Overview and Analytical Approach

On what principles, and in what ways, does the United States sort out mobile populations in its south-western border region? Analysing discretion on the part of front-line border officers is fundamental to exploring these questions. This discretion involves not only decisions about when, on whom, and on what legal grounds to act but also decisions about when and on whom not to act. Examination of non-actions completes the range of information needed to delineate unequal social sorting by the state. Unequal sorting is specified in the analysis of field materials through a novel prism, paying attention to why and how certain borderlanders are trusted in enforcement settings while others are considered potential risks. The allocation of trust and risk proves to be interestingly complex, revealing several major processes operating simultaneously, class inequality, race inequality, and the enactment of the territorial nation-state.

A number of scholars, working from very different perspectives, converge on the argument that discretion is not a formless domain of uncontrolled action but, rather, an analysable domain of patterned actions that significantly affect law and administration.\(^1\) Anna Pratt usefully characterizes discretion as "a positive form of power,"\(^2\) by which she means that discretionary decisions are usefully analysed in terms of power relations rather than being completely

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\(^2\) Pratt, "Dunking the Doughnut," 220.

idiosyncratic. Nevertheless, discretion seen as a form of power is complex, and monolithic forms of critical analysis are flawed. Keith Hawkins’ focus on decision making at multiple, linked points of discretion draws our attention to several simultaneous levels of analysis, including individual officials as part of a socio-cultural group, organizations and their formal and informal dynamics, legal frameworks, wider societal contexts, and the entire process of legal activity. I can hardly aspire, in this small space, to offer such a comprehensive analysis, so I focus on the first stage of policing: the decision to act or not act (stop, inspect, question, etc.) on a given person or conveyance in the border setting.

The gate-keeping role of the initial decision to act or not act by front-line officers is widely understood to be crucial to all subsequent moments of legal decision making. Hawkins several times insists on the importance of the decision not to initiate cases in his study of occupational health and safety, and the literature on policing repeatedly points to street-level decision making—to act formally or to either not act at all or act informally—in most (but not all) circumstances as absolutely central to the shaping of all further activities in the criminal justice system. This theme dovetails with the recognition throughout the discretion literature of the importance of understanding so-called street-level bureaucrats and their interfaces with various publics, although such workers occupy crucial roles not only at the point of initial decision making but at many points in legal processing.

The decision to act or not to act, and, in particular, non-decisions or non-actions, have in turn proved to be central to understanding taken-for-granted power arrangements in society. Direct power actions in the face of opposition require explicit disagreement. But much social activity that we would reasonably want to describe in terms of unequal power takes place without such disagreement. In the cases I will examine, for instance, poor unauthorized Mexican immigrants are more likely to be the objects of explicit border

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3 Hawkins, *Law as Last Resort*.
4 To be precise, an exception is those situations where front-line officials must act on all applicants for a legal benefit, which may also entail decisions about punitive actions. Relevant examples are Bouchard and Carroll’s study of applicants for Canadian immigration (“Policy-Making and Administrative Discretion”) and Weber’s study of applicants for asylum in the United Kingdom: Leanne Weber, “Decisions to Detain Asylum Seekers—Routine, Duty or Individual Choice?” in *Exercising Discretion: Decision-Making in the Criminal Justice System and Beyond*, ed. Loraine Gelsthorpe and Nicola Padfield (Cullompton, UK: Willan, 2003), 164.
7 The key work is Steven Lukes, *Power: A Radical View* (London: Macmillan, 1974), and previous studies of non-decision-making cited therein.
policing, while rich unauthorized Mexican immigrants are less likely to be so; the latter non-action both draws on officers’ anticipation of the political and legal influence of the wealthy and also helps to maintain and even reinforce that influence. Therefore, to understand both the practice and the distributive effects of power in border enforcement, we must be attentive to discretionary non-actions, and the reasons for them.9 The challenge, however, is precisely in the subtlety of non-action as opposed to positive actions or obligatory decisions. (The term “non-action” here means not bringing punitive law enforcement to bear in a particular situation; that is, it is a non-act in terms of the wider power order, but it requires a definite decision of some sort at the organizational or officer level, even if in many cases the reasons for not enforcing the law are taken for granted and even unconscious. Hence, these “actions of not acting” are, as decisions, analysable in quite specifiable ways, which is my main concern here.)

The existence of non-acts is best seen, in the places I will discuss, in the “sorting” of individuals as members of assumed social groups.10 Sorting is central to border policing because officers in this region (which is not just the literal boundary but, rather, a deep layer of inhabited territory) confront not a well-defined set of individuals but, rather, a complex web of people flowing throughout a variegated space of ordinary activities. Officers, faced with so many people and activities that they could be acting on, sort individuals into categories: riskier actors who are worth additional action (questioning, request for identification, search, initial detention) versus actors who are trustworthy and are thus not acted on any further. Border officers are much like street-level police in this respect, except that much police work is reactive (to public calls, warrants, etc.) while border officers react only at a few fixed self-presentation points (e.g., ports of entry, airports) and otherwise must sort out from an apparently infinite universe a specific set of people on whom to act—and, by implication, also sort out people on whom to “non-act.”

Anna Pratt has emphasized risk as a central concept in border and immigration practices;11 my work explores the equally important inverse, trust.12 In

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9 Much the same point is made in Gilboy, “Penetrability of Administrative Systems,” 300.
11 Pratt, Securing Borders. Trust (contrasted with risk) also lurks behind the scenes in Hawkins’ magisterial work, without ever being explicitly interrogated—for example, in health and safety officers’ decisions to use informal negotiation and education with businesses that they trust to comply. See Hawkins, Law as Last Resort.
12 The social scientific literature refers either to interpersonal trust (e.g., Carlos G. Vélez-Ibáñez, Bonds of Mutual Trust: The Cultural System of Rotating Credit Associations among Urban Mexicans and Chicanos (New Brunswick, NJ: Rutgers University Press, 1983)) or to trust in overarching social institutions (e.g., Anthony Giddens, The
doing active sorting, border officers trust certain social types, which can then be disregarded for further action, and suspect other types. The questions that follow are, Whom do they trust not to be immigration and drug law violators, and whom do they distrust? and, What are the background contexts of those allocations of trust? To be sure, the trust/distrust (or risk) distinction is not as dichotomous as might appear in my attempt to extract an analysis here; properly stated, there is a continuum between trust and suspicion. Border officers categorically trust many people, have multiple reasons to have suspicion of many others, and hold suspicions that vary from mild to intense. In a discussion of this length, however, I cannot begin to capture the full subtlety of that continuum.

Collective trust has interesting qualities. To be in a trustworthy state is to be largely invisible, because one can act with fewer impediments and one is subject to less scrutiny and to fewer obtrusive incidents of questioning, search, momentary detention, and so on. Collective distrust, in turn, focuses the attention of the state; it is visible and directly experienced. Trust is likely to draw on and reinforce power and prestige, although not absolutely or neatly so, and likewise inclusion within the unmarked social “norm.” The term “privilege” describes normalized, invisible power and prestige and the trustworthiness that goes along with them. In the borderlands setting, amid literally thousands of federal police and advanced surveillance technologies and practices, privileged actors move about, conducting their daily lives, with little sense that they are likely to be stopped, interrogated, or doubted—indeed, with a strong sense that they should not be subject to such delays and indignities. The literature on borders has recently emphasized formal versions of these mobility privileges, embodied in physical and electronic data records and algorithms that process those data traces. The processed data are used to identify specific travellers who are trusted to pass through borders with little or no direct inspection, implying less time delay, inconvenience, and stigma (they are also used to target particular demographic groups and individuals for intensified scrutiny). These practices are important, and they are included in this analysis when relevant. But the sorting of trusted and targeted travellers goes beyond formal data processing and trusted-traveller programs; informal sorting of travellers is a pervasive and powerful feature of enforcement in
the borderlands, especially in loosely controlled, roving police activities in immigrant communities.\textsuperscript{15}

Pratt has raised a fundamental question: What features of state and society do riskiness attributions and consequent actions constitute?\textsuperscript{16} I ask the corresponding question: What features of state and society do trustworthiness non-actions constitute? What does the attribution of unequal trust imply, and the experience of privilege shape? After looking over the whole of border-policing activities, we find that the answers are interestingly complex and revealing.

US Policing at the Border with Mexico

\textit{Preliminary considerations}

Before we describe the border-policing setting, a few prefatory comments are necessary. Much of what I will describe about who is identified for scrutiny and who is trusted will seem quite evident, based on the putative likelihood that various social types will violate federal laws. This implies that my analysis of action and non-action is belabouring the obvious. Indeed, federal officers make (with important exceptions) rational decisions in probabilistic terms about where to direct their energies, especially when they would face potentially overwhelming workloads were they not to so ration their efforts. There are several good reasons for being attentive to the non-actions of such officers, even those justified by low probabilities of success. First, these officers are entrusted with enforcing multiple laws that involve different social actors—notably, people whose immigration and nationality status is assumed or demonstrated to be trustworthy may well be carrying contraband drugs, commercial goods, plants and animals, and so forth. Good officers are attentive to several possible dimensions of untrustworthiness, but, at the same time, allowing travellers to avoid questioning because of one ground of trustworthiness certainly changes the chances that they will be caught in a different violation.

Second, immigration laws involve many and subtle violations. For example, a bearer of a legal visitor’s visa would be violating the terms of that visa by working in the United States (under most but not all circumstances) or by overstaying the time limits on that visa, which particularly matters for local border-crossing visas, as we shall see. In another example, a US citizen who receives little scrutiny may in fact routinely employ and transport an unauthorized commuting migrant, a rather common situation in the borderlands. So a trustworthiness attribution to such probabilistically legitimate inhabitants of the borderlands may result in a

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\textsuperscript{15} The literature’s concentration on increasingly explicit and powerful formal programs inadvertently gives the misleading impression that differential sorting and treatment in mobility is new or is more markedly unequal than in the recent past. Consideration of informal sorting practices shows that such features are deeply rooted and that they have significant effects even without networked and computer-processed databases and without formal trusted-traveller programs. Furthermore, formalized programs do not simply eliminate discretion but, rather, combine in new ways (as discussed in the text) important continuing elements of officer- and management-level discretion with more explicit forms of differential treatment.

\textsuperscript{16} Pratt, \textit{Securing Borders}.
non-action on a significant legal violation—and in ways that favour certain lines of class, race, nationality, and so forth. To put the matter in more abstract terms: in both my first and second considerations, non-action turns a probabilistic judgment into a certainty, insofar as non-scrutiny makes certain that a non-random segment of legal violations are never detected. And, to venture a more normative point, we might wonder what constitutive values occur in a situation where everyone is collectively subject to state scrutiny, sharing in the experience, as opposed to a situation in which people are scrutinized unequally on the basis of probabilistic criteria, no matter how apparently rational the criteria may be. In preparation for that question of political philosophy, it is at least worth pushing our inquiry into differential police targeting past the point of saying, This targeting is probabilistically satisfactory, and that is that.

**Action and non-action: Settings and sites**

Hawkins provides a useful nested contextualization of legal and administrative decision making: “surround, field, and frame.” The *surround* is the broad societal context (ideology, politics, economics, etc.); the *field* is the network of interacting laws, organizations, and actors; and the *frame* is the patterned way in which officials think about particular cases and contexts. I will return to this approach when discussing border officers’ decision making, but what follows summarizes the range of operations conducted by various border-policing agencies, with particular attention to their geographic locations and the implications of those for social sorting. Clearly, most of these geographic, organizational, and legal considerations fall within the “field” rubric. But one important “surround” consideration characterizes the overall border setting and differential action and non-action on migration.

The United States overwhelmingly concentrates immigration law-enforcement efforts on people entering across the Mexican border (not via other entrance routes, such as airports or across the Canadian border) and migrating by “entry without inspection” (i.e., crossing the border clandestinely), termed EWIs. What such efforts do not concentrate on are people who enter with legitimate non-immigrant visas but who violate the terms of those visas by overstaying the time limit and/or by working without authorization. Visa violators are certainly more diverse than EWIs in terms of national origins, and, at least in the border region, visa violators are also more likely to belong to the middle or upper class, while EWIs are more likely to belong to the working class. Thus, the concentration on the Mexican border and on EWIs implies a whole surround of immigration acts and non-acts that are quite socially unequal.\(^{19}\)

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17. It is well known in criminology that the level and focus of policing, including discretion exercised by street-level officers, have profound effects on apparent crime rates. See Peter K. Manning, *Police Work: The Social Organization of Policing* (Cambridge, MA: MIT Press, 1977), 131–32, 279–93.


19. About 90% of all migration arrests are made by the Border Patrol, and over 98% of those are made at the south-west border, almost entirely of EWIs, while demographers estimate that about 45% of all unauthorized migrants come to the United States through legal modes of entry and only later violate the terms of their visas. See *Modes of Entry for the
Because of this overall policy emphasis, the US side of the US–Mexico border forms a strip, from the international boundary to between 20 and 100 miles north, of distinctly intense immigration and drug law enforcement. It is demarcated on one side by the border ports of entry and on the other by interior checkpoints interdicting main roads leading outward. Approximately 12 million people live in this region, with millions more passing through it. Within this heavily policed zone, discretion (targeting and trust) have significant daily impacts, especially in light of the potential acts of questioning that are foregone as well as those that are acted on. To understand these phenomena, I will survey the panoply of immigration and drug enforcement activities and locations within this strip.

First, however, a key distinction is helpful, followed by some of the relevant law governing search and seizure. In one set of policing sites—boundary ports of entry, interior checkpoints, and public airports—all persons and conveyances must present themselves for inspection by the state. At these places, the officers of the state do not exercise discretion about whether or not to inspect a traveller, although within the inspection there remain important discretionary acts and non-acts (discussed below). By contrast, a wide variety of border-zone policing activities and locations give fundamental discretion to the government official as to whether or not to detain and question a given individual or conveyance. These sites are more diverse, but two typical examples are passengers waiting for local buses and those waiting for interurban buses. In such places, the decision to select out a particular place, group of people, or individual for police action is constitutive of all further legal processes, or of no process at all. In a social setting less heavily policed than the borderlands, one might say that the latter point is true but trivial, but in this peculiar region, it merits close attention and analysis.

Before I proceed further on this, however, a digression is needed concerning the formal law and the reality in practice of search and seizure in the borderlands. At boundary ports of entry, there is no search requirement for articulable facts leading to reasonable suspicion; the sole requirement is that a search be conducted reasonably, and even that requirement is looser at the border than inland. Interior checkpoints and border-region airports are considered to be “extended border searches,” a rather peculiar concept. Federal officers there may detain and question a person without individualized suspicion, as long as the stop is brief and unintrusive. Notably, at fixed checkpoints officers can act solely on the basis of “Mexican appearance” in

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See United States v. Martinez-Fuerte, 428 U.S. 543 (1976); United States v. Massie, 65 F.3d 843 (10th Cir. 1995); United States v. Rascon-Ortiz, 994 F.2d 749 (10th Cir. 1993),
referring occupants to a secondary inspection area for questioning. They may ask about citizenship and immigration status, related identification documents, vehicle ownership, cargo, travel plans, and so forth, while constructing reasonable suspicion, probable cause, or consent for further searches or detention.

Finally, roving Border Patrols within 100 air miles of the boundary may detain and question people and search any vehicle without a warrant, based only on reasonable suspicion (for briefly questioning people) and probable cause (for a physical search or longer questioning). The key decision here is Brignoni-Ponce, in which the US Supreme Court held that race is a relevant factor in reasonable suspicion but that it cannot be the sole factor; there must be specific articulable facts and reasonable inferences therefrom that point to the suspect’s illegal presence in the United States. Articulable facts, under Brignoni-Ponce, might include characteristics of an area in which a vehicle (or a pedestrian) is encountered, previous experience with alien traffic, the driver’s behaviour, the type of vehicle, and so forth.22

In reality, during my ethnographic fieldwork in border enforcement, I never heard Brignoni-Ponce reasoning explicitly discussed, nor is it mentioned by Robert Maril in his definitive study of Border Patrol practice in southern Texas.23 I did see a list of accepted articulable factors on the bulletin board of a Border Patrol station, and managers discussed it with me (and presumably also with their officers) in general terms, but I think it is reasonable to say that this court decision is one of those niceties of law that do not penetrate street-level policing.24 Why is this the case? It is quite rare for immigration apprehensions to be questioned in court, first because most end in voluntary departure (no judicial process at all), second because deportation is an administrative proceeding in which the potential deportee has no right to counsel (though such counsel may be retained), and, third, on the criminal side, because of the usual attrition of cases awaiting trial. Drug arrests perhaps go to trial more often (and drugs are more protected than people under Brignoni-Ponce), but the average officer and her or his managers rarely, if ever, receive feedback on the constitutionality of their actions. Also, as we will see below, racial profiling in the overwhelmingly Mexican-origin borderlands occurs constantly, but, because of the numbers of possible targets involved, the additional considerations used to winnow down people for questioning tend to approximate Brignoni-Ponce standards, although there are few real-world checks on racially inequitable search and seizure in this region.

We now turn to a survey of sites of borderlands policing and their characteristics vis-à-vis socially unequal discretion. Ports of entry along the US...
southern land border currently require documentation for entry; documents may include US passports or passport cards (a cheaper stand-in for passports) as proof of US citizenship, the so-called Green Card as proof of permanent legal resident status, a passport (for Canadian citizens or most citizens of visa-waiver countries), non-immigrant visas of many kinds (e.g., students and temporary visitors, categories that cover many Mexican entrants), or Border Crossing Cards (also called "laser visas"). The latter are issued at the discretion of the US government (the key issue being evidence of economic resources and residential commitment in Mexico) to some residents of Mexican border regions, allowing them to visit within 25 miles of the US border for up to 30 days (a similar card is issued on the northern border to Canadian citizens); bearers should not reside or work in the United States.

Current port policy at the port of El Paso (which I monitor) is that at least one document must be physically examined by the officer during primary inspection, the stage at which a decision is made either to admit the entrant to the country or move him or her to more in-depth secondary inspection. Even though formal documentation constrains officers' trust or distrust in some ways (e.g., the bearer of a US passport cannot be denied admission to the United States), social categorization enters the inspectorial encounter at ports in a number of ways. For one thing, inspectors are enforcing not only the rules of entry into the country but also laws taxing, restricting, or prohibiting various goods from being brought across the border. Physical inspection of the person, possessions, and vehicle and questioning about what sorts of items are being carried may be minimal, moderate, or extensive, depending on a complicated set of assessments by the officer, as discussed below. In addition, admission to the country for bearers of certain types of documents remains at the border officer's discretion.

The Border Crossing Card (BCC) is a telling example, for it is often used by Mexican residents to commute to work in US border cities (e.g., as domestic workers or gardeners) or to travel back and forth to Mexico while actually residing in the United States without authorization. Enforcement of the terms of the card at border ports is limited, but it does happen; crossers who look like upper- and middle-class Mexicans (as judged by their clothing, their vehicles, lighter skin colour, etc.) are more likely to be trusted in their use of the card, the assumption being that they do not have an economic need to work or reside on the US side (an assumption that may well be incorrect) or that they have lawyers or political connections sufficient to enable them to complain about being detained for questioning or about having their card seized. In the case of degrees of questioning or non-questioning of BCC carriers, as in many other instances that could be cited at ports, differential degrees of trust result in differential paths toward potential legal penalty—a

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visibly prosperous Mexican man, in a late-model car, effectively does not risk his right to enter the United States by living there without authorization if he routine escapes meaningful scrutiny.

A special port of entry—called the Dedicated Commuter Lane (DCL), also known as the SENTRI program (NEXUS is the equivalent at the Canadian border)—allows pre-cleared travellers to enter the United States with little or no inspection. The traveller’s vehicle is equipped with a radio-signal-emitting decal, and the traveller is issued a radio-signal-emitting card that is registered at the entry booth; the inspector sees a computer database record of the traveller and may either clear the vehicle immediately or detain vehicle and traveller for further primary inspection, which is rare. This is a formal system of trust, with very limited discretion, and the social implications of its allocation are quite interesting. The DCL status requires a background security check, a $400 annual fee (most of which goes to the Mexican government), and admissibility to the United States. The latter requirement covers not only US citizens and legal residents but also non-immigrant Mexican-national visitors (such as bearers of BCCs). Because the entrance mode is vehicular (there is no frequent-entry card for pedestrians), because cardholders must pay a fee, and because the background check tends to favour well-documented life histories (e.g., businesses, educational institutions), the DCL program largely “trusts” rich and/or professional members of border society. Interestingly, it allocates trust in this way regardless of nationality, since the latter is not a criterion for obtaining the card. The DCL lanes thus make explicit (“formalize”) the otherwise implicit practices of trust and distrust in border enforcement.

Entry to the United States in the spaces between ports of entry is forbidden (it is “entry without inspection”). Presumably, anyone detected making such an entry is an obvious target for arrest; there may be flexibility in deciding whether or not to make the physical effort to detain and arrest such a

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27 I make this generalization about the composition of SENTRI participants with confidence, based on my “local knowledge,” but it has no rigorous empirical verification.

28 Most people who cross the border are entered into deportation proceedings, an administrative (not criminal) process; they may be offered and accept voluntary departure, which bypasses formal deportation (and thus truncates any further review); some are formally deported, a choice that involves complex discretionary decision-making at several immigration policing and judiciary levels. Illegal entry is the criminal form of entry without inspection (8 U.S.C. § 1325) that can be proposed by Border Patrol officers, with the approval of managers, for prosecution by federal attorneys. Until recently, it was a rare charge, sometimes used to discipline perceived bad actors, smugglers, and so on. Recently, it has been applied by policy uniformly to all arrestees in certain low-volume sectors of the border region and at the discretion of Border Patrol managers and federal prosecutors in some higher-volume sectors. The misdemeanour charge is used for first-time offenders, but repeat unauthorized crossers are sometimes charged with felony illegal entry. See the data compiled by Transactional Records Access Clearinghouse (TRAC), Immigration Enforcement: The Rhetoric, the Reality (Trac Reports Inc., 2007), http://trac.syr.edu/immigration/reports/178/; and TRAC, Surge in Immigration Prosecutions Continues (TRAC Reports Inc., 2008), http://trac.syr.edu/immigration/reports/188/.
person, but this is sociologically trivial. The matter of discretion in border policing is not so simple, however. Some entrants are actually seen crossing the border, but many (perhaps most) are not. Frontal border-patrolling tactics used on parts of the border since late 1993 deter most entry in open, obvious places. The more remote sections of the border are heavily patrolled, and likely entry points and paths north are monitored using motion sensors, cameras, and other forms of surveillance, but it is commonly the case that people targeted for arrest are simply presumed to be unauthorized entrants as a result of some combination of geographic location, time of day (most often night), clothes, accoutrements (backpacks, etc.), and physical appearance (being smaller, darker, and dirtier, it is thought, than US residents). Identification of these entrants is often but not always linked to some sort of data from sensors, cameras, and so on.29

Furthermore, a full civil society exists right up to the boundary, with farms, parks, houses, roads, and so forth. The people (citizens, legal residents, and authorized temporary entrants) who move through this policed space often resemble potential undocumented migrants from Mexico and Central America in their skin colour and facial appearance, since 80–90% of residents in the borderlands are of Mexican origin (more on the issue of racial profiling in border policing below). Is the person sitting in a park near the boundary a lookout for smugglers, or a local innocently relaxing?

In addition to the issue of allocating trust and distrust among the people found at or very near the boundary, in a number of places the Border Patrol operates at a distance away from the border. Set within civil society, its activities inevitably require social sorting. For example, one way in which unauthorized migrants move north from the borderlands is to be driven toward interior checkpoints (these entities are discussed below) and then walk around them, to be picked up again on the other side. Of course, the Border Patrol tries to interdict these actions by stopping people in vehicles and on foot around the checkpoints. Such areas are part of the inhabited national territory of the United States, however, even if sparsely populated, so that there is inevitably a selective process of deciding whether (say) the driver of this pickup truck on a dirt road is a smuggler or a ranch hand.

An even more complicated scenario faces the Border Patrol in the densely inhabited areas of the borderlands, which vary from urban and peri-urban settlements perched right up against the border to the numerous small towns and informal settlements (called colonias) a few miles north of the boundary. There is a broad tendency for settlements nearer the border and more marginal or outlying settlements to be more Latino, more working class, and more immigrant in their composition. Clearly, not everyone in these places is an undocumented migrant; at the same time, however, these locations are definitely used in the process of unauthorized entrance and northward movement—as pickup and drop-off points for arranged

29 On everyday Border Patrol tactics near the boundary see Maril, *Patrolling Chaos*.
transportation, and for "safe houses" in which to wait for such services. There are also a number—empirically undetermined—of unauthorized residents of such communities, that is, not in transit northward but still residing, working, and moving around in the policed region. The point is that the poorer and more powerless communities are subject to inequitable levels of border policing by comparison with richer, more ethnically mixed, and more influential communities.

Detailed locational preferences in immigration enforcement are poorly documented, but these appear, based on my ethnographic research, usually to be decisions made by lower management (station management), operating within main guidelines and restrictions emanating from middle management (sector management) and central office policy (agencies within the Department of Homeland Security, or DHS, in Washington, DC). There were clear guidelines, at the time when I researched the Border Patrol in southern California, to stay away from certain locations on the basis of risk, liability (e.g., injuries to officers or immigrants when operating on highways), and potential local criticism based on those factors. Maril documents restrictions apparently based on jurisdictional distinctions,30 and Timothy Dunn describes a particularly interesting case of resistance to the Border Patrol’s policing of community life (in particular, students, teachers, and families near a high school) in the poor, heavily Mexican-origin inner city of El Paso.31 This resistance resulted in a significant and enduring shift of border policing within the city of El Paso from the streets and neighbourhoods of the city to the undeveloped land abutting the border, a tactic best described as “full-frontal policing.”

The El Paso case is interesting, however, because while the Border Patrol responded to political power by reducing its presence in civil society within the relatively easily organized (for resistance) city, it refocused some of its efforts to unincorporated or small incorporated settlements on the outer fringes of the city or scattered within the region’s farming zone. These communities are not only socially low ranking (in the sense described above) but also—and, I think, crucially—largely prostrate politically, unable to fend off the intense policing of everyday spaces and ordinary life. In other words, a complicated calculus of political power—administrative agencies and organized or unorganized communities—helps to account for the differential local geography of attention from the border police, one of the most important elements making up the patterns of action and non-action in this region.

In the settled areas, then, federal police enforce immigration and other laws by observing parks and cruising streets, stopping pedestrians and vehicles, parking outside houses and other structures to observe and interdict people going in and out, and so forth. Current Border Patrol practice is not to conduct arrests on church and school grounds and other community structures,

30 Maril, Patrolling Chaos.
but periodically such activities do take place.\(^{32}\) Another DHS agency, Immigration and Customs Enforcement (ICE), also operates in the inhabited borderlands; their mandate is the US interior, but, as one can readily see, the border region is both interior and border at the same time, and thus jurisdictions overlap.

Among ICE’s many operations are workplace checks, which occasionally penalize employers and managers but almost always result in the arrest and removal of unauthorized workers. Workplace checks concentrate on non-household workplaces, such as landscaping firms and rock quarries, and avoid the unauthorized employment of workers in the households of the upper and middle classes of the borderlands, such as maids and day labourers. The reason for this bias is not clear, though one can imagine that it is organizational habit built on years of being penalized politically for going after the servants of the rich.\(^{33}\) ICE also serves final orders of deportation and other such administrative orders. During such actions, officers frequently question and arrest bystanders, such as people in the same house, neighbourhood, or apartment complex as the individual specified in a warrant for final deportation. Such street, park, residential, and workplace operations concentrate on areas of the borderlands that are inhabited by working-class people of Mexican origin, both because of the higher probability that poor unauthorized people will be living in such areas (thus exempting rich unauthorized people, who are present in noticeable but unknown numbers) and also because, as just discussed, these areas are politically less able to fend off policing.

And the complications do not end there. The borderlands, like any other modern landscape, are substantially organized around methods of transportation, including but going well beyond walking. Setting aside for the moment the region’s public airports, to which I will return below, there are interurban buses and bus stations, intra-urban buses (local mass transit), taxis, and private vehicles. Two examples suffice to show the importance of differential treatment in these transportation-scapes. Private cars are largely exempt from attention by the Border Patrol, with just a few “logical” exceptions: when entering the nation at a port of entry, when exiting the enclosed border region at an interior checkpoint, and when driving in or parked around a characteristic place for immigrant smuggling, such as a peri-urban settlement. On the other hand, the Border Patrol, at least in the city of El Paso, regularly has bicycle patrols surveying urban bus stops, especially those leading away from the border, selecting out non-automobile-users for questioning and potential arrest. Likewise, interurban buses are regularly detained and entered by Border Patrol officers, who quickly survey the passengers and selectively (sometimes uniformly) ask them for identification. Privilege and targeting operate at two levels. First, key assumptions about who uses different kinds of transportation result in relatively efficient targeting of unauthorized

\(^{32}\) Ibid.

migrants but also produce clear social inequalities in the allocation of trust and distrust among mobile people in this region. Second, the selection of individuals to question or from whom to require identification, and how intensely those requirements are pursued, varies according to socially unequal criteria, as I will discuss below in the context of decision making by officers.

In addition to the international border with Mexico, two internal borders within the United States seek to interdict unauthorized travellers and contraband from proceeding further into the country, effectively defining the interior edge of the border-policing region. One bottleneck is at commercial airports (but not airports for private or small-scale aviation). The other is at fixed interior checkpoints on all main highways leading away from the border region, north of the borderlands’ major population centres. At airports, the identification of all people entering the secure departing passenger area is examined, which is the practice at all US commercial airports, but with the added dimension that Transportation Security Administration (TSA) officers can refer people about whom they have immigration questions or concerns to Border Patrol officers, who are always stationed nearby. Thus, the discretion exercised is not in the documentation per se but in the pull-asides. And these Border Patrol officers, likewise, visually inspect entrants and can (at their discretion) briefly detain them for questioning. Very little is known about the actual operation of inspections at border airports, however.

Fixed checkpoints on highways leading out of the borderlands are quite interesting from the point of view of discretion. Presentation of the traveller and vehicle for brief questioning and inspection is obligatory (except on those occasions when no staff are at the checkpoint). But it is entirely the decision of the officers whether to ask for identification, whether to ask the travellers questions, and whether to examine the outside of the conveyance (examination of closed compartments, except of public transportation, requires permission or articulable facts; longer detention for extended inspection also requires articulable facts).

The practice of interior checkpoints involves balancing traffic backups on busy highways against intensity of inspections; the often massive traffic backups at the border ports themselves (long lines winding well back into Mexican cities and towns) are less politically sensitive than the ones on US highways. As a result, Border Patrol officers at interior checkpoints perform rapid sorting activities, deciding which people and vehicles to detain for substantial questioning/inspection and which will be subject to little or no

\[34\] Local law-enforcement entities (city police departments, county sheriffs, state police) represent a significant presence in these zones of everyday life in the borderlands. These entities vary in terms of whether or not they try, during minor contacts such as traffic stops, to insist on identification of nationality and immigration status and to hold possible unauthorized immigrants for turnover to federal authorities. Local jails also vary in their policies of identification and turnover for various levels of crime. And federal officers have discretion as to whether or not to accept inquiries/turnovers from non-federal law-enforcement personnel. See Mathew Coleman, "Immigration Geopolitics Beyond the Mexico–US Border," *Antipode* 38 (2007), 54, who discusses these issues for the interior of the country.
questioning. The complex grounds on which officers make these decisions are discussed below, but suffice it to point out that because the proceed/scrutinize decision is rapid and crucial at these checkpoints, trust and distrust matter greatly, and thus the social cues for trust and distrust matter greatly—with trust allowing for minimal or no inspection, and thus smooth and rapid travel, and distrust drawing inspectorial attention and delayed or denied mobility.

In summary, the US borderlands present a complex geography of federal policing in which border control is not just localized at the international boundary, or for arriving international flights, but, rather, is distributed throughout the civil society of this American region. Even in pure boundary processes, discretion would be important, but its importance here is heightened by the fact that border police are constantly sorting highly diverse people involved in all sorts of everyday activities and places. Some of this sorting is reactive—people have to present themselves for inspection—but much of it is pro-active, apparently skipping over many people, places, and activities and focusing on only some of them. In this context, the decision to act or not act, and how intensely and comprehensively to pursue action, is central to the sorting process. It is central also to the way in which border policing affects people’s lives, whether they are, in practice, mostly immune or often targeted (or somewhere in between). It is to the basis of such act/not-act decisions, then, that we now turn.

**Officers’ discretion in the field**

As I have mentioned, this article uses Hawkins’ surround/field/frame approach to sort out the complexities of decision making. The main “surrounds” around decision making by border police are three main moral—ideological priorities. The first of these is the strong but also, in practice, sporadic moral danger to US society from contraband “drugs” (i.e., illegalized drugs, as opposed to nicotine and alcohol). Drug arrests have moral clarity and bring organizational reward (e.g., the admiration of other officers).

The second is the fact that officers operate within a complicated network of ideas about unauthorized Mexican immigrants. On the one hand, officers generally see their job as guardians of a restricted good: access to the United States. Unauthorized migrants are focal threats to that restriction, because they act “illegally,” breaking the idealized “law” (as opposed to the complicated reality of laws). Furthermore, Mexicans are the central image of the illegal outsider, an image of deep historical construction and one that is strongly imbued in officers through their training—for example, as of my 1991/1992 research, all examples used in officers’ Spanish language training involved questioning and arresting Mexicans. On the other hand, officers

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35 Minor border laws (e.g., unauthorized pharmaceutical importation) are enforced sporadically, either by specialized investigations, because of obvious nervousness on the part of a border crosser, or by an attentive officer who cares to make the extra, largely unrewarded effort.
know, or quickly learn, that not all people of Mexican appearance are unauthorized migrants and, indeed, that many are US citizens or legal residents and others are authorized visitors; they also learn that people are constantly cycling back and forth through the arrest/removal/arrest process at the border and that border/immigration policing is thus frustrating and often unrewarding (in the moral terms of success against a threat). Many officers also hold apparently contradictory images of Mexican and Central American migrants as honest, humble, hard workers—the good (if patronizing) immigrant stereotype. Thus, for border officers, the stereotyped icon of the illegal alien who needs to be detected within and removed from American society has something of the role of the “symbolic assailant” (in this case, on the nation), as noted in police-officer ethnographies, though not with the harshest connotations of “assailant,” except for those perceived as “bad” migrants (drug smugglers, gang members, etc.).  

Finally, non-Mexicans are a fairly infrequent intervention in the surround; Central Americans are most often encountered at the border but are viewed much like Mexicans, except that it is a lot more work to process them, while people from more distant lands offer the moral reward of being potential terrorists (conceptually speaking, of course—not in reality, at this border).  

A number of legal and organizational fields surround officers’ decision making; among the most important are two different domains of law enforcement: obligatory checkpoints and autonomous fields of law-enforcement action or inaction. An example of the former is a port of entry where everyone must be at least minimally inspected; an example of the latter is a bus stop at which an officer may question everyone, no one, or selected individuals. In fields of the former type, officers have fewer legal constraints on search and seizure, and by policy must act (even if, in practice, minimal attention may amount to a de facto “non-act”). But in such locations the obligatory halt and inspection creates a movement bottleneck. The role of such inspections points thus becomes to balance facilitation of passage of some entrants (e.g., returning US citizens or large, trusted commercial shippers at ports) with targeting of other entrants (e.g., selected non-citizens or shippers) for referral to in-depth questioning areas. Management may (and often does) implement specific traffic-management policies, in response to wider societal


pressure, to reduce the level of scrutiny and the amount of time spent in inspection, and officers themselves rely strongly on their various decision-making frameworks to make nearly instantaneous (20- to 30-second) trust/distrust actions in order to keep traffic flowing. This field is regulated by a quota system that favours the extensive deployment of trustworthiness constructions, even in the absence of formal trusted-traveller programs, to control average time in inspection (an officer’s mental script would run along these lines: “Don’t be too picky for too many entrants, because the management quota is 30 seconds average per primary encounter”).

In field sites where enforcement action is purely discretionary, search and seizure is more restrictive conceptually, though not in practice. It is characteristic of all such sites that the trust option is truly a non-action, not even contemplating stopping someone who seems privileged with respect to border policing. It is a decision, one that can be analysed, but it is so common and so completely unstated that it is almost completely unmarked within officers’ decision-making process (Why bother with an obvious “citizen”?). The assessment of distrust is more complex and ambiguous, however, and may range from slight suspicion to aggressive certainty. As a result, officers frame decisions by weighing a number of dimensions at once, as will be discussed shortly. Their considerations also vary based on the particular tactical setting.

Frontal operations near the border, which have been emphasized by the Border Patrol since late 1993, are more likely to result in direct or strong inferential evidence of unauthorized entrance and to reduce the role of social sorting in favour of physical evidence of entry, whereas the remaining interior operations (which are still numerous) place more emphasis on the various social and behavioural sorting frames and, thus, on inequalities of trust and distrust. Furthermore, frontal border operations are notoriously boring to officers, with their emphasis on prevention by static positioning; operations within civil society involve more psychically rewarding activities, such as detection in the landscape or the population, pursuit, and then arrest of the symbolic assailant. One must always keep in mind that unlike fixed presentation points, officers in these “roving” roles are, to a greater or lesser extent, autonomous, as is well known for field organizations. Thus, management sometimes assigns or allows officers to range into borderlands civil society, where they are most likely to engage in socially based targeting (e.g., to increase the number of arrests when particular units are being measured by their “productivity”), and at other times tries to rein them in, especially as they periodically create headaches for management (e.g., by stopping US citizens, who then complain to management or to congressional offices). Officers and low-level supervisors themselves tend to expand their sorting tendencies outward into civil society; they do this, in part, because of an organizational culture “surround,” the idea that energetic and admired officers work hard and creatively to make arrests.

38 See Maril, Patrolling Chaos.
What follows, then, is a brief synthetic review of the immediate considerations—the “frames,” in Hawkins’ terminology—of immigration officers’ decision making, especially with respect to two fields: high-speed sorting at obligatory presentation points, and discretionary targeting in inhabited borderlands settings. 39 It is important to note that what I provide is an overview, and even this will prove to be rather complicated and lengthy. Specific decisions vary substantially according to setting, the salience of particular factors in a given case (e.g., obvious nerves might override standard social cues of “trustworthiness”), an individual officer’s approach, short-term organizational priorities (e.g., officers’ awareness of overcrowding in short-term detention rooms may curtail extended questioning), and many other factors. Likewise, it is worth repeating that while many of the considerations reviewed here are relatively rational, in the probabilistic sense of targeting the most likely immigration and drug violators, the point at issue is their overall effect in allocating unequal risk and trust among large populations living in and moving through the borderlands.

Some decisions by border officers, especially at obligatory presentation points (though not at all of those points, and not in all cases), are based on formalized criteria. Some formalized criteria are based on management directives (e.g., reaching arrest quotas, keeping at or below inspection-time quotas at ports and checkpoints), and others are loaded on networked computer systems that officers consult at such locations. Computer-based watch lists flag vehicle licence plates and individual identity documents. It is also possible that there are algorithm-based risk-assessment systems that target vehicles and individuals on the basis of general characteristics rather than specified identities, but whether such systems are in use at the southern border is not disclosed (and, in general, information about formalized decision-making systems is difficult to obtain). Nevertheless, consistent rules for inspection are often ignored or given minimal effort by officers in the field. 40 Furthermore, there is a range of discretion in terms of whether or not the officers reach the step of accessing centralized information: at Mexican border ports, for example, vehicle licence plates are automatically read and data called up for the officer when a vehicle enters the inspection area, but personal identification documents are visually examined and the officer chooses whether or not to enter encoded data on the basis of less formal decision criteria. Formalization, then, does not remove discretion from the border-control system.

Among informal decision-making considerations, racial profiling demands priority of attention for my purposes; it is indeed important, although probably

39 This discussion is based on my ethnographic research (see note 36 above), supplemented by Gilboy’s work, which was done mostly at an airport not located on a border (see note 1 above).
matched in importance by visible nervousness and geographic location or time of day as salient considerations. Border officers readily admit that they profile "Mexican-looking" people, and defend this procedure on grounds of probabilistic efficiency: given the national policy prioritization of immigration enforcement at the Mexican border rather than at other locations, they can hardly do otherwise. However, racial profiling is not simple in the US-Mexico borderlands, where Latinos, mainly of Mexican origin, usually make up a large majority (often 80-90%) of the population. Furthermore, physical phenotype does not neatly correspond to citizenship and immigration status; most of the US citizens in this region, including the majority of border officers, are themselves of Mexican origin. It is simply logistically impossible—and, today, would also draw political resistance—to stop and question all persons who appear to be Mexican.

Officers use two additional approaches to refine their profiling. First, people who appear to be "white" (or "Anglo") or "African American" are negatively profiled out of consideration, on the assumption that they are US citizens. They are usually not detained for questioning, or, at obligatory inspection points, are usually not questioned vigorously, unless there is some other compelling consideration (e.g., stopping on a road near the border, especially at night). Of course, this fits quite precisely the analysis of non-acts leading to social privilege. It bears mentioning that phenotypical appearances are not definitive markers of Mexican origin, given the highly varied ancestry and, thus, appearance of Mexico's population. The largest component of Mexican ancestry is Native American, and thus a certain national-appearance stereotype is constructed out of medium-brown skin colour, brunette hair, and specific facial features; but many Mexicans have light skin and hair colours and European rather than Native American facial structure. It is generally thought that lighter-skinned Mexicans are more likely to belong to the upper orders of society (because of their European ancestry and/or because they spend less time outdoors than workers or peasants do); this seems, in my experience, to be partly true, though I do not know of any empirical verification. Thus, paying less attention to "white people" partially privileges upper-class Mexicans and North Americans of Mexican origin, as well as Euro-Americans; it merges race and class, though in a complex and partial manner.

The other way of refining racial/pseudo-national profiling is to add other decision-making criteria (e.g., apparent nervousness or apparent social class) to winnow down the field. These criteria can be sorted into two categories: elements found during the surface inspection of the individual and her or

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41 A (then) Border Patrol officer described his sorting task at a highway checkpoint as follows: "We stopped cars from the south [Mexico] or U.S. border states with Hispanic people in the car. We were not trying to discriminate, but the numbers of Hispanics you catch are tremendous; really, it's almost only Hispanics." He subsequently sought to separate his personal identity from the discriminatory implications of this organizational imperative. This highly interesting interview is reproduced in Josiah McC. Heyman, "U.S. Immigration Officers of Mexican Ancestry as Mexican Americans, Citizens, and Immigration Police," *Current Anthropology* 43 (2002), 489.
his conveyance (including the racial profiling already discussed), and those that require questioning and acquisition of documents from the target. The former criteria imply the potential for no enforcement action at all, the quintessential allocation of trust, versus deciding to proceed; the latter criteria, on the other hand, are premised on at least an initial action to detain the individual for questioning, although there may then be a trusting action—releasing that person and his or her conveyance—thereafter.

Officers deploy a variable set of age and sex stereotypes. Both adult women and adult men are susceptible to being viewed as potential undocumented workers, while young men are generally more likely to be suspected of transporting drugs. Smugglers recognize this tendency, and have therefore diversified their carriers, which in turn results in officers' being less prone to use these age and sex stereotypes. More powerful are a set of social status signs, such as clothing: officers may distinguish between professional or business styles, or high-income shoppers, and styles thought to be worn by working-class Mexicans, who are targeted for their presumed need to come to the US to work without authorization. Similar sorts of considerations apply to other visible signs, such as vehicles. (The reading of signs of drug conveyance is quite different: apparent income is less significant, but details of vehicles—such as compartments and suspensions—are more important.) Finally, specific signs of subcultures are also “read” on the surface of the individual: tattoos, muscular bodies, particularly long or particularly short hair, and so forth. These are taken as clues both to potential drug use and transportation and also to legal exclusion categories (e.g., aggravated felony records of putative gang members). The overall effect of these visible social cues is to sort out a more trustworthy set of people—largely visibly more prosperous, putatively more “white collar,” and generally lighter-skinned—from a less trustworthy mass of poorer, more working-class, and broadly darker people.

These social differences are by no means the only criteria officers use to make decisions, and non-social considerations can override social sorting under some circumstances. One such domain is time-space location, as discussed above in the review of different sites of policing in the borderlands: a new car with an apparently prosperous occupant stopped on the wrong road at the wrong hour will rapidly draw Border Patrol questioning. Another domain is non-verbal (and, in questioning, meta-verbal) behaviour—tense expressions and body stances, avoiding looking at the officer, looking too often and too much at the officer, halting speech or too much speech, and so forth. Obviously, these items are highly subjective, and they are by no means immune to social sorting (working-class Mexicans tend to look down when

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42 For simplicity of presentation, I have listed individual characteristics, but another layer of decision making has to do with combinations of individuals and the officer's socially, based stories about what such a group might be doing together (e.g., a darker-skinned and/or poorer family group may be targeted as a possible case of transporting unauthorized children, whereas an apparently richer or whiter family group is highly unlikely to be stopped, thanks to a mental interpretation about their more likely social legitimacy as travellers within the United States).
facing government authorities, rather than looking them in the eye), although they are also probabilistically valuable in making choices in enforcement.

Once people are detained for questioning and vehicles for external search, additional layers of decision-making criteria can be added. There are, of course, the documentary checks on identification and vehicles discussed above. Documents also enable officers to create different levels of trust by nationality, as has been discussed by observers of border inspections. Documents showing a legal right to be in US territory almost entirely remove immigration violations as a ground of suspicion (but not entirely, since some officers may not clearly understand the maze of migration documents, or may hold suspicions, founded or unfounded, about the documents’ authenticity). But in the US–Mexican borderlands, simply defining a person’s nationality as Mexican adds little to the interpretative frame, since there are so many Mexican nationals in this region and so many ways for such nationals to be in the United States. Away from required documentation points, however, the officer may be presented with merely verbal claims of nationality (e.g., a claim to US citizenship). In such cases, accent and use of language are used to sort non-native from native speakers of English, a rough but defective proxy for nationality. Various sorts of questions about cultural information are also used to “break” (as officers term it) or confirm these claims.

Questions are used to elicit the narrative of what the person or group of people is doing, the purpose of the trip, and so forth. This narrative is weighed against informal typologies of commonly encountered legitimate stories, as opposed to either aberrant stories or commonly encountered false narratives. The totality of these cues—stories, accents, clothes, cars, and so on—is used to construct a mental model of the social and behavioural character of the person by comparison to stock interpretations of borderlanders in action. Some comparisons are confirmatory, either of putative innocence or guilt, while others appear inconsistent and thus require further questioning, search, and detention (as do apparently “guilty” stories). I have termed this activity the construction and evaluation of “plausible stories.” The plausible stories, of course, contain powerful social images—the legitimate businessman from Mexico, the undocumented maid, the drug-carrying gang member—and thus are fundamental to the governmental sorting of trusted versus distrusted (risk-presenting) people in the borderlands.

Concluding Analyses
The material discussed above is complex, both in terms of the sites of action (and their specific legal and logistical practices) and in terms of the considerations in officers’ decision making. Several different principles appear to

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43 E.g., Gilboy “Deciding Who Gets In.”
44 Non-US, non-Mexican nationals are sorted in complex ways; for example, officials might not be highly suspicious of Europeans or Canadians (who are presumed to be tourists) while being very suspicious of Middle Easterners and South Asians (as potential terrorists).
45 This concept is discussed in Heyman, “Class and Classification”; similar observations are offered by Gilboy, “Deciding Who Gets In.”
coexist, including sorting by nationality, by race, and by class (and there are other, less pronounced principles at work, such as gender and sexuality). Some are embodied in law or policy, such as immigration and nationality or pre-cleared travel programs, but are enacted in practice, while others exist only in practice. These patterns of practice both draw on existing lines of social inequality and constitute and reinforce them, in particular insofar as patterns of arrest and non-arrest and access and barriers to spatial movement both substantially affect society.

One might imagine that at a border the relevant pattern would be only how border practices constitute territorial nation-states and who "belongs" within them. Certainly such practices are important, but it is worth noting the cross-cutting patterns of class and race. Both the formal Dedicated Commuter Lane program, which operates on the basis of security investigation and income or assets rather than citizenship, and the various roles of apparent class judgments at checkpoints and civil-society patrols constitute class as a key principle of differentiation. Race cuts across both nationality and class, since it is crucial to sorting in the US–Mexican borderlands (enacting the assumption that Mexican-appearing people may be foreigners and work seekers), and yet race is not used today as a sole principle of enforcement, since it does not correspond neatly to either class or nationality.

This multiplicity is no accident. Nationality, class, legality, and race coexist as fundamental constitutive features of the contemporary governance of mobility in the United States. Different analysts have emphasized different principles, but a close analysis of this material reveals that all four operate on the ground. One might then go on to speculate that this is a matter of historical transition, that borderlands governance was more strictly racist in the past and has shifted toward class and citizenship (combining legality and nationality) in the present, without completely abandoning the racist equation of Mexicans to disposable units of labour. Likewise, one might envision that the coexistence of class and nationalism are features of the current transitional, perhaps contradictory, combination of global flows of capital with the continuing, even reinforced, power of the national-security state. Close attention

47 E.g., nationality in Nevins, Operation Gatekeeper; class relations/surplus value transfer in Heyman, "Class and Classification"; legality in Inda, Targeting Immigrants; and race in Hing, Defining America.
to discretion in the borderlands thus helps to reveal multiple socially constitutive processes at work in the contemporary world.

Attention to the patterns of non-action adds to our understanding of such issues. A focus on discretionary actions captures important information, such as key targets and consequences of policing. Adding an account of non-action then raises additional important issues. Gilboy identifies a specific kind of non-action, one in which state officers hold back on acting, even when they normally would want to, because of anticipated political pressures. But a close analysis of non-action also demonstrates that certain social figures are considered by officers themselves to be generally unsuited for policing, although in fact the potential legal situation is rather more complex. This highlights the distribution of trust as well as of mistrust or risk. Sorting is an allocative process of potential penalty or non-penalty, informal and formal, among (constructed) socio-legal types. Being the beneficiary of non-action thus can be a distinct privilege in an unequal society. In the border case, this privilege entails (1) avoiding the public and personal humiliation of being stopped and scrutinized by police; (2) speeding up one’s movement through various inspection points and eliminating the delays of being detained on the street or elsewhere; (3) reducing one’s chances of being caught in some legal or regulatory violation, of particular importance in the borderlands; and (4) experiencing state power as relatively invisible, taken for granted, and unworrisome, and perhaps also identifying with the state (in particular with border enforcement).

Résumé

La discrétion exercée par les agents de première ligne des services frontaliers représente un élément fondamental dans l’étude de la façon que les états-nations traitent les populations mobiles aux frontières internationales et près de celles-ci. Cette discrétion implique non seulement des décisions sur les moments d’agir, instants réactionnaires marqués par des circonstances, des personnes ou des motifs légaux particuliers, mais aussi des décisions sur les moments de ne pas agir. Une étude des inactions complète l’ensemble des informations nécessaires afin de délimiter l’inégalité du triage social par l’État. Cette inégalité est soulignée dans l’analyse des documents frontaliers à l’aide d’une perspective novatrice : l’auteur examine les raisons pourquoi, dans un tel contexte, certains frontaliers inspirent confiance tandis que d’autres sont considérés comme des risques potentiels. L’allocation de la confiance et du risque est des plus intéressantes et complexes, révélant plusieurs processus majeurs opérant simultanément, à savoir les inégalités de classe et de race ainsi que la promulgation territoriale de l’État-nation.

Mots clés: discrétion, migration, mobilité, frontières, confiance, risque

50 Gilboy, “Penetrability of Administrative Systems.”
Abstract
Discretion on the part of front-line border officers is fundamental to exploring how nation-states sort out mobile populations at and near international borders. This discretion involves not only decisions about when, on whom, and on what legal grounds to act but also decisions about when and on whom not to act. Examination of non-actions completes the range of information needed to delineate unequal social sorting by the state. Unequal sorting is specified in the analysis of field materials through a novel prism, paying attention to why and how certain border-landers are trusted in enforcement settings while others are considered potential risks. The allocation of trust and risk proves interestingly complex, revealing several major processes operating simultaneously, both class and race inequality and the enactment of the territorial nation-state.

Keywords: Discretion, migration, mobility, borders, trust, risk

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