Moral proximity and the territorial imperative

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Abstract
In The Shifting Border, Ayelet Shachar offers us two concrete proposals for combatting the danger posed by the shifting border, especially to those crossing borders in search of safety. One proposal suggests that human rights travel with migrants, so that agents who control the border must take responsibility for protecting their human rights at the border. A second proposal, which forms the basis of my commentary below, asks that states consider alternative ways for migrants to seek protection safely. In responding to this second proposal, I make two proposals of my own that stem from Shachar’s analysis: (1) her analysis offers us the resources we need in order to expand, not only the channels available to migrants for seeking protection, but also our sense of who should be involved in controlling admission, and (2) expanding the “who” that is involved in admission gives meaning to the concept of “moral proximity” which can help to overcome the territorial imperative that dominates the rules governing international migration, i.e., the imperative that protection travels with physical access to territory, only.

Keywords
Borders, proximity, refugees, refugee sponsorship, resettlement

Ayelet Shachar’s The Shifting Border articulates the multiple ways in which the border between states is no longer in any real sense at the border. As the title tells us, the border has shifted and now operates not only at physical borders, but also inside of them and at far flung locations away from them. Borders are ever-more pervasive in
our lives, and are acting more than ever to render movement of the most vulnerable of global citizens dangerous. Shachar offers us two concrete proposals for combatting the danger posed by the shifting border, especially to those crossing borders in search of safety, both of which invite us to take on the fact of the shifting border and, as it were, take advantage of it. One proposal suggests that “human rights follow the border” – so that whatever agent has “effective control” of the space in which a migrant finds herself is also responsible for protecting her human rights (Shachar, 2020: 75–82). The result will be that “instances of protection will begin…whenever and wherever such authority is implemented under the colour of law” (Shachar, 2020: 76). A second proposal, which forms the basis of my commentary below, asks that states take seriously the possibility of digging “new channels for migrants seeking protection, rather than leaving these migrants to rely exclusively on the act of ‘touching base’” (Shachar, 2020: 82). In responding to this second proposal, I make two proposals of my own – friendly additions, really – that stem from Shachar’s analysis: (1) her analysis offers us the resources we need in order to expand, not only the channels available to migrants for seeking protection, but also our sense of who should be involved in controlling admission, and (2) expanding the “who” that is involved in admission gives meaning to the concept of “moral proximity” which can help to overcome the territorial imperative that dominates the rules governing international migration, i.e., the imperative that protection travels with physical access to territory, only.

Expanding “who” selects migrants for admission

Shachar advises us all to seek new and innovative channels by which migrants, especially the most vulnerable, can achieve safety. In that discussion, Shachar points to a moment in recent Canadian history that I have evaluated in some detail elsewhere, the choice of the Canadian government to respond to the crisis in Syria by committing to rapidly admitting 25,000 Syrian refugees, a feat which it managed in part by having Canadian officials go to refugee camps in Jordan, Turkey and Lebanon. There, officials conducted the pre-admission interviews/screenings necessary for such individuals to gain admission to Canada (Lenard, 2016; Lenard, 2020a, 2020b). These actions served not only to expedite the travel of refugees to Canada, they also did not require that such asylum seekers gain access to Canadian territory in order to have their requests for safety considered. This exercise illustrates that it need not always be the case that arriving on to a territory is the sole way to gain its protection (Shachar, 2020: 83).

In my view, the Canadian effort was interesting for a second reason. One key part of the Canadian effort stemmed from what Shachar notes at note 198, namely its Private Sponsorship of Refugees Program (PSRP). The PSRP has been in operation in Canada formally since 1978, and before that on an informal basis (Labman and Cameron, 2020; Molloy et al., 2017). This programme allows Canadian citizens to name specific refugees for admission, so long as they are willing to carry the costs of doing so for one year, and so long as they are willing and able to support them during that time with a wide range of basic integration tasks, including finding accommodation, language education, health care and so on. The willingness of Canadian citizens to take on this
work meant that the initial 25,000 commitment turned, eventually, into nearly 60,000 admitted Syrians (for an assessment of this effort, see (Hamilton et al., 2020). As well, at least 7000 of the initial 25,000 were privately sponsored by Canadian citizens.

One standard claim made about the conventional border is that it is, or should be, under the control of a government – the government of a sovereign state in particular, which has the authority to make admission determinations. Whatever one thinks about whether the power to control entry is key to state sovereignty – here, I am in agreement with Sarah Fine’s observation, in her contribution to the volume, that it is likely not so obviously a key element of state sovereignty – what private or community sponsorship programmes demonstrate is that there is another way to work with the shifting border, and that is to shift authority for admission into the hands of citizens, at least partially (Kumin, 2015).¹

States are often anxious to prevent refugees from getting to their border for economic reasons – they do not want to bear the costs of supporting refugees as they integrate. A community or private sponsorship model offers citizens the opportunity to carry some of these costs, and some evidence from the Canadian case suggests additionally that privately sponsored refugees contribute to the economy relatively quickly after arrival (Woo and Stueck, 2015). A reasonable objection to such a model, which offloads the cost of refugee admission to citizens, is that the duty to admit and resettle refugees is a state duty; a sponsorship model might turn into a mechanism by which states can avoid carrying their duties out (Labman, 2016). However, there remain very good reasons to adopt a sponsorship option, alongside more conventional routes to admission, as part of the strategy of responding to the shifting border by accepting some of its parameters. In particular, community sponsorship programs meet Shachar’s injunction to “expand access to protection and enlarge the ‘pie’ of actors and stakeholders” involved (Shachar, 2020: 267).

Citizens and their role in immigration control

One reason why I think it is important to take seriously the role of citizens in the protection-offering framework is that they are taking this role for themselves in multiple situations, and as moral philosophers we need responses to these actions. Around the world, citizens are coming to the aid of refugees and asylum seekers – in the desert between Mexico and the United States, in the Mediterranean Sea, at the many crossings at which African migrants attempt to gain entry into Europe; worryingly, their actions are increasingly being criminalised (Duarte, 2020). Although they are scattered throughout Shachar’s book and not engaged with in a substantive way, the references to citizen humanitarian efforts provide evidence that there is everywhere strong support for refugees and asylum seekers (for example, Shachar, 2020: 94). Shachar acknowledges that these moments are part of the “resistance” to harsh border control, and she notices that these actors have opened up new “spaces for democratic contestation” (Shachar, 2020: 94). She notes that “the politics of contestation and resistance is on the rise, providing a vital companion and catalyst for any progressive legal and conceptual change along the lines” that she is advocating in her essay (Shachar, 2020: 95).
In spite of this context, of what might be understood as a world-wide uprising of citizens keen on offering humanitarian support for migrants, it is striking to see Shachar’s relative pessimism on this front. For example, Shachar points to Jakob Huber’s view, in his contribution to the volume, that the presence of refugees serves to generate solidarity, and expresses scepticism of this claim (Shachar, 2020: 265). Moreover, while she notes in passing the initial enthusiasm Germans showed for arriving asylum seekers (the videos were shared widely on social media), she then cites a survey suggesting that nearly half the population (just under or just over, depending on the question) report negative views with respect to Muslims and/or asylum seekers (Shachar, 2020: 265). Offering only 2 sentences to those who cheered for arriving Syrians, she devotes several paragraphs to the “backlash” against minorities and the resultant majority nationalism in Germany. But why? Have those who cheered changed sides? I doubt it. Why not elevate those voices? This elevation is something that I think we should do, as moral philosophers – we should move towards thinking of citizens who are asserting themselves in deliberations around the best treatment for asylum seekers not as resisters, who are opening up space for contestation, but rather as legitimate players in global migration management. I think this extension is consistent with Shachar’s overall project, furthermore.

Indeed, the sanctuary movement that Shachar cites, in her optimistic mode, is just that – sub-state jurisdictions that are engaged in the process of rejecting the idea that “states” have a monolithic hold on border control. They too are using their resources to combat the idea that there is only one actor with the right to assert power at borders (Lenard, 2020a, 2020b; Wilcox, 2019). But they are not resisting, in the sense that they are engaging in civil disobedience of some kind – rather, they are using their authority to question the exclusive jurisdiction of states to control borders. Their actions, as democratic publics, manifest a realisation of precisely the phenomenon Shachar is proposing as a way to further the quality of the protection offered to those in need, by bringing “the shifting border” “under the normative umbrella of regulatory and democratic oversight” (Shachar, 2020: 76). The more general point, to connect to the earlier comments about citizens’ role in selecting for admission, is to notice again that there are more players at the “border”, this time citizens operating as members of sub-state jurisdictions.

The moral relevance of “proximity” broadly understood

The choice to circumvent states as choosers of potential admits, or as the sole agent justified in exercising authority at the border, is manifest also in “matching systems” that Shachar observes to be in operation in early phases, around the world. “Matching systems” help to match refugee arrivals to particular locales in need of the skills with which they travel, or with services that best match their needs. She says, “these multivariable matching and relocation schemes are not materially or practically dependent on territorial arrival” (Shachar, 2020: 264). Such a system was adopted in Brazil, for example, in response to asylum seekers from Venezuela, which developed “an innovative relocation program” that moved Venezuelans from border towns to farther-away-spaces in Brazil. Brazilian border authorities asked recipient cities to specify “priority criteria
and create integration opportunities”, and asked refugees for their preference for location as well (Shachar, 2020: 256). Matching systems can be adopted globally: “Translating such interstate distribution mechanisms, which were modelled on the new UN global compacts, to different countries and regimes will require tremendous innovation”, but is possible to conceive (Shachar, 2020: 257). Indeed, “Talent Beyond Boundaries” is just such a program, in trial operation, attempting to match skilled refugees with states that require their specific skills (“Talent Beyond Boundaries”, 2020).

Shachar defends these programs for the ways in which they move beyond treating “reaching territory” as key to securing protection. She writes, this sort of an approach “does not elevate proximity to a pedestal” (Shachar, 2020: 266). But, I think this is the wrong way to think about what is going on here. Rather, what is going on is the deliberate attempt to create connections that mimic proximity and the moral (and felt) import that it carries. I certainly agree with Shachar that physical proximity should not be elevated to a pedestal, and that the more flexible tools that Shachar defends, as a way to protect the rights of movers, are tremendously important and indeed would be game-changing if implemented. I believe, as well, however, that we should be attentive to the many ways available, manifest in these matching programs, to cultivate a sense of proximity across borders and its potentially powerful role in generating among receiving states (and citizens therein) the sense that they possess an obligation to offer refuge-seekers support.

In other words, these algorithms that allow for “matches” work well to create a basis for believing there is a relationship between states and refuge-seekers, or at least the groundwork for the development of such a relationship. To return to my earlier discussion of the PSRP in Canada, it has been well-observed that for “stranger” sponsorships – where Canadian citizens with no connections to specific refugees are “matched” with newcomers for the purposes of sponsorship (as opposed to, say, where Canadian citizens sponsor friends and family in refugee situations abroad) – they are more successful where refugees and Canadians are able to connect in advance of arrival, via WhatsApp or other apps that facilitate communication. These early forms of communication produce a sense of “moral proximity” that heightens, among sponsors, the sense that they have strong duties towards the refugees they will welcome, and they develop among refugees a kind of motivation to collaborate with “a new family” to do the hard work of integration (Kyriakides et al., 2019). Matching systems do the same – they identify talents/needs among refugees with states that have needs/services – and in so doing create a sense of proximity on both sides absent physical proximity. This suggestion, I think, should be understood as a friendly addition to Shachar’s proposals!

**Conclusion**

As I said the outset, Shachar’s text is beautifully innovative. It encourages readers to think seriously about where immigration control is unjust, and where it can realistically be modified to the benefit of those who are most vulnerable. It is, in my view, a must-read for anyone looking for a new way to think about the constraints imposed by existing global migration management systems, and how they can be undermined. Inspired by
her prompts, I have proposed that the set of people who should rightfully be understood
as playing a role in determining admissions should be expanded, and furthermore that a
state can and should act to creates ties – of moral proximity – to encourage citizens to take
a more active role in offering resettlement support to those most in need.

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**Note**

1. Several organizations, including the Canadian government and the United Nations High
Commissioner for Refugees (UNHCR), are collaborating presently to encourage other states
to adopt forms of community sponsorship, on the idea that private citizens may be willing to
take on some of the “settlement” work for newly arrived refugees, especially if they are permit-
ted to have a say in who is admitted (*GRSI Press Release* 2017, *GRSI: Joint Statement* 2018).

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