a “personal database of every resident.” This all-encompassing database can be checked and verified by government officials at all times. Measures of migration and population control thus become intertwined with new, powerful technologies of surveillance.

The Border is Dead; Long Live the Border

Plagues have throughout history wreaked extraordinary havoc on the societies they raid. The COVID-19 pandemic has threatened our default expectation of some degree of predictability and possibility. As megacities become ghost towns, and once-bustling airports grind to a halt, the virus has generated a puzzling new enigma of a globalized world harboring barricaded nations, all under the pervasive gaze of “all-seeing” eyes. While we cannot read the tealeaves of the future, we can learn from the surprising lessons of the recent past, revealing that the border is not vanishing but rather metamorphosing. 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 different orientation has emerged. Far from the dream of a borderless world that emerged after the Berlin Wall came down, today we see not only more border walls but also the rapid proliferation of “movable” legal barriers that may appear anywhere but are applied selectively and unevenly, with fluctuating degree, intensity, and frequency of regulation.

Instead of waning and disappearing, states have engendered a whole new legal cartography of control over borders and movement. No longer a static and immovable barrier, the border has become a mobile, agile, sophisticated, and ever-transforming legal construct—a *shifting border*, which can be planted and replanted in myriad locations, with dramatic implications for the rights and protections of those falling under its remit.

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undo the draconian surveillance and control measures that this virus has unleashed without hesitation. No less significant, we will face the task of reimagining national sovereignty and international cooperation in a world where borders, like people, have the capacity to move.

—Ayelet Shachar

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