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Shachar, Ayelet; Mahmood, Aaqib

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The Body as the Border: A New Era

*Ayelet Shachar & Aaqib Mahmood**

Abstract: »*Der Körper als Grenze: Eine neue Ära*«. COVID-19 has reminded us of the significance of borders. In 1989, with the fall of the Berlin Wall, many predicted that sealed gates would soon become relics of a bygone era. Today, we find a different reality. Instead of disappearing, borders are transforming. In this article, we build upon the shifting border logic to explore how responses to the global pandemic have accelerated processes of detachment of mobility control from a fixed territorial marker. From global travel bans to mandating pre-arrival proof of a negative test result taken within 48 or 72 hours prior to departure to requiring digital registration of a passenger's travel history to enforcing strict post-arrival mandatory quarantine orders that arrest mobility, the shifting border paradigm has provided a template for policymakers to respond to a mounting global crisis. In addition to regulating movement *across* international borders and *within* countries, we trace the surprising return of subnational and inter-regional division lines in managing mobility, the erosion of the once taken for granted right to return to one's home country, and the spatial and legal techniques used to block refugees from reaching terra firma during the pandemic. Next, we critically evaluate the authorization given under emergency regulations to deploy novel biometric and AI technologies, big data, and predictive algorithms to surveil moving bodies at real time and reprimand those deemed to have breached their quarantine or related governmental emergency measures. While drastic times call for drastic measures, techniques of movement control that "scan" and trace our bodies raise serious questions about justice, fairness, and the risk of discrimination, which may well remain with us even long after the pandemic is over.

Keywords: Borders, migration, COVID-19, health passes, regulation of movement, surveillance, biometric techniques, subnational divisions, refugees, right to enter one's country, border, body, mobility, asylum seekers.

* Ayelet Shachar, University of Toronto, R. F. Harney Chair in Ethnic, Immigration and Pluralism Studies, 1 Devonshire Place, M5S 3K7 Toronto, Canada; ayelet.shachar@utoronto.ca.
Aaqib Mahmood, University of Toronto, Faculty of Law, 78 Queens Park, M5S 2C5 Toronto, Canada; aaqib.mahmood@mail.utoronto.ca.

1. Introduction

COVID-19 has reminded us of the significance of borders. In 1989, with the fall of the Berlin Wall, many predicted that sealed gates would soon become relics of a bygone era. Today, we find a different reality. Instead of disappearing, borders are transforming. The current crisis reveals that governments seeking to restrict mobility rely only partly (and increasingly rarely) on brick and mortar. The border has become a moving barrier, an unmoored legal concept, creating a new paradigm: the *shifting border* (Shachar 2020a). It may stretch outward, far beyond the territory of the state, to regulate mobility from afar, just as it may bleed inward, deep into the interior. In this article, we build upon the shifting border logic to explore how responses to the global pandemic have accelerated processes of detachment of mobility control from a fixed territorial marker. From global travel bans to mandating pre-arrival proof of a negative COVID-19 test result taken within 48 or 72 hours prior to departure to requiring digital registration of a passenger's travel history to enforcing strict post-arrival mandatory quarantines to imposing "stay at home" orders that arrest mobility, the shifting border has provided a template for policymakers to respond to a mounting global crisis. Migration and mobility control techniques once deployed primarily to monitor people on the move, escaping poverty and instability, have shifted: *everyone*, including citizens and residents of wealthy democracies, is potentially within their ever-extended reach.

In the pandemic era, our homes became both shelters from community transmission of the virus and fortresses of immobility. Subnational and inter-regional division lines, which are typically crossed without even having been noticed, regained significance. Authorities imposed intra-state lockdowns and movement bans across regions, provinces, states, and Länder in Germany, Italy, France, and Spain, to mention but a few European examples. International travelers were quarantined in hotel rooms, monitored with GPS-connected wristbands to ensure they remained within their individualized "geofence" enclosure. The power of states to regulate movement *across* international borders and *within* countries of residence has ballooned to unprecedented proportions. As we document in the following pages, governments relied on a web of emergency legal powers that authorized spatial, temporal, digital, algorithmic, and "bio-status" surveillance measures.

Our comparative analysis elucidates the range, breadth, and significance of recent legislation, regulation, and discretionary authorization to implement a groundswell of novel, powerful governmental tools. Through a varied range of scales, locations, and infrastructures, public officials have unleashed biometric "eyes" and "ears" to monitor human mobility – or, conversely, mandate its *immobility*. We further explore how these emergency measures

relied upon and further accentuated the logic of the pre-pandemic shifting borders and have in turn markedly bolstered the reach and impact of public and private authorities in regulating borders, managing movement, surveilling bodies, and engendering new spaces of “contactless” identity verification through biometric indicators. Treating the body as the site of regulation and control of mobility is no longer a matter of science fiction. It is the reality of the here and now.

Following this introduction, the discussion proceeds in two main sections. Section 2 underscores how states have both relied upon and adapted ready-made “scripts” of the shifting border to respond to the shock of a rapidly spreading global pandemic in which mobility control – of people, and of the virus – was key to breaking the chain of infection. We elaborate on the complex, multiscalar, and multidimensional qualities of the pandemic-emboldened shifting border, which has operated in different scales (international, national, subnational), attached to different activities (boarding a plane, entering a café, or obeying a stay-at-home order), and has given rise to new validation procedures, including a variety of digital passes. Some of these new digital passes are mandatory – think of France’s COVID-19 “health pass,” which generates a QR to validate the carrier’s status as fully vaccinated, recipient of a negative test taken, or recently recovering. The pass must be shown by anyone who seeks to travel on intercity train, enjoy a meal in a restaurant, or enter a retirement home or a hospital (except in the case of emergency). Germany implemented the “3G Regel” – *geimpft, genesen, getestet* (vaccinated, recovered, tested). Other jurisdictions have introduced voluntary verification measures. Take New York State’s digital “excelsior pass,” which offers a “voluntary and secure way to retrieve proof of COVID-19 vaccination or negative test results” (New York State 2021). The public campaign to encourage the use of the pass encourages potential registrants to “think of it as a mobile airline boarding pass, but for proving you received a COVID-19 vaccination or negative test” (*ibid.*). Internationally, ever tightening mobility regulations are in place, including the requirement to show proof of the passenger’s COVID-free-status. We further demonstrate how different categories of entrants were adversely impacted by the pandemic, focusing on two extreme examples whereby those with a pro-tanto right of admission were *denied* access: home-bound citizens and refugees seeking asylum.

In section 3, we shift the gaze to explore how the border has not only dramatically extended its spatial and temporal reach, but has also become ascribed to moving bodies. We demonstrate the prominence of legal and bureaucratic inscription of surveillance of the “infected” and the new scripts that the COVID-19 pandemic has emboldened. Whether or not these scripts will become part of the post-pandemic “new normal” remains an open question at this stage. What we know for certain is that once far-fetched scenarios such as “scanning” and tracing our bodies through a sophisticated suites of

new technologies are no longer solely relegated to fiction; they are part of the here and now of living through a pandemic.

2. Bordering Functions that are “Freed” from Fixed Territoriality

In their contribution to this Special Issue, Gülzau and Mau focus on “the ‘physical border infrastructure’” (Gülzau and Mau 2021, 13, in this special issue; Hassner and Wittenberg, 2015, 162), reminding us of the prevalence of borders as “material and physical structures that states set up to demarcate, control, and seal off their territory” (Gülzau and Mau 2021). Complementing their analysis, in this article, we wish to highlight the emergence of no less significant a phenomenon – the growing role played by bordering functions that are “freed” from physicality and materiality and, as such, spawn new layers of discretion by states (acting alone or in concert and, increasingly, in partnership with supranational entities and private actors), creating liminal spaces in which migration control functions are detached from a fixed territorial location.

Shachar’s latest book, *The Shifting Border*, published just days before the pandemic took hold globally, explores the tremendous investment – legal, political, discursive – by governments in rich countries in averting arrival by uninvited migrants from poorer countries by turning once-fixed borders into

legal spaces that states can manipulate to yield desired outcomes, allowing states, for example, to capture undesirables and apply parallel legal rights regimes within those spaces, while also expanding outward beyond national borders, allowing extraterritorial inspection and exclusion from spaces within other countries’ territory. This reimagining of the Westphalian system proposes that while physical borders remain in place, their meaning changes – contradicting conventional expectations of both reified national borders and global borderless territories where rights are supposedly protected through international agreements and treaties (Harper 2021, 822).

Unlike the static physical barrier, the shifting border is not fixed in time and place; increasingly, it is comprised of legal portals, digital surveillance tools, and AI-powered risk assessments technologies. The black lines we find in atlases no longer coincide with the agile locus and focus of migration and mobility control.

When it comes to regulating mobility and access, the *location* of the border is shifting.¹ It may bleed deep into the interior – arresting mobility and movement within the territory, resurrecting subnational and interprovincial

¹ This section draws upon Shachar 2020a, 4-7.

borderlines between states, Länder, and the like. In other circumstances, the border may extend well beyond the edge of the territory, with migration control functions outsourced or externalized to countries of transit and origin. This is part of a strategy that strives, as official government policy documents explain, to “push the border out” as far away from the actual territorial border as possible. This concept, enthusiastically embraced by governments worldwide, involves screening people “at the source” or origin of their journey – *not* the destination – and then again at every possible checkpoint along the way. By stretching the border both outwards and inwards, authorities along the travel continuum gain vast – and as of today only sparsely constrained and regulated – capacity to monitor and track individuals before, and after, they reach their desired destination. The traditional static border is thus reimaged as the *last* point of encounter, not the first. Responses to the global pandemic have accelerated this trend.

2.1 How Did Global Travel Come to a Halt?

On March 11, 2020, the World Health Organization (WHO) declared the novel coronavirus (COVID-19) outbreak as a global pandemic. Remarkably, by the end of March 2020, the world came to a standstill. Data collected by the COVID Border Accountability Project shows that 189 countries imposed global travel bans in response to the COVID 19 pandemic (Shiraef 2020). Another way to slice the data is this: more than nine-in-ten people worldwide lived in countries with travel restrictions amid COVID-19 (Conner 2020). Governments curbed mobility by imposing travel bans, *de facto* engaging in self-closure or self-isolation (at the national level), by banning inbound, outbound, or both forms of travel. Faced with the challenge of defeating an invisible virus, such bold measures were seen at the time as both necessary and proportional. But they also exposed deeper patterns that disrupt and test assumptions about waning sovereignty, while also revealing the limits of the populist push for border-fortification. Take the United States. Counter to the narrative of border walls, which was salient under the Trump administration, it did not require a single sack of cement to “barricade” the United States from travelers arriving from China, Iran, and later the European Union (these locations were categorized as high-risk areas in the early stages of the pandemic). Instead, it took only the stroke of a pen – the signature of a presidential proclamation – to define who may enter and who was to be turned away *before* boarding a flight toward the United States.

More important for the purpose of our discussion is the question of *how* this feat was achieved – how could international mobility come to a halt in such a rapid and unprecedented manner? None of the legally mandated bans on entry (and in most countries, exit as well) required even one battalion of soldiers to move to the edge of the territory, or a single brick or barbed wire to be

installed at the border. Governments the world over have deployed a key rationale of the shifting border to regulate mobility from afar, by blocking travelers *prior* to arrival, before they embark, and *after* they reach their destination. It was the power of the law – the reach of its ordinances – not guns and ammunition, that brought the world to a halt.

2.2 Unilateral Closure of International Borders

We need to distinguish among three levels of borders that “returned” in the pandemic: international borders, national borders within free movement zones, and subnational borders. We address these in turn. Internationally, after the WHO’s declaration of a global pandemic, governments took swift unilateral action. Take Canada. From March 16, 2020 onward, Canada blocked entry and passage through its border by adopting a series of Orders in Council (OiCs) – an executive legal instrument that is immediately enforceable, without parliamentary scrutiny or public debate. These OiCs are powerful legal instruments: they prohibited non-essential travel *to* and *from* Canada. Canada also issued a separate regulation to close the 8,891 kilometer “world’s longest undefended border” it shares with the United States, restricting all non-essential travel (including immediate family members – a provision that was only removed several months later), while allowing critical supply chains to continue to operate, although in moderated fashion. It took more than a year and half for Canada to agree to unilaterally open its border to non-essential American travel. (At the time of writing, the United States has not reciprocated, just as it has kept the travel bans prohibiting Europeans from entering the United States.) At the time of writing, New Zealand and Australia also remain closed to non-nationals and have erected a hard-to-penetrate boundary that excludes all outsiders. As we explore in greater detail below, even homebound Australian citizens were refused entry to their own home country. 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, 2020, with the dramatic proclamation by then President Trump from the Oval Office that the United States would suspend travel from 26 European countries (similar restrictions were later expanded to apply to the UK and Ireland). Even in non-pandemic times, travelers wishing to embark on a US-bound flight regularly encounter its border and authorized guardians (US 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. Prior to the outbreak of COVID-19, more than six hundred US Customs and Border Protection officials and agricultural specialists were deployed in airports around the world on any given day, and processed millions of passengers before they departed for

the United States. Strikingly, such decisions bear the full weight of US law, as though their determinations were made “at the border,” despite being made at a great distance. This policy is clarified in US government documents: it is preferable to “identify and address threats at the earliest possible point” (CBP 2016). Controlling the movement of people starts to happen “elsewhere” and not at the actual border (Shachar 2020b).

2.3 Erecting National Borders in a Supranational Setting

The European Union, which prides itself on free movement, also took drastic action at the onset of the pandemic to restrict entry into the bloc by applying a “temporary restriction of non-essential travel from third countries into the EU+ area” (European Commission 2020). As the Commission explained, these

travel restrictions should focus on drastically reducing incoming people flows at the external borders of the Union, thereby also slowing transmission to other countries on travelers’ return, and discouraging outgoing travel of EU citizens and other persons residing in the EU+ area.

Freedom of movement *within* the Schengen area was also severely curtailed during the first wave of the pandemic. To regulate mobility and avert “uninvited” entrants, the European Union and its member states established one of the world’s most complex, multilayered systems of border management. Traditionally, the surveillance gaze is on irregular mobility. With the surge in the number of infections, however, governments turned to emergency measures that built on the existing infrastructure to put into practice extensive monitoring and tracking operations that were designed to indiscriminately and anonymously monitor everyone’s mobility. In addition, 15 countries re-erected internal borders and implemented border checks to stop all non-essential travel, including movement by EU+ passport holders and long-term third-country residents who, under non-emergency circumstances, enjoy protected freedom of movement.² Consider the following examples. Finland passed a national legislation termed Government Decision SM/2020/20 that temporarily reintroduced border controls at its internal borders. Germany implemented land borders with its neighbors – Denmark, Luxembourg, France, Austria, and Switzerland – via a notification under SBC titled ST 6851 2020 INIT, which it later extended under its ST 7033 2020 INIT Notification to further add sea borders with Denmark to the list.

² The 15 countries that took such action in the first wave of the pandemic were Austria, Belgium, Czech Republic, Denmark, Estonia, France, Finland, Germany, Hungary, Lithuania, Norway, Poland, Portugal, Spain, and Switzerland. For further discussion, see appendix 1 in Sergio Carrera and Ngo Chun Luk, “Love thy Neighbour? Coronavirus Politics and Their Impact on EU Freedoms and Rule of Law in the Schengen Area” (2020) CEPS Paper in Liberty and Security in Europe No. 2020-04. Brussels: Centre for European Policy Studies.

2.4 The Return of the Subnational

Italy took matters a step further and implemented strict mobility constraints *within* its own territory, giving teeth to intra-state mobility bans. The government approved a decree-law – formally called a DPCM (Decreto del presidente del consiglio) – to restrict movement between Italian regions/provinces on all non-essential grounds. Each region is designated to be yellow, orange, or red based on the risk of contracting COVID-19 at each region/autonomous province. If you are in a red zone, the decree-law prohibits you from leaving the region until its rating drops to orange or yellow. In doing so, Italy has not only shifted its border from the Union to the national perimeter but has also “reactivated” subdivisions within the country along regionalist lines in a desperate bid to stop the transmission of the virus. Italy’s approach proved a precursor to the action taken by other countries in Europe and beyond. Subnational borderlines, frequently treated as mere administrative categories, turned out to be vital policy tools in the pandemic. They allowed to “break the chain of infection” through an added spatial barrier or layer of distancing. While the turn to international borders was predictable, the amplification of *subnational* borders came as a surprise. It is one of the most interesting and novel findings of our study. Early on, Germany enacted inter-Länder restrictions. For example, those residing in Berlin were allowed entry to Brandenburg, but they were restricted to travel into the neighboring Landen of Mecklenburg-Western Pomerania. On March 17, 2020, Brandenburg passed an ordinance that restricted the use of accommodation facilities, campsites, mobile home sites, and holiday rentals to tourists from other Länder, which acted as a pause against mobility by Berliners. Mecklenburg-Western Pomerania prohibited all non-essential non-residents from entering. After announcing this regulation, border checks were placed to inspect the license plates of all incoming vehicles; those that were not registered under Mecklenburg-Western Pomerania were rejected entry. In early 2021, when infection numbers spiked in Germany, the federal and Länder governments introduced new rules to curb the virus spread through tighter spatial regulations of movement, limiting each person in high-instance areas to movement within an individualized mobility “zone,” a 15-kilometer diameter from the place where they resided. In the UK, the Scottish government introduced temporary travel restrictions to certain areas like Bedford, Bolton, Blackburn, and Darwen. Similarly, no travel was permitted in and out of Glasgow when incidents numbers exceeded a threshold and rose quickly. France relied on lockdowns, nightly curfews, and the shutting down of inter-regional travel. We already mentioned that in planning for a post-pandemic future, France has introduced the *pass sanitaire* (“health pass”), a QR code that must be presented in order to participate in a range of activities (cultural, commercial, transit), offering a combined logic of avoiding the curtailment of

freedoms caused by the curfews and lockdowns, restoring economic and social activities, and providing an incentive for people to get vaccinated or get tested (test results are only valid for 72 hours). These new rules, which came into effect in August 2021, were met with fierce opposition, but polls show that most of the population in France supports the introduction of the pass.

Turning our gaze beyond Europe, the strategy of sealing inter-regional borders was also deployed in China, India, Malaysia, Australia, and Canada. China was the first country in the world to introduce a regional lockdown in Wuhan and several other cities in Hubei province, placing approximately 57 million people in lockdown in January 2020. In India, the borders between Delhi and its neighboring states were sealed in March 2020. In Malaysia, the interstate travel ban was enforced by the national police at checkpoints. Anyone seeking to leave a state had to apply for a police permit. Australia is another federal country whose government relied heavily on the use of interstate bans to limit the spread of COVID-19. As soon as a city or state was marked as a hotspot, travel to and from it was immediately restricted. In December 2020, close to the holiday season, there was an outbreak of the virus in Sydney. Within hours, Queensland, Victoria, and the Northern Territory banned all arrivals from New South Wales, West Australia implemented a strict border closure to all entrants, and South Australia denied entry to all those with addresses or a travel history from the affected suburbs. In Canada, the country's four eastern provinces created the "Atlantic bubble," which restricted all non-essential entry into these provinces from the rest of the country. A woman who was denied entry into one of these provinces to attend her mother's funeral brought a constitutional challenge against the provincial emergency measure that blocked her ability to travel within Canada, despite the country's constitutional commitment to intra-state freedom of movement.³ The court agreed that the woman's constitutional freedom of movement was violated but held that such violation was justifiable within reasonable limits due to the ongoing COVID-19 situation. As the pandemic lagged on, other Canadian provinces took steps to implement their own provincial borders, most notably Ontario – home to Toronto, Canada's largest and the country's most diverse city – which barricaded itself by imposing restrictions on entry from neighboring provinces, including Quebec. In many ways, Walzer's prediction that the world will become "a thousand petty fortresses" has proven relevant under pandemic conditions (Walzer 1983, 39).

2.5 Targeting and Sorting Access Domestically: Green Passes, Health Passes

As the pandemic persisted, a growing number of countries began experimenting with the idea of granting "targeted" access to certain locations and

³ Taylor v. Newfoundland and Labrador, 2020 NLSC 125 (CanLII).

non-essential activities only to those who can prove the prerequisite “bio-status” for entry – by way of digital pass recording a negative COVID-19 test, certificate of recovery, or proof of vaccination. In doing so, governments have shifted the regulation of mobility from the international, national, and sub-national border to the perimeter of shops, salons, and cultural institutions. In February 2021, the Austrian government proclaimed that lockdowns proved unhelpful in limiting the spread of COVID-19 variants and adopted an “entry testing” policy as an additional measure to curb the pandemic. A negative test (or proof of vaccination or certificate of recovery) is required when visiting a restaurant, checking in at a hotel, receiving services that require close physical proximity to others (e.g., getting a haircut), or entering cultural venues including theaters, opera halls, and leisure and sports facilities. The Austrian government declares itself as “among the frontrunners worldwide when it comes to testing people, a position we aim to keep.” Another country that deployed such entry tests was Israel, which in early 2021 had the highest vaccination rate in the world. Israel introduced a “green pass,” which acted as a digital magic key to access gyms, swimming pools, restaurants, hotels, and cultural and sporting events and venues, in addition to adopting the so-called traffic system, whereby a color code is used to classify the risk in different localities based on the epidemiological situation there. In March 2021, after Germany entered the third wave of COVID-19 infections, Berlin introduced a new pilot project to explore whether the city’s much beloved cultural venues, including theaters, concert halls, opera houses, and night clubs could be safely accessed and revived by requiring people who purchased admission tickets to present an official negative result of a COVID-19 test taken within 12 hours of the show as a precondition for entry.

These strategies may well become the “new normal” of the post-pandemic world. As already mentioned, they allow a relaxation of heavy-handed lockdown and curfews, albeit in cautionary fashion, reminiscent of life before COVID-19 but with an added precautionary and regulatory inscription. At the same time, these various entry passes raise serious ethical and legal dilemmas about equity, privacy, and surveillance. On the global scale, richer countries have engaged in vaccine nationalism and hoarding, securing for their own members billions of doses of COVID-19 vaccines, while developing economies struggle to access life-saving doses and medical supplies. Despite initiatives such as COVAX, the bulk of vaccines have gone to wealthier nations. As of May 2021, the disparities in COVID-19 vaccination revealed “scandalous inequality”: 10 countries accounted for 75 percent of inoculations delivered worldwide whereas frontline health care workers and at-risk populations in poorer countries remain vulnerable and without access.

2.6 Sorting International Access through “Vaccine Passports”

In seeking to balance between health concerns and the “reopening” of international travel, governments and commercial actors, such as airline operators, have opted to introduce added layers of pre- and post-travel regulation and control. New safety protocols now require passengers to show proof that they are not carriers of the virus; the border has shifted onto the body itself. Air travelers must pass a multilayered review process, beginning 72 hours prior to departure, with a mandatory digital registration (applicable to citizens and non-citizens alike), proof of a negative test, submission of vaccination documentation (if relevant), or proof of recovery within the last three to six months, and travelers need to submit a tentative quarantine plan for government approval in the case that they test positive after arrival. At the border itself, even if all the pre-arrival hurdles were cleared, an officer has the authority to determine whether admission is granted. After crossing the border, a growing number of countries require an additional negative test to be taken at the airport and then again after several days if arriving from a risk area, high incidence area, or area of variant concerns. The unvaccinated cannot “test out” of these requirements at the border, and once they are in the country, they must comply with the various quarantine requirements set by the relevant national and local authorities. In summer 2021, with the gradual reopening of tourist destinations in Europe, countries experimented with new approaches to sorting between the vaccinated and unvaccinated. Greece, for example, limited access to indoor spaces to the vaccinated; Malta subjected all unvaccinated entrants, including those arriving from fellow EU member states, to a binding quarantine.

At the supranational level, Europe led the way with the adoption of the EU Digital COVID certificate, which came into effect on July 1, 2021. The certificate provides digital proof that a person has been vaccinated, received a negative test result, or has recovered from the virus. The EU certificate is valid in digital or printed forms, both of which contain a QR code with a digital signature to avoid falsification. Beyond the Commission’s initiative, a growing number of European countries, especially those whose economies rely heavily on tourism, have entered into bilateral or multilateral agreements to recognize “vaccine passports” issued by non-EU countries, showing proof of full vaccination. These include: the UK’s NHS COVID pass letter/NHS App, the United States’ CDC COVID vaccination record card, Dubai Health Authorities Vaccine Certificate, the Turkish vaccine certificate, Gibraltar, Jersey, and Guernsey vaccination certificate, and the list goes on. The travel industry, tech companies, and airline operators are exploring the idea of introducing a more standardized vaccine passport, which will operate across national borders and the maze of accompanying regulations. The goal is to harmonize the standards for the “issuance of verifiable health credentials” that may

resemble the EU's Digital COVID certificate or "any compatible digital wallet of the individual's choice" as envisioned by a coalition of public and private organizations behind the Vaccine Credential Initiative, which is composed of leading tech and healthcare firms (VCI 2021). Transnationally, the International Air Transportation Association (IATA) introduced a global standardized "IATA Travel Pass," which is still at a trial stage. It permits passengers to acquire information about what tests, vaccines, and other measures are required prior to travel, and gives them the ability to "share their tests and vaccination results in a verifiable, safe and privacy-protecting manner" through a unified digital platform. IATA launched the pilot test of the Travel Pass on a Singapore Airline flight from the glitzy city-state to London's Heathrow airport on March 17, 2021. If the IATA Pass emerges as the new global standard it will become ubiquitous (think of the QWERTY keyboard): an expected, if not a mandatory, prerequisite for boarding an international flight.⁴

Airlines are keen on seeing such developments because current legal regulations adopted by governments worldwide in effect "deputize" these carriers as pre-arrival, digital border guards, with heavy sanctions imposed for rule breaching. Consider the United States. Since January 2021, it put into effect an order under Section 361 of the Public Health Service Act (41 U.S.C. 264) and 42 Code of Federal Regulations 71.20 & 73.31(b) that requires a negative COVID-19 test upon pre-departure for any passenger wanting to board a flight to the United States.⁵ Under section 1 of the order – Requirements of Airlines & Other Aircraft Operators – airlines and related operators bringing passengers to the United States have the burden of verifying negative COVID-19 test results of each passenger, recording passenger health information, and denying boarding to anyone that fails to do so; if airlines and related operators fail to do so, they risk facing criminal penalties.⁶ Again, we see yet another dimension of border shifting: not only spatially and temporally but also institutionally, as private actors act as delegates to execute powers that traditionally rested with public governmental agencies: determining whom to allow in and whom to keep out.

We saw earlier that several countries draw official distinctions between the vaccinated and the unvaccinated in terms of their treatment before or after arrival (most notably post-entry testing and quarantine requirements), using

⁴ As with other legal regulations, some individualized exceptions may apply on health or religious grounds.

⁵ "Order under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 71.20 & 71.31(b)," Centers for Disease Control and Prevention – Department of Health and Human Services (2021), online: <https://www.cdc.gov/quarantine/pdf/Global-Airline-Testing-Order-RPWSigned-Encrypted-p.pdf>; "COVID-19 Traveler Information," US Department of State – Bureau of consular Affairs (2021), online: <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>.

⁶ Among other criminal penalties, see: 42 U.S.C. 271 and 42 CFR 71.2, alongside 18 U.S.C. 3559 and 3571.

these distinctions as tools of public health and, in some cases, also as incentives to promote inoculations. Globally, such distinctions may further compound the global mobility divide (Mau et al. 2015), especially with vaccination rates heavily skewed in favor of rich countries and so poorly distributed to the rest of the world. Another fast-emerging trend is the mandating of pre-flight digital registration (providing an added buffer zone and “pre-warning” system for destination countries to sort entrants in advance of travel) and the individualized obligation to show proof of a negative COVID-19 test within a particular time-window prior to boarding an international flight. At the time of writing, in the European Union, Italy, Denmark, Sweden, Belgium, Bulgaria, Croatia, Luxembourg, and the Netherlands necessitate a negative COVID-19 test as a condition for boarding a flight from a non-EU country. Similarly, the United Kingdom, Norway, Turkey, China, the UAE, Cambodia, Iraq, Thailand, Angola, Chad, Egypt, Ghana, Kenya, Morocco, Namibia, the Democratic Republic of the Congo, Rwanda, South Africa, South Sudan, Anguilla, Antigua and Barbuda, Aruba, the Bahamas, Costa Rica, Greenland, Panama, Argentina, and Peru all mandate a negative test before boarding a flight from any foreign country. Some nations like Germany, Spain, Russia, Bosnia and Herzegovina, Cyprus, Lithuania, Malta, Montenegro, Romania, Slovakia, Djibouti, and Ecuador demand proof of a negative test prior to boarding from designated high-risk countries or countries of variant concerns. In all such cases, the requirement for a negative COVID-19 test takes place prior to departure, stretching the temporal and spatial reach of the shifting border. It is not limited to a particular distance or proximity to the destination state’s territorial border. Rather, the border regulating entry extends, effectively, across the world to the jurisdiction of every port or point of departure across the travel continuum. Even more astonishingly is how the proliferation of negative COVID-19 testing requirements is not limited to Global North countries. Rather, in our pandemic times, the shifting border has become commonplace and manifold through its implementation in every continent; it is the new norm.⁷

2.7 Always Welcome Back Home? The Curious Case of Citizens Abroad

At the outset of the pandemic, a number of nation states were sympathetic towards nationals living abroad and took steps to repatriate them. Germany organized plane carriers despite border restrictions coming into place to repatriate over 200,000 citizens. India did the same, especially in Gulf states where many resided as migrant workers and were facing layoffs. Canada took steps to repatriate more than 60,000 Canadians from over 109 countries. Yet

⁷ There are a few exceptions, such as Qatar, Iceland, and Bahrain, which require testing upon arrival rather than pre-departure.

despite this sympathy at the start of the pandemic to repatriate nationals, new pre-arrival restrictions implemented just a few months into the pandemic restricted entry to homebound citizens and permanent residents, despite their otherwise privileged status. In this, the virus has featured an unexpected variant of the “great equalizer”; instead of levelling up all boats, it “levelled down” everyone’s treatment. Regardless of a passenger’s citizenship status, if a traveler’s bio-status exhibits COVID-19 related symptoms, airline carriers are instructed, as explained above, to refuse travel to that person, and their admission to their home state is temporarily halted. Although international law clarifies that “no one shall be arbitrarily deprived of the right to enter his [or her] own country” (ICCPR, Article 12[4] 1976), the pandemic has revealed that even the basic human right to return home – 18 months into the pandemic – has been overridden in ways that increasingly appear to fail the criteria of reasonable, proportionate, and necessary governmental action. For much of the pandemic, Australia’s strict public health measures have kept the country largely COVID-free. However, these very same measures also led the country to bar its own citizens abroad from returning home. An estimated 40,000 Australians were stranded overseas and were deprived of the right to enter their own home country – not because they cannot produce a valid negative COVID-19 test, but due to the government’s strict policy of capping the number of returning travelers. These restrictions shake up the common expectation that “the right to return to one’s country of citizenship is perhaps the most uncontroversial of all mobility rights” (Mégret 2020, 323). The pandemic has thus taught us that even such uncontroversial mobility rights are not absolute. To date, there are very few judicial pronouncements interpreting the scope of limitations that can be imposed on citizens who wish to enter (or exit) their home country under pandemic conditions. Israel is an exception. In March 2021, the Supreme Court of Israel (SCI) struck down as unconstitutional a governmental scheme that limited the number of returning citizens and residents to 3,000 per day and restricted the ability of those who have not yet been vaccinated to leave the country. The SCI judges opined that the governmental scheme did not meet the requirements of proportionality as it failed to properly balance the competing interests of public health (the prevention of spread of dangerous new variants of the virus) versus the fundamental rights of citizens and residents. The court further ruled that a democracy cannot so sweepingly restrict the right of citizens to enter the country, especially prior to an election (Bachner 2021). This precedent provides welcome guidance: even in the midst of a pandemic, certain checks and balances ought to be maintained in rule of law societies. But what happens in cases whereby, unlike Australia or Israel, governments place barriers to mobility that are not overt but rather remain “invisible,” ambiguous, and slippery, much like the shifting border itself? Canada has showcased such an example.

Canada has refrained from explicitly restricting the entry of its citizens or permanent residents. Instead, it has taken the indirect route of delegating enforcement authority on gatekeepers, such as airline carriers, which are held accountable if they fail to bar embarkment of travelers who display COVID-19 symptoms or test positive for the virus, irrespective of the passport they hold. When asked about such denial of entry of Canadians seeking to return to Canada, the Deputy Prime Minister responded that “Canadians will always be able to come home.” Yet, Canadians are *not* allowed to board flights to Canada – which is often the only way to reach the country – if they display COVID-19 symptoms. By shifting the border onto foreign soil and mandating third parties – air carriers – to do its dirty work of denying Canadians a seat on its plane, the Canadian government has worked around its obligation to allow Canadians their constitutional right of entry. This illustrates the difficulty of challenging shrewd restrictions to mobility that rely on the shifting border technique of stopping travelers (here, homebound citizens) in their tracks before they reach the destination country, while they are still at the point of departure or transit. As a seasoned civil rights lawyer explained, although Canadians have a constitutional right to always enter Canada, refusing Canadians to board airlines is a “vastly different thing”; it is far harder to challenge an extraterritorial deprivation of right when the government denies the very deprivation of the right in the first place, hiding instead behind the technicalities of emergency requirements to contain the transmission of COVID-19 that the very same government has imposed unilaterally upon third-party actors, such as air carriers, under threat of sanction if they fail to comply.

2.8 Blocked Access: Refugees and Asylum Seekers

Refugees and asylum seekers face a steeper bar. Even if they have managed, at great risk, to reach the territorial border of a country or its vicinity, the pandemic has offered a pretext to deny their protection claims without preliminary screening or individualized assessment. Take the United States. Even prior to the virus’ chilling effect on global mobility, asylum seekers that arrived by land to the US southern border were subject to the Trump administration’s “metering” and migrant protection protocols (MPP), according to which individuals were returned to Mexico to await their US asylum hearing and adjudication, a process that can last months. Although the MPP program began before 2020 and was based on US immigration law provisions allowing migrants arriving “from a foreign country contiguous to the United States” to be returned to the territory pending immigration proceedings, it gained a newfound justification under the pandemic.⁸ The Centers for Disease Control and Prevention (CDC) and US Customs and Border Protection (CBP) retooled the MPP as a means to “shield” Americans from the virus by returning

⁸ 8 U.S.C. 1225 (b)(2)(C).

individuals with pending immigration proceedings in the United States to Mexico (Gilman 2020). The legal case may cross the border; the applicant may not. Canada also restricted access to refugees and asylum seekers arriving from the United States, in effect “barricading” its southern border through legal measures of prohibiting any irregular arrivals from applying for protection, even if they managed to physically enter the country. In classic shifting border fashion, the once-fixed point of entry has been detached from a grounded territorial marker. It now stretches deeply into the interior, covering the entire geopolitical space of Canada, leading observers to conclude that “Canada achieved on its southern border through less inflammatory but more calculating means” what the Trump administration has attempted to achieve through overt anti-immigrant rhetoric and policies (Rehaag, Song, and Toope 2020).

Across the Atlantic, as COVID-19 cases began to rapidly climb in Europe, several member states have relied on public health justifications to skirt international protection obligations by sealing off their borders and ports of entry to asylum seekers. Cyprus, Greece, Hungary, and Spain completely banned entry to asylum applicants on grounds of protecting their residents from COVID-19. Malta and Italy went a step further by declaring their ports unsafe due to the virus. Even prior to the pandemic, Malta setup offshore quarantine facilities where asylum seekers were placed in a constant state of purgatory (Nimführ, Otto, and Samateh 2020; Amnesty International 2020). Yet, after 65 migrants on a ship in Malta’s shores tested positive for COVID-19, the government gained sufficient fuel to ban all asylum seekers from entering on grounds of public health. Since then, through a declaration passed unanimously by Malta’s cabinet, all ports were closed to refugees and asylum seekers. NGO ships that patrol the Mediterranean for search and rescue missions were prohibited from disembarking their human “cargo.” Even migrants pulled off from drowning dinghies were refused admission to the island. To avert the crucial territory link to activate the asylum protection apparatus, Malta kept the rescued migrants in international waters, outside Malta’s territorial waters. How? By placing them on chartered tourist vessels, namely, yachts typically used by well-heeled travelers, which were floating empty as no tourists arrived in the time of COVID-19.

Italy was the precursor to Malta’s actions when it declared its seaports unsafe due to the COVID-19 pandemic. A decree signed by Italy’s interior minister, health minister, foreign minister, and infrastructure minister indicated that the purported reasoning for the ban was that asylum seekers pose a risk to Italy’s public health (Human Rights Watch 2020). The decree was issued after an NGO rescue boat arrived at Italian controlled waters in April 2020 with 150 people on board. In a cruel twist of irony, the NGO rescue boat was named after Alun Kurdi, the 3-year-old Syrian boy whose body was washed ashore in Turkey in 2015, drawing global attention to the plight of refugees.

Human rights activists and NGOs continue to contest Malta's and Italy's position as breaching basic protection obligations owed to refugees and asylum seekers, which are perhaps even more, rather the less, important in pandemic times.

As we just saw, at both ends of the spectrum, from citizens who have a guaranteed right to return to their home country to refugees and asylum seekers who are entitled to international protection, the pandemic eroded and tested what were once seen as solid markers of national and humanitarian baselines. As the examples we have explored here illustrate, borders are not vanishing but rather, are being reimagined and reinvented. The shifting border is at once multidirectional and slippery, but not in the transnational, open, and tolerant way foreseen by demise-of-the-state or post-Westphalian theorists. Instead, a darker, more restrictive 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 "portable" legal barriers that may appear anywhere but are applied selectively and unevenly, with fluctuating intensity and frequency of regulation. We now turn to the final part of our discussion, which explores how the pandemic has allowed new scripts to emerge, scripts that intimately attach "custom made" individualized borders to moving bodies.

3. Embedding New Scripts: Transposing the Shifting Border onto the Body

Anyone who has lived through the pandemic knows that much of the emphasis on mobility has intimately been tied to the body. Movement control no longer takes place exclusively at international crossings. It has extended beyond preventing or granting entry at a marked point in time and place to a more amorphous, all-encompassing, and potentially never-ending process of "controlling, confining, and surveilling movement." Whereas the unit of analysis for mobility control was traditionally reserved to the territorial border, today it is gradually grafting onto the body itself.

Whereas movement control once relied on brick and mortar, nowadays a range of governmental and commercial actors may "scan" and surveil our bodies through a sophisticated suite of technologies, sensors, and algorithms. 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. In Australia, an automated biometric border control solution by Vision-Box is

deployed at Perth international airport with “smart gates” that are equipped with facial recognition, enabling paperless flight boarding. Dubai International Airport, too, 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, requiring no human interaction. 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 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, a process that has accelerated with the surge of the COVID-19 pandemic. Governments are also proactively developing and implementing data-mining technologies and predictive analytics as well as bilateral and multilateral agreements with countries of origin and transit that treat the latter as migration “buffer zones” for wealthier nations (often in exchange for capacity-building and material assistance in the form of development aid).

Sharing biometric information, risk assessments, and electronic records of travelers’ identity prior to travel has replaced traditional interactions between the individual and state officials at the actual territorial border because, as the UK Home Office revealingly puts it, the encounter “can be too late – they [unauthorized entrants] have achieved their goal of reaching our shores.” To achieve this sweeping vision, the location, operation, and logic of the border has to be redefined to allow government officials or their delegates (increasingly operating in concert with a host of private sector actors that deploy new digital, biometric, and algorithmic tools) to screen and intercept travelers earlier, more frequently, and more distantly from the prosperous nations they seek to reach. Thus, national and supranational authorities, aided by a dizzying array of technological “eyes” and “ears,” track migrant bodies as they move through multiple checkpoints along the travel continuum: pre-arrival, at crossing stations, post-entry, and, increasingly, within their territories as well.

As part of the concentrated effort to achieve such migration and mobility management, pre-clearance “electronic travel authorization” is now required as a matter of course, even for those who benefit from visa-free travel and are in possession of internationally coveted passports. Such electronic pre-clearance, which is linked digitally to one’s passport, must be applied for and approved by the government of the destination country before the travelers embark on their journey. Without such authorization, it is impossible today to board a plane or enter into the United States, Canada, or Australia. The European Travel Information and Authorization System (ETIAS), which will serve

as a clearing house for pretravel authorization for Schengen Area countries, is expected to become operational in 2022. This additional layer of pre-clearance and information-gathering creates a powerful yet invisible eBorder that is operational anywhere in the world, prior to departure, adjusting itself to the location and risk profile of the traveler. When the ETIAS proposal was adopted, Jean-Claude Juncker, then President of the European Union, justified the EU's commitment to rolling out this new system as a "way to know who is travelling to Europe before they even get here." In this brave new world, automated, biometric, and virtual borders will come to play a key role in the politics of mobility management, turning the bodies of migrants and travelers into the sites of regulation of movement and risk prediction.

Enter the pandemic. Tools which were once limited primarily to international border crossing have become operational much closer to home. Scholars refer to these as "embodied technologies," which fall into a continuum: they may be "carried by, worn on, ingested by, implanted in, embedded on, or engaging in ambient interaction with an organic body" (Pedersen 2018). Embodied technologies can be broken down into various types, according to the method or kind of technology device (mobile, wearable, implantable; Pedersen 2018), or surveillance type, such as "over the skin" or "under the skin" (Harari 2020). The former is more familiar. It tracks what you click on the screen of your iPad or smartphone. The latter is more intrusive. Embodied technologies allow governments or corporations to "look into our souls" by monitoring, analyzing, and interpreting in real-time our racing heart rate or micro gestures, which none of us can control.

3.1 Surveillance Everywhere

The body has long been at the heart of analysis in surveillance discourse. Perhaps serendipitously aligned with the COVID-19 context, Michel Foucault memorably drew on the example of the plague to elucidate disciplinary mechanisms that gave rise to "an intensification and a ramification of power" through "multiple separations, individualizing distributions, an organization in depth of surveillance and control" (Foucault 1979, 198). In Foucault's narrative, the plague-stricken town was "traversed throughout with hierarchy, surveillance, observation, writing; the town immobilized by the functioning of an extensive power that bears in a distinct way over all individual bodies" (ibid). Much has changed since the plague hit the medieval towns of old Europe. But there is also surprising continuity. The strategies of quarantine, disinfection, and social regulation of "infected" bodies date back to the onset of the Black Death (Tognotti 2013). Today, however, we have new additions to the toolbox. Advanced technology, big data, and AI algorithms give powerful actors, whether private or public, pervasive control and oversight over people's movement, regardless of their proximity to a territorial border.

Examples abound. China has been at the forefront of using advanced technological instruments that utilize big data and artificial intelligence to monitor bodies for slowing the spread of the virus (Haleem et al. 2020). Beyond introducing social distancing and quarantine mandates, China assigned 900 million of its residents a QR code within a span of two weeks in February of 2020; accessible through a mobile device or printable for those with limited access to technology, the QR code was required in order to move in public spaces (Bragazzi et al. 2020; Wu et al. 2020). The designation of the QR code is based upon sophisticated algorithms rooted in big data and artificial intelligence that combine people's self-assessed health status, the government's comprehensive data on its people, and China's real time collection of data on aviation, ground transportation systems, and social media. Checkpoints were setup at community entrances, major traffic exit and entry points, airports, train stations, and city/district lines where QR codes must be scanned. Each QR code is constantly updated and when scanned at a checkpoint, shows either a green, yellow, or red color. Like a stop sign, green marks a moving body as safe, yellow as cautious – usually referring to a new arrival to the city/district – and red as high risk of being exposed to COVID-19. Bodies tagged with a yellow or red QR code must quarantine and are prohibited from moving in any public space for 7 and 14 days respectively. When a yellow or red QR code is recorded in China's system, police make routine visits to ensure quarantine mandates are being followed and have been reported to forcibly enter homes to verify this (McNeil Jr. 2020). To date, over 30 countries have adopted contact tracing applications that draw on China's approach and surveillance expertise (Shendruk 2020).

In other parts of East Asia, Hong Kong and Taiwan have also used advanced technologies to monitor quarantine orders. Since March 18, 2020, Hong Kong has required new arrivals in ports of entry to wear electronic wristbands that are paired with the passenger's mobile device. Each wristband has a QR code that must be scanned regularly through the government's StayHomeSafe phone application. Wearers are directed, upon arrival to their homes, to walk around its perimeter to map out the space and the quarantine boundary. The wristband, in combination with the application, picks up the unique communication signals of a home that is comprised of the house WiFi network, nearby internet networks, cellular networks, and Bluetooth signals to create the "composite signature" of the home. The wristband wearers are constantly monitored to ensure that they are contained within the unique composite of their respective homes. If the monitored body steps outside the boundary for a few seconds, an alarm through the phone goes off that cannot be silenced without having the unique QR code on the wristband scanned through the government mobile app. It is reported that constant scans are also required at irregular times throughout the day to ensure compliance and that the

person assigned the individualized QR code has not steered too far away from their mobile device.

Taiwan faced a major challenge with the outbreak of COVID-19. It was projected to have the second highest rate of cases at the outset of the pandemic due to the high rate of movement of people from Mainland China to Taiwan. In 2019 alone, 2.71 million non-Taiwanese individuals travelled from Mainland China to Taiwan. In response, the Taiwanese government took proactive steps as early as December 31, 2019. It authorized its officials to board planes arriving from Wuhan, China to assess incoming passengers for fever or pneumonia-like symptoms before allowing them to deplane. Anyone who exhibited symptoms was placed under house-arrest, inside a “mobile geofence.” Under Taiwan’s Entry Quarantine System – enacted on February 14, 2020 – the government gained complete access to cellphone location data of quarantining bodies to monitor their location and movement in real time; if anyone stepped outside of their home, the geofence would be crossed and law enforcement would be alerted to track down the person violating their quarantine order. Additionally, under the Entry Quarantine System, Taiwan has also used QR codes to gain substantial information on travelers entering the country to feed into its big data and AI algorithms to notify hospitals, clinics, and pharmacies of possible virus carrying individuals entering the country (Wang, Ng, and Brook 2020).

In Israel, emergency orders issued by the government authorized unprecedented tracking of the country’s home population to prevent the spread of the virus, calibrating for civilian uses spyware that was originally designed for espionage and anti-terrorism purposes. The system is deployed automatically, without requiring users’ consent. It collects two weeks of mobile phone tracking information from residents who have tested positive for the virus and matches it with location data to determine who they came in contact with for a period of more than 15 minutes in that two-week period. When a body is marked as a carrier, the system then notifies at-risk persons that they must get tested and immediately quarantine (this intrusive surveillance program was eventually struck down by the country’s top court). Singapore has also implemented a mobile phone app that uses Bluetooth to track the contacts of those who are suspected to have the virus and stores that information for at least 21 days. When an individual is confirmed to have COVID-19, Singapore’s Ministry of Health identifies those who encountered the infected person and mandates them to get tested and, if required, quarantine. In South Korea, the government began collecting phone GPS, motor vehicle GPS, credit card histories, surveillance video recordings, and confidential interviews with clinical patients for curbing the spread of the virus (Agbehadji et al. 2020). Similar to China, South Korea leveraged big data and artificial intelligence to deploy an aggressive contact tracing strategy. Referred to as the COVID-19 Smart Management System (COVID-19 SMS), the system uses bank card records and

GPS data from vehicles and mobile phones to track bodies moving in real-time through South Korean cities and while quarantining (Lin and Hou 2020). The government is publicly broadcasting detailed information about infected bodies by sharing their whereabouts in real time and a map of their movement history over the past 2 weeks (Lyons 2020). Health authorities have gone so far as sending highly descriptive mass text messages alongside live locations to residents of COVID-19 carriers' physical descriptions. In one case, a text message read, "A woman in her 60s has just tested positive. Click on the link for the places she visited before she was hospitalized" (D'Amore 2020). Semblances of such "authoritarian surveillance" have also emerged in countries priding themselves on their liberal democratic credentials. Though not mandated as forcibly as in China, Iceland has used an aggressive testing strategy of asymptomatic individuals to routinely monitor the health of bodies moving in public spaces. Iceland is using information collected through these tests, patient-reported symptoms, and genomic sequencing data to forecast the pathology and direction in which the COVID-19 virus is spreading (White-law et al. 2020).

Private companies and commercial actors the world over have been crucial in aiding governments in achieving these massive tracking and surveillance efforts, as they have the technological know-how to garner the required information. It is well known that Europe has the world's most stringent privacy laws since it introduced the General Data Protection Regulation 2016/679 (GDPR), which mandates strict rules on data collection and protection of technological devices and social media. Despite this regulatory infrastructure, once the pandemic took hold, mobile carriers in the European Union were asked to share aggregate data with health authorities in Austria, Italy, Czech Republic, Liechtenstein, and Germany to monitor movement to determine whether people are social distancing. Telekom Austria AG, the largest provider in Austria, is using a technology that was initially designed to track tourist movements to provide data to the government on everyone's movement and to identify potential COVID-19 hotspots. Vodafone Group Plc has done the same in Italy, especially in hard-hit regions at the height of the earlier waves of the pandemic. In Italy's Lombardy region, movement was tracked and recorded through the aid of such technologies, especially when individuals veered beyond the permitted range of 300-500 meters away from their homes. In the Czech Republic, geolocation data and Bluetooth technology is being used to create "memory maps" to track the movement of infected people to assess who they came in contact with in the past 5 to 10 days. Though the information is anonymous and aggregated as per GDPR rules, evidence suggests that such anonymized information can be used via sophisticated AI to identify particular individuals' identities (Rocher, Hendrickx, and de Montjoye 2019). In Liechtenstein, the government has partnered with Swiss researchers to allow residents to wear a bracelet that collects heart rate,

temperature, and breathing data to monitor bodies and their changing temperatures for quicker COVID-19 responses, showing the slide between over-the-skin and under-the-skin surveillance technologies. Germany launched a smartwatch application that collects a wearer's temperature, sleep pattern, and heartrate data in real time to detect signs of a viral illness; unlike the post-arrival wristbands that individuals must wear within the 14-day quarantine period after landing in Hong Kong, the use of this application is volitional, and it is not conditional upon crossing an international border. Data gathered from German device-wearers are pooled together to create an interactive map that policy makers and law enforcers use to assess infection rates and regional concentrations of contagion. For those who test positive, the Polish Government's *Kwarantanna domowa* app not only collects its users' geolocation but goes one step further by using facial recognition technology to ensure compliance with quarantine restrictions. With only a few exceptions, all persons subject to mandatory quarantine in Poland are required to install the app on their phone or risk criminal liability. Moving beyond single-country initiatives, several European mobile applications have been linked to create a pan-European tracing network. Taking a more regional approach, and following a successful pilot project, EU member states launched a new network in October 2020 to connect national apps through a server located in Luxembourg. The server is a gateway for sharing "proximity" data across participating EU countries. For instance, an Italian resident who recently traveled to Germany would receive a notification if they were in contact with an infected person in that country or vice versa. In the United States, Google and Apple were amongst the key tech giants whose expertise was relied upon to create an interoperable platform of contact-tracing apps. Alongside this, the United States has green-lighted a national study that captures the resting heartrate of smartwatch wearers to detect signs of COVID-19; such data seems to allow early detection of infection even prior to onset of visible symptoms, helping predict outbreak patterns. The United Kingdom is working with Silent Sentinel to implement high-tech, high-resolution fever detection cameras throughout its cities to identify, record, and transmit real-time information about individuals who exhibit high temperatures. Italy is using Chinese manufactured biotechnology at airports, train stations, schools, shopping centers, and public transportation systems. All of these developments have a futurist whiff to them, underscoring just how far the pandemic has legitimized the everyday use of technologies once thought to belong to the realm of the exception. With the attempt to predict hotspots, our reality begins to mimic science fiction, if not film noir.

As we move toward a post-pandemic world, questions of informed consent and volitional versus coerced use of such technologies – and their architectures – will surely come to the fore. Once put into operation, however, it may prove difficult to return the genie of bio-surveillance back to the bottle, as it

provides governments unprecedented technological “see-all” eyes to monitor and track *everyone’s mobility everywhere*.

3.2 What Does the Future Hold?

As we have seen, governments, tech companies, and commercial entities have placed the body at the center of regulatory control. With new technologies ranging from geofencing to QR codes and mobile tacking to high-tech thermal cameras, a body marked as suspect, let alone infected, is barred from participating in society, from entering public spaces, and from engaging with the full extent of rights and protections that other members take for granted. As Seyla Benhabib has recently observed (Benhabib 2020), it is both ironic and tragic that the haunting image evoked by Foucault in *Folie et déraison: Histoire de la Folie à l’âge classique* (Foucault 1965) of the ship of fools traveling the waterways of Europe without being permitted to disembark at any port is a fitting metaphor that nowadays applies not only to asylum seekers and refugees locked up in yachts outside Malta’s territorial waters or denied disembarkment in Italy. It also applies to COVID-positive passengers stranded on luxury cruise boats and, potentially, to all of us, if we exhibit the dreaded signs of contagion.

In the face of an unprecedented global pandemic, whereby humans are both the casualties and carriers of the deadly virus, governments have responded with massive expansion of the reach, scope, and breadth of a shapeshifting border that has not only broken away from the map but has also morphed during the pandemic into a panopticonic suite of measures providing governments unprecedented technological “see-all” eyes to monitor and track *everyone’s mobility everywhere*, turning the body into the ultimate site of regulation.

Reliance on the elasticity of stretching and bending the shifting border of migration and movement control, both domestically and internationally, has provided a versatile toolbox for governments to swiftly respond to the shock of a fast-spreading virus that caused a global pandemic. While we do not have a crystal ball, if the past is an indicator of the future, we anticipate that at least some of these measures will be difficult to scale back as they set a new baseline. Just like a new surveillance paradigm was normalized in the aftermath of 9/11, redefining expectations and acceptable practices in a post COVID-19 world may well entrench shifting border techniques, in their multiple and ever-fracturing dimensions – temporal, spatial, corporal – into the heart of global mobility regimes.

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Kristina Korte

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