14 *Three Responses to Shifting Borders*
Sovereigntism, Democratic Cosmopolitanism, and the Watershed Model

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In November 2020, after Hurricane Iota destroyed their houses and gang-violence upended their lives, thousands of Honduran asylum-seekers tried to reach the US. But they did not make it there (Burnett, 2021). They had expected the infamous border wall to be the major obstacle they would face. Yet, after the US government struck a deal with Mexican authorities, new obstacles appeared on the way. Since 2019, at the request of the US, Mexico has mobilized some 30,000 troops to contain such asylum-seekers at its own southern border (Diaz Briseño, 2022). For the Honduran migrants the US border effectively moved south.

In the last two decades, states have intensified the practice of policing boundaries beyond their territorial limits – a phenomenon known as "externalization" (Carling & Hernández-Carretero, 2011; Casas-Cortes, Cobarrubias, & Pickles, 2015; Sandven, 2022). They also deploy border police in their own heartlands, internalizing borders and changing their shape.[1] They thus create what Ayelet Shachar calls "shifting borders": uses of the law to selectively restrict mobility by detaching migration-control from territorial markers (Shachar, 2020b: 4).

Shifting borders reveal a state's power to migrants, but they have wider effects. When states make exceptions to the limits of their countries' jurisdictions, their legitimacy also changes. For state legitimacy not only depends on how states exercise their power, but it also depends on *where* they exercise it. This is obvious when states invade other countries or establish colonial orders. In those cases, the state

[1] Scholars have called this trend "border polymorphism" (Burridge et al., 2017).

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might govern justly, but its governing in the wrong place renders the political order illegitimate (Stilz, 2009, 2019: 90–93). Moreover, borders and legitimate territory are also the main props of the international state system, and of the human rights regime that gives it rules. Therefore, when borders shift, the international order also changes. Shifting borders affect the states' and the states system's legitimacy.

If shifting borders thus upend traditional notions of territorial legitimacy, what should we make of them? Should we be for them? Against them? Or something else? This chapter analyses three normative responses to shifting borders, and defends the third. Each response –Sovereigntism, Democratic Cosmopolitanism, and what I call, the Watershed Model – deals differently with the foundational elements of state legitimacy (people, territory, and rights). The Watershed Model imagines the political response to shifting borders as similar to other grass-roots movements, such as those of indigenous peoples and transnational migrant activists, who redefine territory to allow for human mobility and to resist state overreach in border control. I argue that this model is best prepared to deal with challenges of shifting borders in times of planetary crises, such as global poverty and climate change.

1 Rights, People, and Territory: Shifting Borders as a Normative Problem

In the last few decades, rich countries have externalized borders to avoid having to hear asylum seekers who reach their territory. One way they do this is by sharing responsibilities with other states (as in the case of the EU's "Integrated Border Management"), to subcontract functions to other states through cooperation accords (the best known case is that of the EU with Turkey in 2016), and to delegate powers to private entities (FitzGerald, 2019; Sandven, 2022).

While most researchers of externalized borders ask whether this practice jeopardizes migrants' human rights, fewer notice that it jeopardizes the international system's legitimacy. For at least the past hundred years, the system has rested on the congruence of peoples and territories. This congruence is required because legitimate borders rest on the people's collective self-determination (which in turn is grounded in the value of individual self-determination). Sovereign states, following the 1936 Montevideo Convention, accept that having

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a government, a permanent population, a defined territory, and the capacity to relate to other states are necessary for a state's existence. However, there is also an international understanding that "government" ought to be legitimate. Since the early twentieth century, legitimacy is premised both on good governance and on individual and collective autonomy and human rights. The foundational elements of legitimate states thus became (1) universal or human *rights* (enforceable by local law), (2) a *people* (as the ground of law), and (3) *territory* (as spatial jurisdiction). Thus the triad of rights, people, and territory underlie state legitimacy.

Besides these three, there is also a systemic element. State legitimacy also depends on the whole states system's upholding rights for everyone in the world; for people can only fully enjoy their rights if every individual has access to a territory and a state through legal citizenship, and if all other states and the system as a whole can protect them and pick up the slack if there is any (Brock, 2020; Owen, 2020). So there must be rights, people, and territory in *every* state for the system to be legitimate.

The problem with externalization is that it upsets the balance of these elements. Shifting borders changes the limits of a state's jurisdiction, misaligning people and territory. In so doing, they also undermine state legitimacy, because the people cannot democratically authorize law within the territory whose borders are now shifting. A democratic people could authorize law within reduced territorial expanses, but externalized borders and enlarged jurisdictions impinge on other people's territories. Now, without democratic authorization there is no collective self-determination, which is the ground of individual states' legitimacy. Moreover, without the right alignment of rights, territory, and people, individuals and even entire populations can fall through legal cracks and their human rights become unenforceable, thus jeopardizing the legitimacy of the whole system (Aleinikoff & Owen, 2022; Brock, 2020; Owen, 2020).

For many in the Global North, this misalignment reveals how vulnerable are the human rights of asylum seekers. In the South, by contrast, the misalignment of people, territory, and rights causes concern because it threatens self-determination, which is supposed to protect against international abuse by more powerful countries. Without the assumption that people and territory align, we open the door to nondemocratic and colonial practices.

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When Northern states externalize borders, they impinge on the rights of individuals, but also on other states' rights. For example, Donald Trump bragged that, in 2019, he strong-armed the Mexican foreign minister by threatening to raise tariffs on imports unless Mexico policed its southern border at no cost to the United States. Although we don't know whether these claims are true, there is no doubt that Mexico ceded to US pressure when it accepted the "Remain in Mexico" program. Through this program, 71,000 asylum seekers from third countries were sent back to Mexico to wait for an immigration hearing in the United States. Meanwhile, Mexico did deploy 25,000 soldiers (Diaz Briseño, 2022). The Montevideo triad of territory, people, and rights was supposed to protect self-determination. But border externalization threatens this principle, and with it, the states system's legitimacy.

Given that the elements of the people, territory, and rights triad are in flux, they lead decision-makers to a trilemma, where they can hold one or two elements as fixed, but not all three (see Figure 14.1). They can't leave all three in flux, because administrative structures of some kind must exist to enforce rights, and their legitimacy requires a limit to jurisdiction. If you cannot steady all, there will be sharp disagreements over how they should be controlled, because fundamental values are at stake. Thus, political problems related to shifting borders

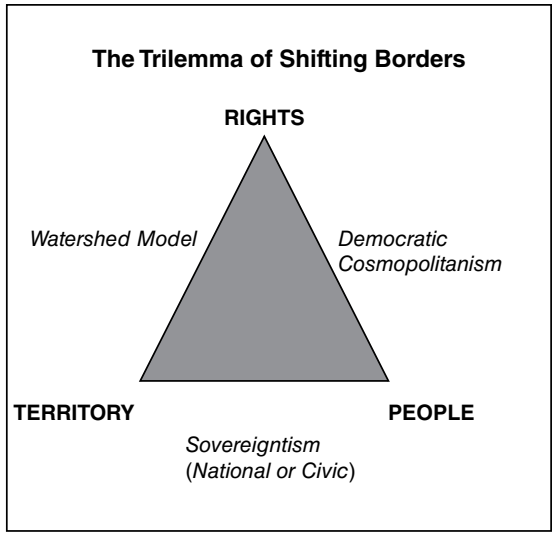


Figure 14.1 The trilemma of shifting borders

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(especially those related to immigration) often appear intractable, for there are conflicts over the proper balance of the triad's elements.

How to strike that balance? Political philosophy today offers three answers. One demands that border externalization stop. That is, it seeks to stabilize people and territory, even if this comes at the expense of rights. On this view, what matters most is connecting (national) people and territory, because this dyad constitutes sovereignty. We could therefore call this position *sovereigntist*. Those who take it hold this connection so dear that they are willing to jettison migrants' rights (as codified in international law) in order to connect people and territory. And they privilege current citizens' rights over those of foreigners.

A second response keeps rights and people in place, but allows territory to move to keep up with the new practices of border control. From this perspective, rights are still justified democratically (the people authorize law), and democratic law should follow border control wherever it goes. As Ayelet Shachar argues, it is "painfully obvious" that we need "mobile remedies and geographically flexed rights protections" to keep up with current changes in border control (Shachar, 2020b). This response thus emphasizes the connection between the people and rights. We could call this position *democratic cosmopolitanism*.

Finally, there is a third response, one that keeps borders where they are legally drawn and maintains rights connected to territory. This response sustains territorial legitimacy by keeping borders and border control in their traditional places. But it is flexible with the people: It allows for human movement and makes physical presence in a territory, or "being here" (Bosniak, 2007), the ground of political legitimacy. Because this response is associated with environmental movements and territorial rights demands, I'll call it the Watershed Model (I elaborate on this response in Ochoa Espejo, 2020).

Rather than engage specific works, in what follows I distill the main features of these responses, with the understanding that no single author fully embraces the pure model. These are ideal types that emphasize each response's strengths and weaknesses.

2 Sovereigntism

Sovereigntism is a view that seeks to make the sovereign people congruent with the territory, because only this alignment justifies state institutions. It relies on two grounds for territorial sovereignty: ownership

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(as when a people owns its national territory) and the self-determination of peoples. Both ultimately depend on the autonomy of individual persons (Stilz, 2019).

For sovereigntism, territories mark the limits of administrative units where governments can protect an individual's basic liberties and organize to meet a society's needs. Only a state that makes the people and the territory congruent can protect these liberties. Since, for sovereigntism, it's those liberties that ground the whole states system, the congruence is the ultimate moral basis of international order. Sovereigntism admits that such congruence is never fully achieved, but considers it the normative ideal underlying the whole global structure.

Now, sovereigntists would be the first to admit that such congruence is often challenged – as it is when people move across borders, or when the border "shifts," that is, when territory changes as the legal jurisdiction of state officers extends beyond the official limits of the state. When any of those occurs, sovereigntism seeks to bring the three elements back into alignment, by rectifying territory through popular referenda, or by fortifying borders and limiting immigration.

But if finding alignment is too difficult (because there are large groups of undocumented migrants, or because it is hard to sort economic migrants from asylum seekers, for example), sovereigntists will sacrifice the internationally sanctioned rights of asylum seekers to make sure that there remains a tight connection between the domestic people and the territory, even if this means that the rights of citizens are at the expense of human rights for all.

Sovereigntists hold that peoples have exclusionary territorial rights. Hence they have the right to ban noncitizens from their territory. So, although sovereigntists may recognize that refugees have rights to a place to live and the right to belong to a community that enforces their rights, they do not see an immediate obligation to take in people who have not touched their borders. Although they accept that all states must recognize human rights, they also see many of those as unenforceable rights against particular states. Specifically, they see no obligation to enforce universal obligations beyond their territories (Miller, 2016; Walzer, 1983).

When people, territory, and rights do not align, sovereigntists will prioritize the relation of people and territory in the context of assigning rights. Sovereigntists hold that the migrants' interests should be protected by their home state and that each state has special obligations

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to its own constituents. On their view, states have an obligation to take in migrants who cannot meet their basic needs and are not secure or oppressed in their home country, but they don't believe there is a human right to emigrate, and thus no duty to take in economic migrants. Moreover, given that international obligations to asylees are unenforceable, sovereigntism sees them as humanitarian concerns, rather than legal obligations. So current citizens have priority (Stilz, 2019: 208).

In practice, when rights and people do not perfectly align with territory, sovereigntists default to prioritizing citizens' rights. When there are many people-out-of-place, they will be perceived as a crisis to the state (Mountz, 2020). Sovereigntists will first seek alignment of people and territory, and then will turn to the migrant's international rights. Moreover, sovereigntists will hold that officers of the law should stay within their territory. If there is a choice between maintaining the sovereignty of the people within the state and protecting the rights of individuals at the border or beyond the border, sovereigntists will choose the first. (If a third country is effectively performing obligations of the sovereign state, as in the example given earlier, where Mexico takes in asylum seekers on behalf of the United States, this will be seen as a concern for the third state.)

Unfortunately, by valuing the link between people and territory above all else, sovereigntism gives states a chance to stretch the law and overlook international rights of nonnational individuals. Sovereigntism has thus often been used to sustain the status quo and to justify practices and institutions that verge on illegality (Cohen, 2020). For this reason, it clashes with our second response to the problem of externalization, which emphasizes the connection between the people and rights.

3 Democratic Cosmopolitanism

Democratic cosmopolitanism sees legitimacy in terms of universal rights. States are necessary because they are the locus where democracy can occur, but this practical need for institutions is secondary to the normative value of universal rights. Therefore, the people (as the ground of democracy) can be imagined as untethered to territory, given that the priority is attending to individuals' rights, wherever they happen to be.

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Democratic cosmopolitans are willing to accept changes in the traditional conception of territory and tolerate shifting borders, as long as state citizens and officers carry their international law obligations with them when they stray beyond official limits of territory. On this approach, as in maritime law, the "law follows the flag." That is, the law is expected to move in lockstep with the shifting border (Shachar, 2020b). Because, from this perspective, rights are still justified in democratic terms, the law remains connected to the people and aligned with universal rights regardless of the jurisdiction (Benhabib, 2006), and thus the triangle corners of rights and people remain steady, even as the territorial border moves.

In its ideal version, democratic cosmopolitanism can make the shifting border acceptable because, as long as the shifting border (as a legal institution) carries democratic law with it, those who encounter officers of the state will be able to exercise their rights as if they had reached the official limits of a state's territory. That is, the country whose borders are shifting will keep the democratic character of its institutions by connecting its people and the rights that they should enforce, but their jurisdiction would not be strictly territorial anymore.

A clear example is when migrants in boats are detained by a country's coast guard on the high seas. The officers should not be able to claim that the migrants' boats are not under the detaining country's jurisdiction because jurisdiction is not exclusively *territorial* jurisdiction, it is primarily the ability to exercise effective control over people (Shachar, 2020b: 138). This fluctuation of the border is permissible on democratic grounds, because both state and international law should comply with democratic decision-making (from each country) such that institutions carry legitimacy with them. Every jurisdiction (even shifting and overlapping legal jurisdictions) can be legitimate provided that for every decision there are democratic inputs (somewhere). Democratic cosmopolitans would accept externalization, provided that the agreements between countries were transparent, and they made international rights available to individuals when they encounter officers – regardless of location (Shachar, 2009: 75).

For democratic cosmopolitans, the solution to externalization is to reinforce the possibility of asylum rather than to curtail it. Unlike sovereigntists, cosmopolitans are not committed to containing peoples within a given area, because rights, for them, do not depend on having territorially limited institutions. Here universal rights (filtered through democratic law) have priority over sovereign concerns. In this view,

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deterritorialized jurisdictions could still offer the protection of the law, because the official who exerts control or detains the migrant (wherever they happen to be) carries with her the law of her state. The aim is to prevent lawless situations where asylum seekers or migrants have no legal protection.

By relinquishing the connection or rights and territory, however, democratic cosmopolitanism puts into question the legitimacy of the territorial state system, even if there is still an official territory of each country and if this detachment occurs only in cases of border control. If we detach law from territory (such as in the examples of officers encountering asylum seekers on the high seas), then we may also detach law from the democratic power of the people who inhabit a country where the extraterritorial officer happens to be (such as the cases when officers from one state police their borders inside a second country with help of local law enforcers). In practice, the distinction between citizens and aliens always creates hierarchies, and democratic laws (of foreign officers and locals) can conflict. Thus, shifting borders extend the jurisdictions of powerful states, and gives them excuses to exercise influence beyond their borders.

In the example of the United States, Mexico, and Central America, extraterritorial US' reach is seen as an imposition of a strong state over its weaker neighbors. When Mexican officers detain migrants from Central America, they are still Mexican officers in Mexican territory. Theoretically, they are working under democratic law, and they have a full right to detain undocumented migrants – but they wonder "Who am I working for?" – as Campos-Delgado and Côté-Boucher's (2022: 5) ethnographic work with Mexican migration officers reveals. If these officers believe that they are effectively working for the United States, then the immigrants that they detain are under the de facto control of a foreign power. If US advisors and officers who now exert this power indirectly were to also wield de jure power in Mexican territory, matters would be openly colonial.

The idea that officers carry the law with them is attractive for democratic cosmopolitans in cases when asylum seekers seek relief. This is clear when asylum seekers try to "touch base" to get legal protection from a state to which they want to migrate, or when they encounter Frontex officers who skirt responsibilities because they do not respond to any particular state's democratic law (Sandven, 2022). In those cases, it is desirable that officers carry their law with them. However,

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their presence would also have a profound impact in other domains. There are many circumstances besides migration where the deterritorialization of jurisdiction would allow foreign officials to formalize their influence over weaker states. For example, if state officers' legal power abroad becomes de jure, then the military advisors typically used abroad by strong states would become legally sanctioned decision-makers. This could effectively undermine the power of the democratic peoples affected. The question of asylum would morph into many other questions of territorial sovereignty, such as when should other countries' officers be present, or when should extraterritorial law be applied? Such questions create jurisdictional conflict and also worries that the stronger are imposing on the weak.

Moreover, when officers carry their law beyond their territorial jurisdiction, they may undermine other advantages of the connection of law and territory. The spatialization of law that occurred in early modernity has problems, but it also has many advantages: The most important is that –in theory – the law applies evenly to all in an area, rather than selectively through personal status. Yet the externalization of borders and the deterritorialization of law reinstates a form of personal jurisdiction – or the power that a legal order has to decide regarding an individual because of that individual's status, independently of their location (a good example of these are courts martial, premodern canon law, or selective rights owing to a person's migratory status). What makes it possible for the law to follow individuals beyond a state's territory also gives the state more power to discriminate internally and intervene externally. Thus, a new order of overlapping territorial and personal jurisdiction can threaten democratic equality between persons and between states.

Finally, when migrants ask for asylum from afar, it makes it harder for the migrants who are already present in a given territory to claim rights on the basis of presence. Presence – and particularly extended presence – then ceases to be a proof that those who are *here* are within a country's jurisdiction and already part of the social order.

4 The Watershed Model

In current discussions, it may seem that sovereigntism and democratic cosmopolitanism are the only approaches available. Yet there is a third corner to the triangle. This response to shifting borders turns to

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territory. It holds the corners of territory and rights in their place, and it does away with the people as a fixed group defined by citizenship. I call this response to shifting borders the Watershed Model, because it takes geographic features and the environment into consideration (Ochoa Espejo, 2020). As a response to current practices of migration policing (particularly "externalization"), the model seeks to keep the legal border at the border. But rather than imagining territory as a container or as the private property of a given identity group, the model values the presence, the material relations and embodied practices, and the political participation of those who happen to be in the territory, regardless of their legal status. The Watershed Model therefore sees the subject of politics in terms of presence and material relations, rather than identity. That is, while it holds territory steady and develops the law in relation to that space, it allows for movement across borders and it gives rights and responsibilities to those who are here – where "being here" refers not only to the presence within legal boundaries (Bosniak, 2007), but also to the relations of those present in a given space with the environmental facts that shape their life in common (Carens, 2013; Shachar, 2009).

Like the other two responses, the Watershed Model arises from concern for legitimacy. Legitimacy arises from respect for democratic law-making, but unlike the other two responses, here the *demos* is not imagined as a group defined by legal status; instead, it is defined by presence within a jurisdiction. This response highlights that the main purpose of the current shifting borders is to keep people out of the territory, or to make distinctions between people who are deemed worthy of refuge and those who are "only" economic migrants. When states move the border to prevent migrants from reaching their legal territory, or when they extend the mandate of border patrols and immigration police within the territory, they work with the assumption that people can be separated into groups according to their legal status. That is, in those models there is an assumption that the law applies differently to some people. However, through the Watershed Model as a lens, all are equal. Democratic legitimacy requires that all persons are equal under the state's territorial jurisdiction. Thus, the Watershed Model clarifies why "no person is illegal" and why undocumented people who have been living in the state can demand rights solely because they are already there (Ochoa Espejo, 2015).

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To ensure that there is democratic legitimacy, the Watershed Model holds territory and rights steady, but the model also recognizes that we cannot stop all movement across borders. To deal with the mobility underlying shifting borders, it does not try to move the scope of national law to catch up with the expanding power of the state, nor try to realign people and territory at the expense of those who cross. Instead, it seeks to dissolve the assumptions that there are different personal statuses within a given territorial jurisdiction. For the other two positions (which seek alignment of people and territory or of people and rights) a person can be either a citizen or an alien. A person could even be an exception to the law, either because they carry extraterritorial obligations or/and immunities or because they are undocumented and have no clear status. But for the Watershed Model, these distinctions do not carry legal weight. They are associated with the selective application of laws on people with different legal statuses, and thus are antithetical to the equality that grounds legitimacy in democratic orders.

To define political participation by presence, the model focuses on place-specific political obligations. Like actual watersheds, territories create unique obligations among those who are within a given space, and these obligations, in turn, establish unique localized and political collectives. Just as each member of a nation has special obligations to other nationals, so too do those who are present in a space have special obligations to those who are physically near them. A good example of place-specific obligations is the watershed responsibility we have not to pollute water for those downstream. Place-specific obligations are tightly connected to governments because they guide administrative and political decisions that coordinate collective action in particular places. These decisions determine how we create territory and how we design urban and rural areas: how we circulate, how we plan cities, and how we think of private, public, and sacred spaces. In this sense, the Watershed Model formalizes place-specific obligations – and indeed rights – in a given territory.

But if territory and rights are held in place, and if participation is defined by presence, this model seems to favor those who are already settled in a given area. What does this mean for those who move? And particularly, what does it mean for migrants, or asylum-seekers? In practice, of course, not all territories are the same. Individuals tend to flock where there are more opportunities and less insecurity, which incentivizes states to create a model that is "hard on the outside

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and soft on the inside" (Bosniak, 2006: 4). How does the Watershed Model deal with the soft inside/hard outside?

The response is that the hard exterior arises only when rights given by presence are superimposed on a model of identity membership (where the people is defined by ethnic or national identity and/or citizenship). When rights are defined by identity, countries have incentives to keep aliens out, but when citizenship is defined by presence exclusively, then the emphasis is on making sure that those who come in perform their place-specific duties, rather than on preventing their entry. (And the incentives to those who seek to enter change as well, because the rights that one acquires through entry are place-specific rights, rather than privileges of identitarian belonging.) In practice, this means that a model that seeks to keep territory and rights in place is compatible with human mobility and even open borders.

In the literature there are many examples of how the sovereigntist and the democratic cosmopolitan models look in practice, but there are far fewer on the Watershed Model, and at first it may sound like an environmental utopia. In actuality, the model has already been widely used (Ochoa Espejo, 2020, 218–221, 232–233, 264–271), but neglected by scholars. Although this third type of response to shifting borders seems unlikely nowadays because of the racialized and xenophobic European and American responses to asylum crises in the early twenty-first century, a watershed approach has been tried in the past, and it may become more common in times of planetary emergency.

5 Movement and Politics in Times of Planetary Crisis

In the long term, the Watershed Model can better respond to the challenges of shifting borders in times of planetary crisis because it can better accommodate large migrations, which will not stop in the future. Moreover, this third response can be used to coordinate action across borders, particularly when it comes to international concerns such as global poverty and climate change. The model also better allows for bottom-up political movements, and it better accommodates spontaneous activism from migrants and communities (such as indigenous groups) who try to defend democratic practices and resist inappropriate intervention from the state.

The Watershed Model reacts to shifting borders by rejecting the legitimacy of immigration control beyond the legal border. Because it

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emphasizes territory, it highlights local obligations – particularly those related to development and material resources. In its ideal version, it focuses on sustainability, specifically in the relationships of residents to the land and environment. The focus on material relations to the land also downplays differences in identity (whether ethnic or civic) among those present in a given area.

The model is not only an aspiration: Identity has not always been emphasized, criminalized, or racialized across borders as it has been since the early 2000s. A good example of this can be found in Mexico's southern border before the United States put pressure on Mexico to control migration from Central America (that is, before border externalization). For all practical matters, Mexico and Guatemala had open borders before the immigration panics in the 1980s and 1990s. Moreover, Mexico had a generous asylum policy for refugees from the Guatemalan civil war (Herrera & Ojeda, 1983).

While the current US border has shifted location and moved deeper into Mexico (as the US becomes more concerned with Central American immigration), prior US interventions in the area were different. Before the 1990s, intervention was ideological and geostrategic. In the 1970s and 1980s, the US pressured Mexico to police the border on the assumption that leftist guerrilla warfare could spread from the South. The then prevalent "domino theory" saw Mexico as a dam against the spillover of communism in the region.

The Mexican state also had other concerns in the area. During the 1980s and 1990s, its fear of revolution in Chiapas led the government to pour resources into development programs, agrarian reform, and other policies focused on agricultural communities. All of this happened while refugees from the civil war in Guatemala poured into the country and were resettled in refugee camps (in fact, new towns), that the Mexican government provided for decades (Paz, 1985). These policies were not explicitly developed with sustainability concerns in mind (the government was certainly not using a Watershed Model explicitly!), but they clearly illustrate that even in the nonideal circumstances of the last century, states governed borders in different ways, and often these did not require racialization, securitizing migration, segregating refugees, or shifting borders.

The Watershed Model response to shifting borders also helps to understand the role of borders beyond migration control. States do not only shift or reorganize borders for the purpose of regulating

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migration, but they also shift practices for geostrategic purposes and when they seek extraterritorial control of natural resources (through mining, industrial agriculture, or water management). The Watershed Model recognizes these concerns, and seeks to address states' policies at this deeper level by focusing on the connection of rights and territory, which distinguishes this corner of the triangle from democratic cosmopolitanism (and unlike sovereigntism, here the territorial emphasis is not on the territory as the people's property, but rather on the rights and obligations relating people to environment). This response also helps us understand grassroots political reactions against state policies at the border – particularly to see the responses from those who are at the crossroads of state power.

For example, recently, the connection between territory and rights has been taken up by indigenous rights activists (Bryan, 2012). When faced with environmental destruction, indigenous activists in Latin America began transforming the traditional meaning of the word "territory" as "an area of land claimed by a state" (Storey, 2020: 1). Instead of envisioning territory as the geospatial limits of a state depicted on a map, these activists considered the relations that their communities had established with *la tierra* – the land – as a source, sustenance, and a way of life; giving rise to "new forms of mobilization and citizen participation focused on the defense of the commons, biodiversity, and the environment" (Svampa, 2019: 27). Hence, they severed the old association between "defense of territory" and military or nationalist purposes, instead tying it to political struggles against environmental degradation. In fact, according to Víctor M. Toledo, "the defense of territory and territoriality is the most visible programmatic feature of the varied environmental struggle and movements of Mexico and Latin America" (Toledo, Garrido, & Barrera-Bassols, 2015: 136). Defenders of territory have sought to stop multinational corporations (who are often in cahoots with national governments) from gouging natural resources out of areas that sustain traditional ways of life. To prevent exploitative extraction of minerals or agricultural products (often justified in the name of national sovereignty), they embraced a conception of territory where ethical relations to the land have moral priority over popular sovereignty or the national will (Svampa, 2019; Toledo et al., 2015).

On this conception, political obligations and rights do not fall like manna from heavenly principles onto individuals through the medium

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of state institutions. Instead, rights and obligations grow out of local norms and struggles. Communities and individuals relate to each other through mutual obligations mediated by the land, and they take responsibility for reproducing life in the places they inhabit. These obligations are justified when they support sustainable patterns of resource use – particularly water use. For these "defenders of the water and the territory," rivers and watersheds stand in for valuable relations, which must be understood as connections among people, animals, and things (Svampa, 2019: 46). Hence, it is not national sovereignty or territorial independence that justifies and defines territory, but rather environmental sustainability. As a result, this third response to shifting borders can accommodate transnational indigenous movements that feed on local politics to resist state control at the border and across it.[2]

In the same vein, the bottom-up activism of migrants who organize in caravans or of citizens who help people on the move is also better captured by a model that sees rights as emerging from participation rather than as a prerogative of the state and its officers. In recent years, the movements of asylum seekers who organize show that local participation and the connection of local movements has transnational effects (Hidalgo, 2015; Mountz, 2020).

The Watershed Model can counter the effects of state policing, allows us to understand and incentivize grass roots movements, and has the added advantage of preparing us to deal with the inevitable movement of people that will increase owing to planetary crises spurred by climate change. If shifting borders are a problem because they undermine the rights of people on the move and trying to restore an ineffective static model is not a promising solution, the Watershed Model offers a source of legitimacy while curtailing the excesses of border control.

Conclusion

The three responses to shifting borders show how states, practitioners, scholars, and activists react to movement across borders, and each of them highlights important values.

[2] There are many examples of indigenous territorial activism across national borders, including the US-Mexico border (Schulze, 2018), Guatemala, El Salvador and Honduras (Casolo, Omar Jerónimo & Sendra, 2020) and in the Brazil-Paraguay Borderlands (Correia, 2019).

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Today, the lives of asylum seekers are at stake. These people have a right to have their asylum cases heard, and states should not make their journeys harder. The urgency of this situation demands that scholars propose alternatives to the current management of borders and undo the illegal tendencies of shifting borders. Current proposals for what to do are likely to fall under one of the three responses modeled here: sovereigntism, democratic cosmopolitanism, and the Watershed Model. Sovereigntism seeks to align people and territory, because it prioritizes the rights of current citizens. Democratic cosmopolitanism proposes that rights and people align, such that the law follows its officers wherever they happen to be, even when this movement sacrifices the traditional limits of territorial jurisdiction and other states' independence. Finally, the Watershed Model emphasizes the connection of territory and rights, and focuses on presence rather than identity. Each of these responses may be appropriate in some circumstances, but in our current moment, we may need to think in terms of watersheds.

I believe that the current migration crises are just one aspect of a wider challenge to democratic governance, and this challenge will worsen as planetary crises created by climate change and lack of vision in environmental sustainability multiply. As hurricanes, floods, heat waves, and pandemics become only more common, migration will only increase. The Watershed Model of borders and border control proposes long-term solutions and aspirations for people on the move, and tools for those who stay behind to deal with the territories that are themselves vulnerable to the crises to come. In the long run, only self-organizing of localities and the people who are there – even if only in passing – will be the ground for democratic governance.

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