

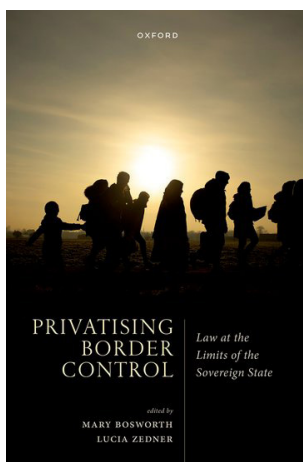
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*Privatising Border Control. Law at the Limits of the Sovereign
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Oxford University Press published an interesting edited volume in 2022 that aims to investigate the phenomenon of privatizing border control through interdisciplinary theoretical and methodological perspectives. The collection of articles looks at the increasing involvement of the private sector in border control. This phenomenon is profoundly important, as the involvement of private actors may challenge state sovereignty by shifting key functions of border control away from public institutions into the hands of profit-driven entities. Such a shift could potentially undermine the authority of the state, complicate the relationship between citizens and the state and it could raise concerns about accountability and transparency.

The Peace of Westphalia ended the thirty years of bloody war in the 17th century. This peace established the Westphalian state system, which is the defining feature of state sovereignty, territorial integrity and non-interference in the internal affairs of other states. This system established the modern concept of



nation-states with defined borders, each having ultimate authority within its territory. It remains a foundation of international relations; although, globalization and supranational organizations have been increasingly challenging its frames.

The past few decades have seen profound transformations within the political, economic and social landscapes. The rapid expansion of globalization, the increasing influence of transnationalism and supranational institutions, and the growing power of multinational corporations have reshaped traditional governance structures. These shifts have led to the erosion of state-centric models of authority, giving way to a more complex and decentralized form of rule. As a result, the welfare state, once being a cornerstone of social and economic stability, has gradually declined, making a room for neoliberal capitalism. This transition has been marked by a strong emphasis on free markets, deregulation, privatization and reduced government intervention, hence bringing a fundamental shift in governance and society. As Ana

Aliverti (2022, p. 259) writes, „*This dynamic whereby political power is increasingly subject to economic bargaining blurs the lines between public and private.*”

In this context, privatization refers to the process of transferring public sector services, functions and assets into private ownership and management. Initially, privatization was largely confined to economic sectors, such as industry, transportation and/or energy, where market-driven efficiency was seen as beneficial. However, over time, its scope has expanded significantly, moving beyond purely economic domains and entering into public service sectors, including healthcare, education and even security.

Today, we have entered an era where privatization is increasingly encroaching upon areas that were once considered the exclusive domain of the sovereign state. Functions such as border control, law enforcement, military operations and detention services – historically regarded as essential to state authority and governance – are now being outsourced to private entities. This shift raises critical questions about accountability, legitimacy and the role of the state in ensuring the protection of fundamental rights. As private actors gain more influence in these traditionally sovereign domains, the very nature of governance and public responsibility is being redefined.

Privatization of core layers of the state, which are often associated with state sovereignty itself, might take various forms, but the progressing tendency is undeniable. As Lucia Zedner and Mary Bosworth write (2022, p. 10), „*the privatisation of border controls takes many forms and encompasses widely varying*

practices, ranging from the contracting out to private security firms of border control functions formerly undertaken by state officials; to the assumption of monitoring and other interventions by NGOs, and even private citizens, to entirely new technologies of control. The tasks and roles privatised range from the provision of services like cleaning, catering, and transport, to control functions such as detaining, guarding, and escorting by private security companies. Monitoring immigration status and reporting irregularities are duties outsourced to charities, NGOs, professionals (including doctors, professors, and teachers), as well as to private citizens like landlords. In addition, new tools of digital security and data highways operate above and beyond the border, well away from public view.” To be more specific, outsourcing border security aspect to companies like G4S in the United Kingdom; Blackwater and/or other private groups such as the self-identified ‘Minutemen’ and ‘United Constitutional Patriots’ in the United States of America; or the Red Cross and Misericordia d’Italia in Italy.

The edited volume is structured into four major parts. In the first part, the articles aim to look at ‘the limits of state sovereignty’. ‘Legitimacy and the rule of the law at the border’ is the research object of the second part. The third part deals with the ‘outsourcing or undermining state authority’, while the last part works with the issue of ‘practices of privatization at the border’.

Jennifer Chacón writes about the racialized quality of privatized border controls, private detention and deportation. She provides insight into surveillance capitalism, a combination of capitalism and high technology, as well as the subsequent privatization tendencies in the United

States, such as the detention system. This means that private companies supply the government with advanced technologies that allow them to monitor, gather data and forecast the behaviour of large groups of people.

Both governmental and corporate entities defend these practices – surveillance, prediction, and manipulation – as vital to ‘border security’, even though private firms generate significant revenue, not only from selling their services, but also from collecting valuable personal data through their collaborations with the government. In addition, the companies that manage these technologies can leverage this data to shape the actions of their customers and users, too. As Chacón puts it (2022, p. 24), *„As surveillance functions are privatised, private actors gain access to public databases, which can be monetised as part of the aggregation services that they sell to private parties.”* She concludes that it is not so much that privatization undermines state authority, but rather that weakened state oversight and inadequate accountability measures are intentionally embedded in service contracts in order to avoid liability.

Valsamis Mitsilegas examines the evolving dynamics between private entities and state sovereignty within the realm of border control, particularly when the activities of private entities are perceived as a threat to state authority (e.g. boats rescuing migrants in the Mediterranean and Aegean Seas). Over the past decade, this relationship has become increasingly complex, largely as a result of the migration crisis. The surge in migration flows has prompted states and the EU to adopt more stringent border control measures, often involving

private companies in the management and enforcement of these policies. As a result, concerns have grown regarding the extent to which private entities, driven by profit motives, may undermine state sovereignty and civil rights in the process, thus *„the involvement of private actors is perceived not as a boost, but rather as a threat to state sovereignty.”* (Mitsilegas, 2022, p. 39)

Moreover, the author discusses the efforts undertaken by states and the EU to establish a ‘hostile environment’ for civil society in this context. This ‘hostile environment’ includes the securitisation, criminalisation of migration and the targeting of linked civil society organizations, as well as the stigmatisation and vilification of certain professions. These measures serve as a specific policy tool to assert state sovereignty.

Peter Ramsay argues that there is a difference between exogenous and endogenous causes of the privatization of state functions. The former is primarily driven by globalization, which diminishes the ability of nation-states to manage global forces, flows and conditions, thereby weakening state sovereignty. The latter highlights internal causes, such as the domestic transformation of the state, particularly through the new market model introduced by neoliberal model, where the state becomes a provider of services to its individual citizens. As Ramsay (2022, p. 63) writes, *„The privatisation of coercive border control is, therefore, evidence of an endogenous waning of sovereignty as a mode of government.”*

This endogenous cause is further fuelled by the decline of national traditions. These traditions and institutions are typically shaped by a strong state, which provides

ideological frameworks and unifying narratives. However, contemporary national institutions fail to unify the nation-state. Representative democracies are increasingly perceived as inadequate in representing the electorate, leading to a growing disdain for democratic politics. The author points to the UK as an example, highlighting that the British monarchy, particularly the deceased Queen, continues to be highly regarded by most citizens, but her successor enjoys less popularity. What is more, opinions on the broader royal family are divided, the state religion has lost its attraction and the Union remains in a fragile state. Subsequently, the privatization of state coercive measures serves as a strategy to obscure the decline of sovereign authority, thereby concealing the erosion of sovereignty.

Malcolm Thorburn presents a defence of the statist perspective against moral individualists. At the beginning of the chapter, the author explores the evolution of border control, tracing it from pre-1914 Europe, when people could cross borders without passport or visa restrictions, to modern border policies. Nowadays, wealthy countries have increasingly fortified themselves against immigration from poorer nations through legislation and coercive enforcement measures, thus implementing the reinvention of government by outsourcing traditional state functions to private actors.

The chapter basically presents a clash between two fundamental approaches to privatization. The statist approach is on the one side that is rooted in the theory of the social contract articulated mainly by Thomas Hobbes, John Locke and/or Jean-Jacques Rousseau. This approach

establishes the idea that individuals are willing to give up some of their natural freedoms in exchange for security, order and protection provided by the governing authority. According to this perspective, the privatization of traditionally state-provided services (such as policing, border control, criminal punishment, detention and war-making) is illegitimate, hence „...*it is the state and only the state that has both the legal and moral standing to determine who shall pass its borders, the actions of private actors in this area, no matter how competent and well-intentioned they might be, are illegitimate.*” (Thorburn, 2022, p. 78) Nevertheless, the opposing side presents a moral individualist argument, asserting that the only true moral agents are individual human beings, who exercise their agency freely and autonomously. From this perspective, individuals are the key agents of moral action, guided by universal principles of interpersonal morality, including respect for others’ rights and the duty to treat others. In this framework, moral responsibility is not vested in the state or collective entities, but rather in the individual’s capacity to make ethical decisions based on these universal moral demands.

The most radical opinion is expressed in the article written by Ashwini Vasanthakumar. The author strongly rejects the intrinsic arguments against privatization, specifically the defence of a hypothetical state. „*It is important to keep in mind the hypothetical nature of this defence lest intrinsic arguments be misconstrued as an apologia for, among other things, the nation-state.*” (Vasanthakumar, 2022, p. 97) Furthermore, she challenges the statist view that privatizing border control could undermine the state’s legitimacy and disrupt the state-

citizen relationship. She argues for the necessity of theorizing legitimacy beyond this limited relationship, particularly in the context of migration control, because „*Decisions made by one political authority impact those who are not its subjects and who have no say in its decision- making processes.*” (Ibid. 2022, p. 99) This implies that the state cannot be considered as a fully legitimate public authority, because it exercises power over migrants without being in a proper political relationship with them. In other words, the state enforces laws and policies that significantly impact migrants’ lives without their direct participation or representation in the political processes. Lack of political reciprocity raises questions about the legitimacy of the state’s authority over non-citizens. According to the chapter, this problem of legitimacy could be handled by two changes. Namely, to propose the idea of ‘differentiated inclusion’, thus regulating the state’s relationship towards migrants, and the idea that theorization should be pushed toward the conception of global political legitimacy, since global problems need a global body with capacity to coordinate and compel.

Emily Ryo and Ian Peacock further explore the privatization of detention and present an anti-privatization framework. Their article focuses on two key aspects. First, they examine how the United States of America has increasingly delegated detention responsibilities to private entities, effectively outsourcing and commercializing a crucial aspect of state legitimacy. They highlight that the use of privately operated prisons in the USA is not a recent phenomenon but it dates back to colonial times, demonstrating a long history of intertwining incarceration with private

interests. However, the contemporary expansion of privatized detention was significantly driven by the ‘War on Drugs’, which led to severe prison overcrowding, and it was further reinforced by the rise of neoliberal policies that advocate for limited government and the prioritization of market actors in public services.

The second key aspect of the article is the analysis of three dominant anti-privatization narratives that have emerged in public discourse. These frameworks critically challenge the legitimacy and ethics of delegating detention to private entities, raising concerns about moral, economic and accountability-related issues. The morality-legitimacy frame argues that profiting from the deprivation of personal liberty is inherently unethical and immoral. The economic-instrumental frame questions the assumption that privatization leads to cost efficiency, emphasizing that the market is dominated by a few powerful companies, which undermines competition and drives up costs rather than reducing them. Lastly, the transparency-accountability frame highlights the secrecy surrounding private detention operations, arguing that they function beyond public scrutiny, limiting oversight and weakening democratic accountability.

Hallam Tuck writes about the complex relationship between public and private incarceration, citizenship and racial difference in the United States of America. The article provides insight into the USA prison system during the dismantling era of the welfare state and the dominance of the neoliberal economic approach. Tuck explores how, during this period, the outsourcing of state functions to private

actors was increasingly seen as a solution to issues like overcrowding in prisons. These challenges were partly driven by the 'War on Drugs' and by the criminalization of migration which led to a dramatic increase in the prison population.

The article discusses that privatization was viewed as a way to address the increasing government spending, but these often cited cost-saving benefits of privatization never materialized in reality. In fact, the attempts to reduce costs had detrimental effects on the healthcare systems within these private facilities, leading to widespread medical neglect in the pursuit of higher profits. Contrary to the claims of efficiency, private prisons often turn out to be more expensive than their public counterparts. Furthermore, Tuck argues that „*Privately operated confinement has become a tool of the prison welfare chauvinism*”, where „*immigrant prisoners are not worth being clothed, housed, and fed, because they will eventually be deported.*” (Tuck, 2022, p. 145) In addition, the contract structures that govern these private prisons place significant financial pressure on operators to maintain high occupancy rates, further incentivizing overcrowding to maximize profits. Subsequently, the criminalization of migration and the articulation of the 'Latino threat' become tools for profit-making, hence this shift toward privatization has had far-reaching consequences, particularly in terms of its impacts on marginalized communities.

Federica Infantino examines the marketization of 'legitimate' violence, focusing on how the state increasingly relies on private companies to achieve its objectives, particularly in areas like security, law enforcement and surveillance. The

author highlights that the outsourcing of government functions is neither a novel, nor an isolated process, but rather it is part of a broader, long-standing neoliberal economic trend that has been present since the 1980s. This trend underlines the primacy of market mechanisms and favours the privatization of public services. In this way, private entities gain access to those roles that were traditionally managed by the state, such as managing border control, overseeing detention facilities and even administering security services. This cooperation with private companies may have positive effects, like the state can operate more efficiently, it can reduce costs and can avoid direct accountability. However, Infantino underlines that this shift raises significant concerns regarding the privatization of state power, particularly when it comes to the use of force. The involvement of private companies in crucial areas of governance challenges the traditional boundaries between public authority and private interests. In other words, this analysis sheds light on the increasing intertwining of state functions and private enterprises and it offers a critical insight into how market-driven policies are reshaping the nature of state control and violence in contemporary societies.

Lucia Zedner's article examines the role of private citizens within the structure of border control outsourcing, focusing on how this shift leads to the establishment of an internal network of controls. The article highlights the increasing involvement of private citizens in ensuring compliance with border-related regulations, therefore expanding the scope of security practices beyond traditional government institutions. This creates a complex network of micro-

border controls, where private citizens are tasked with implementing checks and surveillance measures that influence nearly every aspect of daily life. These controls extend to areas such as housing, education and healthcare, where individuals may be required to present documentation or undergo verification processes. In this context, private citizens (like health care workers, teachers, social care workers, etc.) are also involved in the routine checking of passports, paperwork and other forms of identification, thereby contributing to a broader system of surveillance that blurs the lines between public and private responsibilities.

These border control responsibilities are extensive; however, private actors may be ill-disposed to perform such checks or may lack the professional expertise or training needed to carry them out effectively. Subsequently, individuals, especially those who appear to be ‘foreign’, might be falsely identified, resulting in a denial of access to various services. As Zedner (2022, p. 226) writes, *„Outsourcing border control to private individuals undermines state sovereignty, delegitimises its authority, and far from enhancing efficiency has created a system lacking in the basic prerequisites of good governance, all of which is injurious to social trust, mutual tolerance, and civil peace.”*

Didier Bigo explores the dematerialization of physical border controls through the digitalization of border entry processes, such as the eu-LISA agency and the operational management of large-scale IT systems. These systems represent a significant advancement in digital surveillance, which depoliticizes security by framing it as a technical and

IT matter. Thereafter, security is linked to ‘digital solutions’. These solutions have rarely been questioned; instead, they have been expanded beyond the region and even adopted nationally by countries. As Bigo notes (2022, p. 234), *„The construction of a surveillance industry under the label of civil security has therefore developed silently with little criticism.”*

The article underlines that we are the eyewitness of ‘totalization of security’, where the distinction between digital and physical, which can be considered as the last boundary, is weakened and dissolved. This profound change (crossing the boundaries between digital-physical and public-private) is mainly implemented by computer scientists, systems engineers and by the constructed algorithms. The new IT approach towards security concentrates on composite facial recognition, crowd detection or behavioural anxiety detectors, hence altering the notions of security, *„The guild of data managers and IT systems engineers have, therefore, transformed what security does and what it means. (...) they do not agree with traditional security professionals and in particular with border guards. They have different appreciations of the means of achieving security and they sometimes also prioritise the most important dangers differently. Moreover, this IT field is dominated by a few firms, thus a mercantilist approach prevails rather than the neoliberal free-market model.”* (Ibid. 2022, p. 244) Moreover, this new IT field for security is dominated by only a few firms, thus a mercantilist approach prevails rather than the neoliberal free-market model.

To conclude, the edited volume of Mary Bosworth and Lucia Zedner ‘Privatising Border Control: Law at the Limits of the Sovereign State’ offers an interesting reading about the privatization and outsourcing

of border controls and about the role of the state within the larger frameworks of contemporary governance. The volume raises important topics and questions regarding border control, globalization, privatization and the outsourcing of state roles which are considered as traditionally state-implemented policies and functions.

This book is primarily recommended for the academic community, particularly for students and scholars in the fields of political science, international relations, international law, economics and border studies. It serves as a valuable resource for those who seek a deeper understanding of the evolving dynamics of border structures and privatization. Additionally, it is highly relevant reading for individuals who engage with borders in their professional or personal lives, whether as policy-makers, legal practitioners, border officials, NGO workers, or researchers, as well as for citizens who experience border and their restrictions in their daily interactions.