❚ Book Review ❚

The Shifting Border: Legal Cartographies of Migration and Mobility
Ayelet Shachar. United Kingdom: Manchester University Press, 2020, 328 pages

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The Advent of the Age of The Shifting Border and Its Discontents

Borders are on the move.

We are not simply living in the age of migration. In her book, *The Shifting Border: Legal Cartographies of Migration and Mobility* (TSB, hereafter), Ayelet Shachar demonstrates that peoples worldwide are also living in "the age of the shifting border." She presents the shifting border as a heuristic analytical concept and a new perspective that can enable us to examine more critically how borders on the move regulate human mobility, as well as to rethink the current migration and mobility regime in which we live.

The core problem that we face regarding the shifting border is the overall inflexibility of the refugee-protection legal framework (TSB, 92). There is no doubt about the urgency of international cooperation and burden sharing among states. However, international society—and the so-called Global North particularly—has massively failed to fulfill its legal obligations to protect forced migrants. Overall, a tendency toward burden evasion seems to have overridden those that mandate burden sharing.

What then underlies this tendency of burden evasion? At the deepest level, there is a sense of crisis, which has been amplified particularly among European countries through three waves of challenge: the global

financial crisis (2008), massive influx of refugees (2015), and the current coronavirus pandemic (2020). This sense of crisis, combined with public perceptions of a loss of control, has given an impetus to the securitization of migration. Against this backdrop, the shifting border strategies, as they regulate human mobility, are a clear manifestation of the exercise of discretionary power of the state in the face of the crisis the state itself specifically defines.

As "a regulator's dream tool" (TSB, 29), the shifting border was strategically designed and deployed in a way that skirts the state's obligations for international protection. Established democracies increasingly desire to be relieved of their domestic, regional, and global legal obligations to protect refugees "*without* formally withdrawing 'from those legal obligations'" (TSB, 72).

The Key Features of *The Shifting Border*

In the book, Shachar calls for a shift of focus from "the movement of people" across borders to "the movement of borders" that regulates human mobility worldwide. The lens of the shifting border, she argues, would not only enable us to correct the globalists' demise-of-the-state thesis, but more importantly would analytically capture and allow us to critically examine the features of migration-enforcement practices among established democracies.

What is the shifting border, then? Shachar says that it is "a moving barrier" and "an unmoored legal construct" (TSB, 4). The shifting border is not fixed in terms of time and place. It is a movable gate or wall: It "variably shrinks, expands, disappears, and reappears across space and time" (TSB, 20). Additionally, the shifting border, as it consists of governmental authority exercised, is not illegal or extralegal. On the contrary, it is something "drawn and redrawn by the words of law" (TSB, 13); simply put, it is a legal construct. Its core feature is "a functional rather than a territorially bounded interpretation of jurisdiction" (TSB, 80).

Accordingly, sovereignty is no longer rigidly attached to fixed

territoriality. States are exercising sovereignty quite flexibly by "stretching their jurisdictional arm inward and outward" (TSB, 8). That is to say, "law-and-order agencies … simultaneously expand the actual … scope and reach of their migration and border control activities far beyond the edges of the territory and deep into the interior" (TSB, 19).

In the case of the inward stretch, the interior of the state can be re-categorized as if it is the exterior. This means that the government can put in place a stark administrative distinction between physical entry and the lawful admission of migrants. As such, this "legal fiction" could paradoxically create so-called constitution-free zones in liberal democracies. For instance, the US government, backed by legislation, designated the interior of its territory within 100 miles of its land or coastal borders a *de facto* constitution free zone, in which law-enforcement agents can detect the legal status of random persons and enforce "expedited removal." Australia has also applied a similar policy. Its "excision" policy legally authorized immigration officers to remove asylum seekers who manage to reach Australian territory but stay within the area designated "excised" territory, *as if* they never landed on its territory.

When it comes to the outward stretch, Shachar identifies two inter-related trends. On the one hand, the world's leading immigrant-receiving countries collaborate with countries of origin and/or transit to regulate human mobility more efficiently. On the other hand, shifting border strategies have been accompanied by increasing collaboration between private and public sectors, or the growing role of private companies, which, as Sarah Fine—one of the interlocutors in the book—says, blur the line between state and market to some degree. The pre-clearance system of the United States and the multiple border strategy of Canada are representative examples. US officials with a mission to regulate the entry of migrants are dispatched to countries of origin or/and transit, which are remote from the US territory. Canada, which adopted a similar overseas interdiction policy, even legally permitted the government to request reimbursement from airline companies for the costs of detention, return,

medical care, and the like in cases where irregular migrants are found among their passengers.

Externalization policies on the part of the EU and its member states are further representative examples of outward stretch. Based on partnership with countries of origin and/or transit, these policies were designed to enforce migration control at the earliest possible stage. Here, the partnership is, in fact, a *deal* between the EU (or its member states) and third countries that combines the so-called readmission agreement with development incentives. This is not exclusively a European approach. The United States has been pushing forward similar (but not identical) strategies with Central American states, as Shachar also explains in the book.

Despite the cases discussed above, it would be a misconception to imagine the shifting border only as a wall or a blockade. As Shachar stresses, selectivity is another core feature of shifting-border operations, along with control (TSB, 61). Therefore, the shifting border strategy is based on a bifurcated approach: welcoming desired migrants and keeping out those unwanted or uninvited.

The Shifting Border as the Symptom of "Illiberal Democracy" in Liberal States

Shachar points out the striking implications of the shifting border as it applies to four aspects: "human dignity," "democratic accountability and transparency," "disparities in access to territory and membership," and "the emergence of a surveillance society."

First, shifting borders have been deployed amid legal maneuvering among established democracies to evade or breach rights-protection obligations. The result has been a widening gap between the *inflexibility* of international protection and *flexibility* of the shifting border. Asylum seekers, for instance, are denied their basic procedural rights. Moreover, the shifting border could facilitate unintended irregular migration or unauthorized mobility, which could seriously harm human security, as mi-

gration routes increasingly become dangerous and unsafe.

Second, governments of established democracies presumably intend to skirt democratic accountability and transparency when they design or deploy shifting-border techniques. As Shachar emphasizes, such borders can be strategically deployed to render migration-enforcement practices "largely immune from constitutional constraint, judicial oversight and even more objection" (TSB, 76). For instance, the cases of con-stitution-free zones eliminate the possibility of judicial or constitutional review, which is one of the core elements of liberal constitutionalism. Established democracies could also relocate their borders outward to skirt their constitutional obligations and international responsibilities. From all this, we can see a stark decoupling of legality and legitimacy (or justice).

Third, the spatial flexibility of the shifting border, combined with its increasing selectivity, would further worsen the global mobility divide. We can consider, for example, visa policies. A border becomes an im-permeable barrier to migrants categorized as unwanted or undesired, whereas the same border functions as a hospitable gate for citizens from rich established democracies, especially those with specific talents or skills.

This was not the end of the story. While the three aspects mentioned above mainly concerned migration-specific impacts, a fourth—that is, the emergence of a "surveillance state"—has a more extensive impact. Shachar devoted considerable attention to the impact of the shifting bor-der, as combined with new technologies (AI, big data processing, bio-metric technology, etc.) on the overall governing features of democracy. An increasingly sophisticated information-technology-based surveillance system would influence the daily lives of citizens and noncitizens alike. For instance, think about increased risks of privacy violations, possibly justified in the name of public safety and state security. For citizens, the difference, if it exists, would be one of "degree," not "kind": the age-old binary distinction between citizens and noncitizens is drastically blurred. As such, considering the shifting border a practice directed solely at migration enforcement would be a huge illusion. We should take more

seriously the possibility that we might sleepwalk into a "society of con-
trol" or "illiberal democracy," where citizens and noncitizens alike are
tracked and encoded anytime, anywhere. Additionally, as Steffen Mau,
another interlocutor in the book, astutely points out, we have to face
another critical question: If the allocation of mobility rights depends on
big data, who will or should "control the digital controllers"? (TSB, 156).

Liberal Constraints and Politics of Contestation and Resistance

Despite all the concerns set out above, Shachar is not pessimistic.
Rather, she emphasizes the importance and feasibility of *liberal con-
straints* of law and justice on the overall restrictive tendency of shift-
ing-border practices. Conceding that we live in a world where states will
retain a final say over the terms of entry and stay for the foreseeable
future, she suggests that we would be better served to bring the shifting
border under "the normative umbrella of regulatory and democratic over-
sight" rather than trying to "undo [its] flexibility" to no avail (TSB, 76).

The liberal constraints here imply an "inversion of roles" (TSB, 84),
which is to say a subversive appropriation of shifting-border practices.
In the book, Shachar highlights the rights-enhancing potentiality buried
underneath these practices' restrictive tendencies. For instance, the same
administrative techniques used for the shifting border can become right
enhancing, just as they are currently restricting rights. In this light, we
have a good reason to put forth massive efforts to change the dominant
operative logic of the shifting border from control and discipline toward
justice and rights. Once again, the shifting-border machinery, Shachar
argues, can be deployed "in the service of *enhancing* rights and securing
[human] mobility, rather than inhibiting both" (TSB, 83).

Furthermore, Shachar suggests a two-fold strategy as a principled
approach to liberal constraints. It consists of two principles. The first
is that human rights follow borders; the second is affording protection
extraterritorially to the places where vulnerable migrants are. These two
principles, she insists, combine to foreclose governmental authorities by

using their extraterritorial humanitarian gestures to extend rights-restricting practices.

Still, the question remains: What can be done to enable this transformative idea to materialize in the real world of the shifting border? Shachar tries to answer this question by stressing the critical importance of expansion and of multiple layerings of democratic contestation or civic resistance, which seems to resonate with "cosmopolitan democracy," as scholars like Mary Kaldor and David Held have conceptualized it. She raises her voice: "To stand a fighting chance of success, significant political mobilization is required of critical civil publics, acting locally, nationally, and transnationally" (TSB, 93). Of course, no one denies the essential role of the courts in ensuring liberal constraints. However, the effect of judicial politics would be limited without citizens, to use Mark Tushnet's words, "taking the constitution away from the courts" and reclaiming their constitutional demands.

Stretching the Discourse

This book, with a new perspective and fascinating insights into various cases, will surely stimulate further investigations into the conditions required for the author's suggestions to materialize. Here, one thing to remember is that the shifting border is a policy area wherein the dynamic politics of migration unfold according to the activity of various political actors, whose different expectations or claims collide with one another. In other words, the politics of the shifting border holds multiple dimensions, including interest politics, identity politics, judicial politics, social movements, party politics, and so on. Given this political dimension, we can take the shifting border as a rising research field wherein we could apply a wide range of theoretical resources such as neo-institutionalism, theories of political economics, social movement theories, and the like, to better understand its evolving nature, implications, and possibilities.

We can also explore the key elements of the shifting border in their

possible linkages with the two main paradigms of immigrant integration in 21st century European society: civic integration and mainstreaming. For instance, we can recast the nature, impacts, and dual possibilities of pre-departure integration programs, which are considered to be among the main policy tools of civic integration, from the perspective of the shifting border. In the case of mainstreaming, municipal autonomy, for example, can rein in the restrictive tendencies of the shifting border through mainstreaming immigrant integration across general public policies within its jurisdiction, and vice versa.

The shifting border is not a paradigm applicable only to Western societies. Many other migrant-receiving countries across the globe, regardless of their overall political platform, have already deployed (or could apply sooner or later) legal and administrative techniques for moving borders inward or outward. This would have a profound impact on the global migration regime. Whether this ongoing change would enhance or restrict rights—particularly those of forced migrants—remains to be seen. Of course, we have enough reason to worry at the moment. However, pessimism is not a proper response to our worries—never. We the people still can and should *shift* the dominant pattern of shifting-border practices today, for all that it might be a daunting task.

Biographical Note

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