

Introduction: The Moment the Border is Crossed

This issue spans a vast terrain of physical and mental border crossings, with particular emphasis upon those who have been subjected to the kinds of persecution, fear, upheaval, or curiosity, that can drive people to explore new regions – be they geographical, political, or even spiritual. Authors explore the many disciplines and subjects that are naturally associated with movement, demonstrating the role that intervening obstacles or facilitators can play in the course of the journey to a new host country. As I review this wonderful new issue, I'm inclined by way of introduction to reflect upon first encounters at border spaces, and set it up as a frontier to the other texts, an introduction that may very well be a front-line meeting for readers of this issue, or of the journal itself.

One of the determining factors for how border crossings are experienced is the first few minutes of an encounter, particularly when the traveler happens to be a vulnerable migrant in search of protection. The legal and narrative dynamics of this initial interaction is, it seems to me, both crucial and understudied, particularly given the increasingly draconian structures that lurk behind the gate that the keeper maintains with some combination of discretion, authority and obligation. With the ongoing crises in El Salvador, Guatemala, and Honduras; upheaval in Venezuela; tensions in Columbia and Mexico; and the continued migrant flows from Syria, Eritrea, Somalia, the Lake Chad Basin, Yemen, Iraq, South Sudan, and Afghanistan, it's clear that the issues surrounding the treatment, admission, and policing of vulnerable migrants will remain crucial in the coming years and decades. One way of engaging this border region is to focus on the narrative-law dynamic of first encounters between forced migrants and officials charged with making decisions. At the heart of this dynamic lies the tension between what actions officials are *expected* to take, and which ones they actually take, particularly in light of local, municipal, and state resistance to federal and/or state immigration policies.

In order to take on this broad area of work, I have begun to document the array of national and international immigration law, statutes, cases and regulations that pertain to these interactions, and plan to then supplement this data by interviewing front-line actors from a range of settings and countries. The goal is to test three related hypotheses: (1) How front-line encounters are performed, in language and gesticulation, have important repercussions for which legal guidelines and rules are applied, and thus has bearing upon the likelihood that officials will—or will not—enforce immigration laws; (2) These decisions are informed by the values and attitudes of the official and the claimant that can be identified in dialogue; and (3) Because front-line officials have considerable discretion over irregular migrants, factual errors, irrelevant details, stereotypes (especially in regards to gender, ethnicity and country of origin) and communication missteps by claimants can endanger credible claims for asylum or protection.

The interviews for the project will probe the subjective factors that bear upon the interaction, as a means of addressing other questions, such as: What is the relationship between behaviors noted by officials, and the migrants' country of origin? How do officials claim to address intercultural communication, notably the relationship between demeanor, narrative style, inconsistencies, and credibility? What role does the official feel that translation plays in front-line encounters? What kinds of resources do officials call upon when uncertain about whether the claimant could/should request refugee status or some other form of protection? What are the specific challenges faced by female claimants, in terms of preconceived ideas about women's engagement in, say, political

activities in the host country, or vis-à-vis perceptions about gender relations in the country of origin? How do strongly-ensconced stereotypes affect how officers? Are certain officers inclined to act more negatively in regards to particular groups, particularly those described as being fundamentally dissimilar to the host society by certain officials, such as Muslim claimants in Europe, Australasia, and the Americas? When does an official identify a particular behavior as cultural, and therefore not relevant to the decisions s/he has to make?

The goal is to emphasize the value of narrative/law research, both for scholarship and for policymakers who are interested in supplementing existing training of border officers with a comprehensive understanding of the complex web of legal and performative issues that officers will be encountering in their work on the front lines. At the same time, I'm looking to explore the idea that one of the last horizons for discretion that can favor (or not) asylum seekers and undocumented peoples is at these front lines, where ordinary people charged with official duties encounter ordinary people who have left their homes in search of protection. Each side to this encounter is affected by the communicative and legal apparatuses to which they are subjects, but they are also motivated in some of their decisions by reports that swirl within the social discourse emanating from politicians, media reports, rumors, hearsay and the many intermediaries to the process.

Although undocumented migrants and refugees face similar challenges on the front lines, the proposed research distinguishes between them, first in regards to the laws, regulations, and case law that applies to their situations, and second, in regards to the communicative and performative challenges they face. Notably, the undocumented migrant's objective is generally to avoid authorities, and if forced into a confrontation, to attempt to terminate the encounter as quickly as possible. Asylum seekers, by contrast, are appealing for official recognition, so they may feel less pressure to end the encounter, and instead try to provide the right kinds of information in order for them to make their claim. They must also provide details that won't be contradicted at later stages in the process, since statements deemed false or erroneous can serve as grounds for rejection in later stages, such as the asylum hearing.

Any analysis of front-line interactions naturally benefits from multidisciplinary perspectives, because borders can be seen as laboratories where negotiated processes of adjudication, domination and selection can be observed, and hypotheses about possible outcomes can be tested. This project maps selected variables and their effects, in spaces where officials can choose from actions ranging from protection to incarceration. Preliminary findings suggest that the broadest outcome variation occurs when policymakers are at odds with one another; in such cases, administrators often leave enforcement decisions to those who first encounter vulnerable migrants, deferring to discretionary application of operative regulations and guidelines. In the current climate, there may also be fear on the part of officials who are resistant to federal officials, and who believe that they themselves may be subject to investigation or attack by the federal government, or by their superiors, if they don't act in accordance with prevailing rules.

The legal component of this project relates to the moral and legal responsibilities of host countries, but at the heart of these encounters are officers who work for such agencies as Frontex, the European agency that operates inside of this highly discretionary space. In each encounter, Frontex officials, in conjunction with national border guards,

are called upon to strike a balance between security and protection, just as those who are charged with soliciting confessions, such as Porfiry Petrovich, in Dostoevsky's *Crime and Punishment*, have to balance what they reveal, and what they seek, in interviews with Sonia and Raskolnikov. By bringing narrative issues to the fore (and by invoking literary examples of similar encounters), it is my claim that within such spaces, there's more than just a fabric of legal issues; there's also another fabric woven out of language and performance that occupies the space between the vulnerable migrant and the adjudicating officer who is called upon to distinguish between those who are eligible for the next stage of the protection process (status, asylum proceedings) -- and those who are not. In most of the literature about this process, we find these kinds of distinctions: those entitled to continue their journey into the courts and tribunals that can accord protection or status, and those who are not. The work I'm describing here focuses on that comma that separates those two clauses, the space between those, and those, *on the front lines*.

In a fascinating work called *Humanity at Sea* (Cambridge UP 2016), Itamar Mann provides the legal description of these encounters, imagining that the sea, or, I might add, any liminal space between two territorial jurisdictions established by sovereignty, is a kind of crack. Through this crack it is possible to see the movement from a state of nature to a state of citizenship, or a state of emergency, and a state of protection, in a transnational and historical context. This crack, he says, is the place where we stand in the human rights encounter, the place where the relatively powerless party addresses the relatively powerful one, like Billy Budd before Captain Vere in Melville's classic tale. Captain Vere weighs the options before him, and makes the catastrophic decision to kill Billy Budd, partly in order to quell any urge that others might have to defy orders of their commanding officers. We're seeing similar kinds of draconian behavior amongst border agents who illegally turning away people seeking asylum, or refusing to deal with their requests by projecting the kind of perplexity that Franz K experiences in Kafka's *The Trial*, or that all three of the inmates to hell endure in Jean-Paul Sartre's *Huis Clos*.

How can we research variables that contribute to this variation, and the practice of discretion by officers? Such questions lead us to explore how language theory can help us understand the kind of gender discrimination described by, for example, Jacqueline Bhabha, or the mechanics of vilifying Muslim claimants that is the subject of Sahar Aziz's work on religious discrimination. This is a complex process that must begin with the positing of a general social discourse, for which Marc Angenot, in his vast corpus of work on the subject, offers a powerful model. The overall social discourse, according to Angenot's paradigm, is extremely contradictory, and isn't composed of a set of statically dominant ideas, representations, systems of belief, or 'ideologies'; rather, it is the product of what Angenot describes as "regulated antagonisms" through which a kind of a hegemony will emerge. This hegemonic approach informs decisions made, at least for a particular moment, and in a particular space (in the form of a policy that emerges on its basis, for example), a very Bakhtinian conception of dialogue and dialogism.

This broad-brush conception of the social discourse can be broken down further, into a kind of discourse marketplace, where ideas are bought and sold, promoted and devalued, liquidated and rarefied. This process of dividing up a social discourse is crucially important for those wishing to shift attitudes about, for example, the values, or dangers, posed by vulnerable migrants. Here, the work of Pierre Bourdieu is of particular salience, because he demonstrates the very material nature of language. According to

Bourdieu, the appropriate capital to a particular linguistic objective is made up not of performative utterances, pace John Austin, but of wares introduced into the discourse marketplaces, wares comprised of scarce resources, unequally distributed, and with effects that operate on the basis of prevailing (discourse) market forces. And so, by way of a short example: if a young migrant claims to be eligible for status based on harassment by gang members in Central America, the official standing in front of him might judge whether the migrant looks young enough, or strong enough, to have been targeted for membership in a gang. The official may have heard media reports suggesting that young Central American men use gang violence to justify an illegal border crossing, which might tip the scale in regards to the front-lines decision. From the perspective of the migrant, on the other hand, reports in the media, rumors, or hearsay are critical to decisions in regards to how and where to make a claim. This same migrant might be led, or misled, into accentuating or downplaying certain elements of his narrative on the basis of what he thinks the host society is like, and therefore what an official would wish to hear. Another factor in this complex dialogic relation is misinformation that is spread through rumors, innuendos, or, as we've seen recently, proclamations that seem like harbingers of things to come. For example, the Trump administration has mired protected groups, such as Haitians, in uncertainty, first by threatening to end such programs as DACA, or TPS, and then proposing some kind of relief, and then moving ahead with the original threat. This will certainly impact Canada in the coming years, which was already feeling the effects of the threats made by the administration, while also contributing to front-line uncertainty, as refugees try to negotiate a new official paradigm.

Each of these factors contributes to the circulation of emotions and bodies in discursive encounters in realms where representatives feel the need to "protect" the body politic from invasion or corruption. The narrative task of immigration officials is also rooted in questions of truth and objectivity, since the officials are after the migrant's "real story". To this end, officials employ tools aimed at objectivity and impartiality, such as technologies and documents, and the growing use of electronic devices suggests that many first encounters will be between humans and machines. Risks of arrest are exacerbated on the front lines when the migrants use the "bifocal lenses" of home and host countries to try to negotiate a successful outcome to the encounter, even though they might not have sufficient understanding of how to engage officials to secure a satisfactory outcome to the dialogue. Accounting for the social discourse and the performance of claims contributes importantly to administrative law and communications studies in its assessment of communicative behavior and comportment that affect the legal actions of front-line actors. One of the ways of focusing this work even more precisely is to look at groups most likely to be subjected to stereotypes, negative or positive, such as claimants who are seeking protection on the basis of gender persecution, who may fear that by articulating the narrative upon which their claim needs to be based, that they will be immediately excluded.

These are early days for a project of this magnitude, but I were to look forward, into some of the findings that preliminary conversations suggest might emerge, I would predict that front lines soften as those tribunals, hearings and processes that lay beyond the gate harden. This might seem counter-intuitive, and indeed we regularly receive reports that suggest that when unhinged from legislated sympathy or caring or respect, some agents have found their draconian selves. We can expect that by the same token,

however, that other officials might use their discretion to favor the person who stands at their gate, because they know them, or they know enough about them to recognize the perils of the processes that lay behind the first encounter. We are, as it were, at the door that is kept by the official in Kafka's "Before the Law", or at the gate guarded by the fallen angel in Milton's *Paradise Lost*, or the invisible force that has opened the cell door in Sartre's *Huis Clos*, agents that in all cases arbitrate, with or without personal agency, passage through the threshold, and into deeper depths of misery or security and liberation.

We can hope that humanism will ultimately prevail, and that an *AmeriQuests* issue like this one, released into the social discourses surrounding border control, might incite the kind of empathy required for its promotion.