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SYMPOSIUM ON INFRASTRUCTURING INTERNATIONAL LAW

BUILDING BORDERS AND "NO BORDERS": INFRASTRUCTURAL POLITICS AS IMAGINATION

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Since 2015 when migration across the Mediterranean was declared a "crisis" in Europe, the language of crisis and invasion has persisted, structuring conversations and political imaginations. This has led many to argue for the strict closure of borders and the deportation of migrants or "people on the move,"[1] and to a deepening set of racisms within borders. But this "crisis" has also led to a less publicized, opposing struggle against borders, in the service of a more egalitarian world. I argue that in order to really understand how borders are being regulated or unregulated, we need to look not only at the international legal realm, but also at infrastructural politics.[2] In this Essay, I will discuss two different terrains of infrastructural struggle over migration and borders: the first is about border walls, which are built to close off resources and partition the world into haves and have nots; the second is an infrastructure of collective living, where people-on-the-move are occupying abandoned spaces and working against borders and private property. I suggest that it is important to attend to the infrastructural dimensions of migration and border regimes, as they can produce and regularize exclusion and conceal it from the conventional field of political discussion and legal contestation. At the same time, new infrastructures can prefigure better, more equitable worlds.

Border Walls

It could not have been clearer under Donald Trump's presidency that the politics of migration and borders were being fought out not only in legal spaces, but by way of infrastructure. The constant, key refrain of his presidency was about a border wall: former President Trump repeatedly proposed building "a big, beautiful wall,"[3] and, not unlike an art installation, had contractors display several thirty-foot-tall prototypes in the desert. While borders are in part regulated by law, they are built and rendered real through political and material infrastructures. Indeed, as U.S. Customs and Border Patrol officers themselves have stated, walls are a "tactical infrastructure"—the goal is for them to slow people down, so they can be caught after they cross. Border walls require continuous work and ingenuity to be maintained as necessary and inevitable: they have to be imagined, constructed, legalized, patrolled,

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[1] "People on the move" is a term used by many migrants themselves to get away from legal categories like refugee or economic migrant which are built on hierarchy and exclusion.

[2] For a call to attend to infrastructure in relation to law, see Benedict Kingsbury, *Infrastructure and InfraReg: On Rousing the International Law 'Wizard of Is,"* 8 Cambridge Int'l L.J. 171 (2019).

[3] Shane Bauer, *What Is the Status of Trump's "Big Beautiful Wall"?*, N.Y. Times (July 2, 2020).

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and reimagined. As Anthony Dunne and Fiona Raby state,[4] politics is a battle over the imagination, where the imagination can help us maintain pre-existing realities, or create alternative visions, denaturalizing the "real." In this case, the imagination both produces, and is produced by, infrastructure and design. Trump's political vision of a white supremacist United States was crystallized by border wall infrastructures—not just by law.

Recognizing that infrastructural projects create and regulate new political formations, it is important to attend to the enactments of power in these projects. Infrastructures embed politics in ways that are different than legal regimes. I suggest that paying attention to infrastructure gives us insight into the politics of the U.S.-Mexico border. In particular, we can see how a militarized response to a fear of "invasion" is actually produced and amplified by the materiality of the border wall. More specifically, while border walls purport to be the materialization of national sovereignty—deriving from and protecting an essential inner national identity—paradoxically, I argue that they are ultimately created by transnational political and military technologies. That is, transnational technologies and the economies they are embedded in have helped to manufacture the very idea of invasion that now drives the building of walls. Understanding infrastructural politics, then, allows us to see how a certain politics of fear is built by walls —not always the other way around. A challenge to this ultra-right-wing politics, then, must take seriously the materiality of infrastructure, and its economies.

To understand how walls connect to transnational economies and political imaginaries in order to build the idea of invasion, it is important to know a bit about walls themselves. People often think that border walls are seamless, uniform structures, but in fact, the U.S.-Mexico border wall is made up of many different designs and materials. These include levy walls, floating fences, steel bollards, and picket fences—the designs have names like Normandy, Bollard, Landing Mat, and Aesthetic—the "aesthetic" is an attempt to make border walls less obvious in areas such as universities or schools. The key point is that designs, materials, and the smart border wall technologies are transnational—they are shared, as border security technology is a global industry. I attended a Border Security Expo in January 2018 in San Antonio Texas, which drew tech companies and government officials from around the world in the name of fighting transnational organized crime and terrorism. Israeli companies lead the way, profiting from the fact that Gaza is "a great laboratory,"[5] sharing wares such as smart fences, which are highly fortified steel barriers that have the ability to sense a person's touch or movement. Indeed, the Israeli company Elbit Systems furnishes an arsenal of "homeland security systems" from Gaza and the West Bank to Southern Arizona. Such companies have created what some have dubbed the laboratory of "the Palestine-Mexico border" where technologies are tried out and data is shared.[6]

These are transnational technologies, circulating in the name of national closure. But what does it mean that these wall technologies were developed in different political or historical contexts and for divergent political purposes? I argue that designs embed their own political imaginaries. As social scientists have argued, artifacts always have a politics.[7] In the case of the U.S.-Mexico border, these technologies import a particular political history of militarized violence, most specifically, from Israel-Palestine, where the separation barrier was initiated by Israel in 2002 at the height of the second intifada. The immediate setting was a renewed Palestinian uprising in the face of the failure of the Oslo Accords and the promised peace agreement that would have granted Palestinians a separate state. The larger context is occupation and the violence of settler colonialism. Israel responded with military might, doubling down on territorial security. Consequently, the barrier

[4] Anthony Dunne & Fiona Raby, *Design for the Unreal World*, *in* Studio Time: Future Thinking in Art and Design 49 (Jan Boelen, Ils Huygens & Heini Lehtinen eds., 2018).

[5] Todd Miller & Gabriel Matthew Schivone, *Why Is an Israeli Defense Contractor Building a "Virtual Wall" in the Arizona Desert?*, Nation (Jan. 26, 2015).

[6] *See* Todd Miller, Empire of Borders: The Expansion of the U.S. Border around the World (2019).

[7] *See* Langdon Winner, *Do Artifacts Have Politics?*, 109 Daedalus 121 (1980), and much scholarship that has since built on it.

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was developed in a highly militarized environment. It is made up of electronic fence, iron, barbed wire, and a lot of concrete; it is imposing and mostly impassable. It also uses the highest-level military technologies, from long-range sensors to unmanned aerial vehicles.

What does it mean that these militarized technologies have since been imported into the United States to shore up its southern border, which was *not* at that time a war zone in the same sense? To be sure, the American "war on drugs" has indeed produced its own deep and enduring forms of conflict and violence, but of a different sort, as have the United States' own imperial and settler colonial histories. Those living around the border have co-existed for a very long time, as friends and often as family. This view of "invasion" has been instituted in a top-down fashion; it does not come from the region itself, where the majority do not want a wall.[8] Indeed, along the lines of recent arguments made by social scientists about "technopolitics," we must understand that politics takes place at the level of technology itself—technology is a terrain for the negotiation of moral and political questions.[9]

In order to sell their technology, Israelis use the fact that their war zone doubles as a laboratory—they boast that the technology was tested on the front lines. Since 9/11, the United States has reconfigured its southern border in accordance with the Israeli model. Indeed, the border wall between the United States and Mexico has literally been manufactured by Israeli companies. Some have suggested that this relationship with Israel has helped to produce a militarized logic in the United States: a different system, which has, in effect, according to journalist Todd Miller, "globalized Palestine."[10] This has included giving contracts to Israeli companies for drones, and other surveillance technologies. In addition, the Israel Defense Forces has trained U.S. Customs and Border Protection and Homeland Security agents as well as U.S. law enforcement officers explicitly in counterterrorism, broader perimeter security techniques, and combat.[11] In this process, war has been reframed, and the police has been militarized just as the military has been trained in policing technologies and assigned law enforcement duties.

These technologies have helped to extend the idea of a war against immigrants—as invaders—legitimizing both the creation of a state of exception at the border and the use of military violence against immigrants and other people of color throughout the country.[12] Again, to be clear, the militarization of the American landscape has a long history of its own.[13] The U.S.-Mexico border wall also reveals its own imperial histories, by being built in part with old Vietnam-war era landing mats.[14] Ultimately, the border security complex initiated by the relationship with Israel has been grafted onto U.S. imperial histories, resulting in a U.S.-Israeli hybrid. In many ways, this wall security complex serves as a prototype of a border wall for the Global North—a transnational political and infrastructural formation that works to keep out the racialized poor, that is, the "invaders." This type of infrastructure is a form of regulation that works outside the law, often prefiguring it.

[8] John Burnett, *Unlikely Allies Band Together in Laredo to Oppose the Border Wall*, NPR (May 26, 2020).

[9] *See, e.g.*, Timothy Mitchell, Rule of Experts: Egypt, Techno-Politics, Modernity (2019).

[10] Miller & Schivone, *supra* note 5, at 74.

[11] *Id.* at 78.

[12] *See, e.g.*, Margaret E. Dorsey & Miguel Díaz-Barriga, *The Constitution Free Zone in the United States: Law and Life in a State of Carcelment*, 38 Pol. & Legal Anthropology Rev. 204 (2015).

[13] *See, e.g.*, Catherine Lutz, *Warmaking as the American Way of Life*, *in* The Insecure American: How We Got Here and What We Should Do About It (Hugh Gusterson & Catherine Besteman eds., 2009); Joseph Masco, The Theater of Operations: National Security Affect from the Cold War to the War on Terror (2014).

[14] Victoria Hattam, *Imperial Designs: Remembering Vietnam at the US-Mexico Border Wall*, 9 Memory Stud. 27 (2016).

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"No Borders" Infrastructures

"Open border" legal regimes exist in a limited sense, enabling a certain porosity of nation-state borders, but these are always subsumed by other (regional) borders like the European Union, which are closed. While no "no-borders" legal regimes exist thus far, such visions of the world are being enacted by way of infrastructure; they are prefiguring new political formations. Attending to infrastructure, then, is critical to understanding the direction of political imagination and change.

In 2009, Bridget Anderson, Nandita Sharma, and Cynthia Wright wrote presciently about no borders movements as incarnating a struggle for the global commons.[15] And since then, much of the literature on these movements describes a politics of the "mobile commons," which refers to the shared knowledge, affective cooperation, and mutual support among people-on-the-move when they are on the road or arrive somewhere.[16] This mobile commons—which is also a set of infrastructures—is made up of the secret knowledges and survival tricks that help people cross borders, but perhaps more importantly, also help build a larger politics of freedom of movement. It has also been spoken of as an "underground railroad," drawing on the history of struggle against slavery in the American south. These no-borders infrastructures include the best travel routes, places to rest, safe or cheap transport, and medical or other aid en route.[17]

But in addition to the infrastructures that help people cross borders, there is a second set of infrastructures that are helping to build no-borders worlds. *Occupations* are a key aspect of this embryonic infrastructural politics: occupations of buildings and land in ways not condoned by forms of liberal capitalist governance. People are not just fighting for the freedom to move but also the freedom to live in place. I see occupations as a different form of commoning, which includes the struggle against enclosures and the privatization of space and property. The oft-cited goal of the commons is the sharing of wealth and resources on the basis of collective decision making.[18] To be sure, there are many examples of commoning beyond migrant occupations, including mutual aid projects and collective gardens and kitchens.

People-on-the-move are reimagining both space and how to be together, building alternative forms of governance against the state and against what they see as unjust treatment, including the lack of basic care and shelter. They do this by occupying liminal spaces, thus challenging regimes of private property. These include border zones, hotels, abandoned buildings, monuments, and churches, and this is happening all over Europe and North America. Whoever needs a home—and for however long—can occupy any welcoming, unlived in, or abandoned space; in these spaces, there are no "good" or "bad" migrants, categories which legal regimes often impose. In many ways, these occupations are forcing a more equitable distribution of resources. To be clear, I am aware of how troubling the term "occupation" is, particularly in relation to settler-colonialism. The question is whether such acts can be repurposed toward freedom, that is, if no-borders movements can practice decolonial politics, working with Indigenous communities against the nation-state to undo rather than further the settler colonial project. The point is not to imagine or claim the land as empty or available, but precisely to refuse the authority of the state, challenging its right to decide who resides where.

Occupations have taken different forms. While each is grounded in local histories and political contexts, they share a transnational imagination and set of strategies, where the goal is to build collective infrastructures in which

[15] Bridget Anderson, Nandita Sharma & Cynthia Wright, *Editorial: Why No Borders?*, 26 Refuge 5 (2011).

[16] Dimitris Papadopoulos & Vassilis S. Tsianos, *After Citizenship: Autonomy of Migration, Organisational Ontology and Mobile Commons*, 17 Citizenship Stud. 178 (2013).

[17] *See, e.g.*, "The Alarm Phone," an activist-hotline for refugees in distress in the Mediterranean and Aegean Sea, available at https://alarmphone.org/en.

[18] *See, e.g.*, Pierre Dardot & Christian Laval, Common: On Revolution in the 21st Century (2019).

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people can live together outside the rules of sovereignty and capital. For instance, in the summer of 2018, I went to the occupied Plaza Hotel in Athens, Greece, one of about twelve occupied buildings which, under the new right-wing government, have all since been shut down. Plaza started as an example of the autonomous organization of people-on-the-move, without an NGO working top-down to manage them or provide services. These occupations originated in the dissident history of the district of Exarcheia, where abandoned buildings have been the site of collective living and action since the 1970s. "Refugees" and locals worked and occupied the hotel together. Rather than being contained on the margins of the Greek polity, as with so many refugee camps, these people-on-the-move lived in Athens, indistinguishable from the many who require shelter, particularly since Greece's debt crisis. They were all houseless, out-of-place, and as such, they reclaimed space together, creating a form of commoning.

Plaza residents worked to enable children to go to school regardless of how long they would be living in Athens, decoupling social services from nation-states—indeed, as one of the Plaza residents explained to me, the local teachers organized and went on strike to enable this. This was an experiment in how social services can be accessible to people beyond citizenship status or the state, beyond identity, driven instead by participation, presence, and mutuality. In addition to offering access to education, they created other material infrastructures, such as communal kitchens and living spaces.

Similarly, in France, people-on-the-move have recently occupied abandoned buildings. Many are being co-organized with the political collective *La Chapelle Debout!*, which brings together undocumented folks and others fighting against racism and imperialism. In the spring of 2022, after assessing the many abandoned buildings in Paris, they occupied one in the city's 9th arrondissement, and whoever needed a home moved in; they called it *L'Ambassade des Immigrés* (Immigrant Embassy). Together with locals from the neighborhood, *La Chapelle Debout!* transformed the space into one for collective living and learning, including calling on everyone with expertise to build a collective kitchen. They stocked the building with beds and began creating social infrastructures—access to French and English language lessons, legal aid, medical care, and accompaniment to court. Unfortunately, they were expelled in October 2022, but their mission continues.

Conclusion

Both movements—to close borders or abolish them, to build connections or to rupture them—are happening by way of infrastructure: people are building the worlds they want to live in, and they imagine as they build. In the process, they are prefiguring new collective political worlds that either shore up or challenge regimes of sovereignty and capital. The question is how the law might engage with these—will international legal regimes amplify mobility and equality, or shut these down?

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