

U.S. immigration enforcement: then and now, there and here

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Abstract: This article examines shifts in US border and immigration policing over the last few decades, tracing the transformation of policing from an outwards-looking power located at the territorial margins of the state to an inwards-looking power focused on immigrant populations. I review five components of the militarization of US-Mexico border policy, then outline the recent expansion of enforcement to the US interior. Rather than marking a distinct break between policing regimes, I instead show that many of the same practices remain central to US immigration control. Heeding Paasi's social-process oriented conceptualization of territory, the article closes with a reflection on borders and bordering.

Keywords: borders, immigration, territory, biopolitics, militarization, United States.

In this brief essay, in honor of Anssi Paasi's lifelong critical interrogation of state territoriality and power, I look at one of the most important developments in U.S. immigration policy, but a decade old: the transformation of immigration enforcement from an outwards-looking power, located at the territorial margins of the state, into also an inwards-looking power focused on resident immigrant populations. This shift in the geography of U.S. immigration control means that the presumed identity between border enforcement and immigration policing no longer holds. But it would be a mistake to see this shift as marking a definite break between 'old' and 'new' ways of doing immigration control. In order to work against this understanding, and to better understand the post-9/11 U.S. immigration control regime, I provide

a rough overview of the militarization of immigration enforcement at the U.S.-Mexico border during the 1970s through 1990s, and then suggest schematically how some of the same tactics are at work in the more recent suite of state practices aimed at undocumented immigrants, beyond the border.

In debt to Paasi's social process-inspired approach to territory as a grounded exercise of power, rooted in specific socio-spatial conditions of emergence (Paasi 1996, 1998, 2009), I have tried to emphasize in my research how specific legal, social, political, economic, and biographical contexts shape the practice of U.S. immigration control (Coleman 2012a). The danger in this approach is that the analysis gets mired in the local. As a corrective, what I'm hoping to do here is explore some of the supra-site qualities of the site-specific practices that

constitute U.S. immigration enforcement. This attempt to balance specificity and generality follows from Paasi's general appreciation for context – but without losing sight of the power of critical generalization (Paasi 2011). It is important to understand the local coordinates and dynamism of state governance, specifically with respect to the problem of governing people, and yet not to lose sight of the larger rationalities, practices, and effects which constitute this power (Moisio & Paasi 2013).

In the next section I review the basic features of the militarization of the Border Patrol's immigration responsibilities at the U.S.-Mexico border during the 1970s through 1990s. In a second section I sketch out the more recent expansion of immigration enforcement in the U.S. interior, and show how many of the same practices remain core to U.S. immigration control, albeit differently. I conclude with a few remarks on borders and bordering.

Militarization at the U.S.-Mexico border, 1970s-1990s

A key aspect of the militarization of U.S. immigration enforcement, at the U.S.-Mexico border during the late Cold War period, was the tactical merger of Border Patrol with military activity in the region – keeping in mind that the Border Patrol has historically been categorized as a civilian policing body. This process included the military taking on Border Patrol functions, and vice-versa. The 1982 Department of Defense spending bill was a turning point in this process because it relaxed *posse comitatus*

laws which prohibited military personnel from getting involved in domestic policing. Hence, Joint Task Force 6 formed in the late 1980s and provided air and intelligence support to the Border Patrol and other border region police bodies involved in counter-narcotics work (Dunn 1997). Another important development at this time was the Border Patrol's unofficial adoption of a 'low intensity conflict' approach to immigration control at the U.S.-Mexico border (Heyman 1999). This brought about a significant militarization of Border Patrol practices, training, and, notably, equipment.

A second component of the militarization of immigration enforcement at the border involved what Heyman (1999) has called a "mass production model of policing". By this Heyman means the quantification of the border and its populations into apprehension statistics, as well as typologies of (dangerous) border users, in order to justify expenditures on border infrastructure as well as Border Patrol funding more generally. Indeed, it is doubtful that the 1990s wall-building spree at the border, as well as the growth in Border Patrol staffing that took place that decade, could have taken place without the Border Patrol's creation and use of statistics, especially concerning crime, to produce the region and its populations, at a distance, as a pressing law and order issue (Nevins 2010).

A third feature of militarization was the Border Patrol's strategic escalation of immigration enforcement via a de-differentiation of unlike law enforcement issues – drug trafficking, undocumented entry, crime, etc. – as related components

of an enlarged field of national security (Andreas 2010). In many ways escalation was largely about political posturing by political elites, but it wasn't all hot air. For example, what Andreas has called the "ritualistic performance" of border escalation in the 1990s required the invention and expansion of a number of skeletal law enforcement crimes and categories (moral turpitude, aggravated felonies, drug offenses) intended to be put to work in the border region by the Border Patrol in a broadly discriminatory manner. The point of these legal inventions was to bring into being a strategic edifice of 'mangled' law enforcement categories such that frontline immigration authorities at the border could be freed to decide in the most broad ways possible who to target as a policing and/or security concern, and why (Coleman 2012b).

A fourth feature of militarization at the border was the development of a zone-defense Border Patrol strategy focused on interior transportation networks and immigrant automobility. Much has been written about the early 1990s "prevention through deterrence" strategy at the U.S.-Mexico border, i.e. the massing of officers and barriers along the border in order to stop entry. A no less important aspect of Border Patrol operations included the extensive use of traffic checkpoints and roving traffic operations in the U.S. interior, in order to arrest undocumented migrants post-entry. The Border Patrol's use of traffic enforcement to police immigration dates back to the 1970s, a decade in which interior traffic-based enforcement operations were the agency's primary apprehension tactic,

and as we'll see below, continues today (Coleman & Stuesse 2014).

Lastly, the militarization of immigration enforcement at the U.S.-Mexico border entailed a significant reformulation of search and seizure rules throughout the region, regarding immigration and customs offences, such that Border Patrol stops came to look more like an extra-legal battlefield detention authority than a constitutionally-governed practice. The best example of this concerns the Border Patrol's use of race profiles to single out drivers for legal status checks. In a series of cases decided in the mid-1970s, the government successfully petitioned the Supreme Court to re-interpret constitutional protections against unreasonable search and seizure such that individuals could be stopped on account of 'looking Mexican'. This was essentially a no-cause search and seizure authority, defended by the government and sanctioned by the court on the dubious basis that race and/or ethnicity indicates legal status.

To review, the militarization of U.S. border enforcement during the 1970s through 1990s involved five components: the blurring of the military and the Border Patrol; the calculative transformation of a complex political economic landscape into an actionable, quantified terrain; the 'mangling' of unlike law enforcement issues under the sign of national security; a non-border, zone defence-like focus on interior mobilities; and, legal reconfigurations which afforded the Border Patrol broad, racialized latitude in terms of search and seizure. These developments meant that by the mid-1990s it was exceptionally difficult to think

of the Border Patrol as a strictly civilian law enforcement body. The Border Patrol was instead a boundary object whose entire strategic value was that it confused the domestic/foreign divide (Lytle Hernandez 2010).

Interior enforcement

Over the past decade the U.S. immigration enforcement apparatus has moved well beyond the Border Patrol, and crucially, the U.S.-Mexico border. But many of the defining characteristics of the militarization of border enforcement during the 1970s through 1990s at the U.S.-Mexico border remain relevant to interior enforcement. Indeed, if during the first wave of border militarization the objective was a tactics of closure at the U.S.-Mexico border, the recent shift to interior enforcement has scattered these tactics across the U.S., and across multiple agencies. The bottom line is that the shift to interior enforcement has been less a change in the operational guts of immigration enforcement than a change in where enforcement takes place. Let me try to very briefly signal the importance of each of the five elements of militarization, outlined above, to what is going on now.

First, immigration enforcement over the past decade has all but eroded the police/military distinction, and not simply at or near the U.S.-Mexico border. The formation of Immigration and Customs Enforcement (ICE) as part of the Department of Homeland Security (DHS) in 2003 is an important part of this story. ICE was formed from the ashes of criminal investigation,

detention, and deportation units within the legacy Immigration and Naturalization Service, as well as various investigation and intelligence units within the U.S. Customs Service. These units were, before the DHS, of minor consequence operationally, and consumed a tiny fraction of overall immigration control resources. This is no longer the case. But what's most important about ICE is its role in coordinating and integrating routine police work and so-called homeland security. Indeed, ICE basically ensures the flow of personnel, practices, information, and of course detainees between 'lesser' law enforcement agencies – such as police and sheriffs – and the 'high police' of federal immigration enforcement, intelligence, espionage, and national security. In practice, this means that it is easier than ever to be deported and/or detained by immigration authorities as a result of everyday interaction with local law enforcement agencies. Over the past decade, millions of people have been identified as deportable as a result of ICE's work with the 'low police' of civilian law enforcement.

Mass policing is also, again, crucial to the expansion of immigration enforcement beyond the border. Indeed, ICE has legitimized its ties with interior law enforcement agencies, and funding, in part through an exhaustive inventorying of resident immigrant populations in terms of their actual and/or potential criminality. ICE's operations, for example, are publicly targeted at three basic categories of offenders: serious level 1 offenders (homicide, aggravated assault, weapons offenses, sex offenses, treason, terrorism,

espionage, kidnapping); level 2 offenders (property offenses, drug offenses, vehicle theft, DUI, traffic offenses, etc); and, level 3 misdemeanor and minor infraction offenders (public order crimes, illegal entry, false citizenship claim, resisting arrest, shoplifting, etc). For many this three-part tabulation of immigrant criminality is hard to argue with; for example, surely ICE's attention to civil 'undocumentedness' is secondary to deportees' criminality, and shouldn't we be spending money to deport criminals? Unfortunately this is not so straightforward. First, by far, the majority of ICE's deportees are not the most serious offenders. Second, ICE does not disaggregate its lesser level offenders, which is important because these categories include a range of unlike offenses and so don't tell us much about who is getting arrested, or charged, for what offence. Third, this three-part tabulation in fact misses out on another sizeable group of deportees: those held in local jails and awaiting deportation, but who do not have criminal charges pending against them. This latter category suggests that significant numbers of so-called 'criminal deportees' are in fact labeled as such by virtue of being booked into custody. Being booked into custody should not be confused with conviction or criminality *per se*, especially given the broad power that police have to detain individuals during routine policing.

Third, like its border region predecessor, interior enforcement too depends on the de-differentiation of distinct law enforcement issues and challenges under the sign of national security. For example, fieldwork I've done in southern U.S. states

suggests that sheriffs and police agencies, as well as ICE officials, routinely jumble diverse crimes together – ranging from the failure to pay taxes to terrorism – to justify their work together in the post-9/11 context. I've also routinely heard police professionals justify their relationship with ICE on account of problems such as job competition, depleted social resources, environmental degradation, government spending, and tax policy – which of course are not law enforcement issues *per se*.

Fourth, one of the most important components of interior enforcement concerns immigrant immobilization as an immigration control tactic. Immigrant mobility, and specifically immigrant automobility, is the ground zero of interior enforcement, for example much more important than workplace enforcement in terms of overall detention and deportation numbers (Stuesse & Coleman 2014). Indeed, many more people are getting deported on traffic charges than are getting deported, nationwide, based on worksite enforcement (or for that matter on national security charges). My point is not that workplace enforcement is better, but that interior enforcement leans heavily on the generation of insecurity for immigrant populations on the move between spaces of labor, shopping, worship, recreation, childcare, health care, etc – much as with border-based Border Patrol traffic operations. What this suggests is that it is the social reproduction of immigrant labor, not immigrant labor *per se*, which is in ICE's crosshairs. Or slightly differently, if interior enforcement is at odds with capital in terms of its removal of a very productive

segment of the U.S. labor force, then the state's confrontation with capital over labor has been exported to labor's spaces of social reproduction and away from the workplace.

Finally, interior enforcement depends importantly on the use of legally unconventional search and seizure practices. Research I've done in the U.S. South, as noted above, suggests that large numbers of undocumented residents get deported based on initial contact with a local law enforcement official for a minor traffic violation – and that Hispanic motorists are of particular concern for police and sheriffs. In other words, interior enforcement requires racial profiling. An important question here is the legality of these 'driving while brown' policing practices. Despite growing criticism of racial profiling in the courts in the late 1990s and early 2000s, the so-called war on terror in practice returned immigration enforcement squarely to the realm of search and seizure practice based on racial profiling (Johnson 2010). For example, Department of Justice guidelines published in 2003 on the use of race and ethnicity suggests that race can be a valid criterion in border security- and national security- related policing, at or away from the border (U.S. Department of Justice 2003). Indeed, whereas the Supreme Court cases from the 1970s limited the use of race profiles to a 100 mile border buffer zone, the newer guidelines suggest a geographical generalization of profiling as legitimate to a broad "enforcement of the laws protecting the Nation's borders". This capacious description at least leaves opens the door for police to use race broadly throughout

the U.S. interior when deciding whether or not to ask someone about their legal status.¹

Conclusion

There is a growing consensus in the geography-based border research that 'borders are everywhere', given the sort of developments that I've sketched out above with respect to the 'interior turn' in U.S. immigration control. Although I do think it very profitable to consider the ways that borders and bordering have shifted from a police of geographic edges to a police of things and people, I find the generalizing and largely ungrounded quality of this argument unsatisfactory. Specifically, the argument is insufficiently attentive to the various types of biopolitical and territorial borders that constitute state power. For example, and despite what I've written above about the continuities between border militarization and interior enforcement, we should not lose sight of the fact that biopolitical borders (as in a police of things and people) function differently from territorial borders (as in a police of territory), even if there are indeed commonalities between the two. This seems particularly important in the U.S. context, where it certainly is not the case that the U.S.-Mexico border infrastructure has been replicated across the country. Indeed, what the U.S. context demonstrates is that

¹ A recently revised version of the guidelines, published in 2014 in the context of new scrutiny over racialized policing practices, for example as in Ferguson, apparently steps back from the 2003 document in that it requires policing relevant to homeland security to be based on "trustworthy information, relevant to the locality or time frame" (U.S. Department of Justice, 2014).

there has been a growth in modulating or intermittent bordering in the interior, even as the permanent border colossus remains intact – lethally and legally – at the territorial edges of the U.S. state. In this sense, rather than a generalization of the U.S.-Mexico border, we are now living through the proliferation of different technologies of state territorial rule and different borderings which compound the longer-standing violences of militarized interfaces such as the U.S.-Mexico border.

In short, the ‘borders are everywhere’ thesis too glibly assumes an equivalence between biopolitical and territorial borders, and then posits that they have been multiplied across and between states. I would argue instead that we should be looking to the accumulative effects of multiple types of state borders and borderings, not their simple clone-like reproduction and/or generalization. In other words, we need to be able to theorize the ways in which interior enforcement and border enforcement work together, perhaps tracking each other, without collapsing them into one another. This of course echoes a longstanding theme in Anssi Paasi’s work: that borders are social processes that deserve to be interrogated contextually, in their specificity, for what they do and how they do it – even as there will undoubtedly be supra-site commonalities in play. Going forward we would do very well to remember Paasi’s contributions to thinking through state power in these, at once, specific and general, ways.

References

- Andreas, P. (2010). *Border Games*. Cornell University Press, Ithaca.
- Coleman, M. (2012a). The “Local” Migration State: The Site-Specific Devolution of Immigration Enforcement in the U.S. South. *Law & Policy* 34: 159–190.
- Coleman, M. (2012b). Immigrant Il-Legality: Geopolitical and Legal Borders in the US, 1882–Present. *Geopolitics* 17: 402–422.
- Coleman, M. & A. Kocher (2011). Detention, deportation, devolution and immigrant incapacitation in the U.S., post 9/11. *Geographical Journal* 177: 228–237.
- Coleman, M. & A. Stuesse (2014). Policing Borders, Policing Bodies: The Territorial and Biopolitical Roots of U.S. Immigration Control. In Jones, R. & C. Johnson (eds.): *Placing the Border in Everyday Life*, 33–63. Ashgate : Farnham.
- Dunn, T. J. (1997). *The Militarization of the US-Mexico Border, 1978-1992*. Center for Mexican American Studies, Austin.
- Heyman, J. M. (1999). State Escalation of Force. In J. M. Heyman (ed.): *States and Illegal Practices*, 285–314. Berg, Oxford.
- Johnson, K. R. (2010). How Racial Profiling in America Became the Law of the Land. *Georgetown Immigration Law Journal* 98: 1006–1077.
- Lytle Hernandez, K. (2010). *MIGRA! A History of the U.S. Border Patrol*. University of California Press, Berkeley.
- Meissner, Kerwin, D., Chishti M. A. & C. Bergeron (2012). *Immigration Enforcement in the United States*. Migration Policy Institute, Washington DC.
- Moisio, S. & A. Paasi (2013). From Geopolitical to Geoeconomic? The Changing Political Rationalities of State Space. *Geopolitics* 18: 267–283.
- Nevins, J. (2010). *Operation Gatekeeper and Beyond*. Routledge, New York.
- Paasi, A. (1996). *Territories, Boundaries, and Consciousness*. John Wiley & Sons, London.

- Paasi, A. (1998). Boundaries as Social Processes: Territoriality in a World of Flows. *Geopolitics* 3: 69–88.
- Paasi, A. (2009). Bounded spaces in a 'borderless world': border studies, power and the anatomy of territory. *Journal of Power* 2: 213–234.
- Paasi, A. (2011). Geography, space and the re-emergence of topological thinking. *Dialogues in Human Geography* 1: 299–303.
- Stuesse, A. & M. Coleman (2014). Automobility, Immobility, Altermobility: Surviving and Resisting the Intensification of Immigrant Policing. *City & Society* 26: 51–72.
- U.S. Department of Justice. (2003). Guidance Regarding the Use of Race by Federal Law Enforcement Agencies. Department of Justice, Washington, D.C.
- U.S. Department of Justice. (2014). Guidance for Federal Law Enforcement Agencies Regarding Their Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual orientation, or Gender Identity. Department of Justice, Washington, D.C.