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Migrant Protection and the City in the Americas

Chapter 12 : CONCLUSION

Laurent Faret and Hilary Sanders

The chapters in this volume all address the challenges posed by the presence of migrant populations in urban environments, and the way local policy actors answer the various questions that this presence raises. Despite a diversity of situations, the same interrogations are at stake from Canada to Chile: how can local decision-makers act on what has become a major social and political issue throughout the Americas, in areas as diverse as security, access to health, education and housing services, urban economic development, and the peaceful coexistence of increasingly diverse ethnic and national-origin groups? What place in the city can be given to these populations long-term, in terms of real participation in urban life, from an economic, socio-cultural, or political perspective? As was highlighted in the introduction to this volume, cities are at the forefront of the arrival and settlement of foreign populations. In parallel with questions concerning the legal status of the foreign populations in their midst - over which they ultimately have little control - cities have to deal with issues that are both more immediate and more pragmatic, including those of the daily life of any urban population, with its issues of access to the city and its resources, its labor market, its amenities and its opportunities. From North to South America, initiatives by urban leaders are marked by cross-cutting approaches, some driven by local actors animated by a desire to strengthen the political affirmation of an inclusive city, others by a more or less opportunistic response to growing social demands for action.

In this concluding section, we consider some of the main aspects that can be highlighted upon juxtaposition of the case studies developed in the volume. Although the book is not comparative in nature, the aim of this section is to point out patterns of commonalities and distinctions beyond situated contexts, and to initiate a reflection on the dialectical and evolving relationships between migration, the city and public action. Central to the book has been the need to locate reception policies in their dual environments, that of migration dynamics, on the one hand, and of the structural conditions that allow for urban action, on the other. These two parameters undergird the meaning and scope of hospitality measures, and thus the framework in which the questions of reception are posed.

Clearly, the migratory processes of the last decade are in constant evolution, and the

urban presence of populations is more complex than in the past. The classic forms of settling and incorporating populations that choose their destination voluntarily, forms that remain prevalent and relatively stable in some contexts (such as the United States and Costa Rica), have become more diverse in others. In Peru, some of the migrants fleeing Venezuela do not consider Lima as a long-term destination. In Mexico, the long-standing questions of populations in transit towards the rest of North America have become more politically fraught. In Canada, the migrant presence of recent years is linked both to restrictive US policies and to the influx of refugees from the Middle East, particularly from Syria. In Chile, the conditions of reception of foreign populations have undergone a profound reevaluation following the arrival of significant numbers of Haitian migrants. These trends are important in regards to public policies, as they influence the way the general public perceives migration and foreign populations more broadly, as well as the timing and overall relevance of political initiatives. They are also factors that lead civil society organizations to push for urgent action, or to adjust the focus of their lobbying efforts, according to their agenda. We know how much the acceptability of measures depends on the conjunctural context in which they take place. As the authors point out in many chapters, the media coverage of migration events has played a significant role in shaping public opinion. To a large extent, the movements of migrant "caravans" constitute the backdrop for the reception of Central American populations in Tijuana in recent years. Canadian public awareness of the situation of Syrian refugees precedes the positions taken by decision-makers in Montreal. President Trump's antiimmigrant discourse and the measures implemented at the national level motivate positions taken in New York or Tucson. The sudden arrival of impoverished Venezuelan families in the streets of Lima in 2018 has tested the political will of Peruvian authorities to welcome these refugees. The specificity of these situations of mobility, and their optics, have strongly influenced public action, and will most likely continue to do so. But in all contexts an important challenge is the impact of local measures and policies over time versus the evolutionary nature of migratory dynamics: discrepancies exist between perspectives that require long-term anchoring and programs that respond to very specific contexts.

The structural conditions of urban action, also fundamental characteristics of cities, present fundamental dissimilarities. These conditions include the authority that urban governments can and are willing to exercise in their regional and national environment and the existence of legislation or jurisprudence limiting their autonomy in the realm of migrant reception, but also the historical trajectory of cities vis-à-vis immigration, the effects of political

transformations specific to local elective systems or to power relations between actors that pass through other mechanisms of legitimization. From this perspective, our case studies cannot be decoupled from these institutional environments. While systems of federated states or forms of decentralization are present throughout the Americas, the autonomy of local actors varies greatly. Whereas US cities have assumed responsibilities that directly impact migrant populations, in Latin America centralized government remains strong in many cases, constraining the freedom of municipal leaders. In addition, and as the authors in this volume show, at intermediate scales representing other levels of government (Canadian provinces, Chilean regions, Peruvian departments, Costa Rican districts...), specific positions on migration have emerged, calling for closer collaborations between territorial jurisdictions. At the same time, while cities such as New York and, to a lesser degree, Toronto, Tucson or Tijuana have had to position themselves on migration issues for several decades, the issue of a significant international presence in the city is much more recent in Lima or Mexico City. As municipal leaders in these Latin American cities are more experienced with the incorporation of migrants from the interior of the country, and formal, diversified, measures for international migrants are necessarily less developed. In addition, the conditions under which urban action is undertaken depend on the possibilities for participation by a variety of social actors. In some cases, decision-making systems or the monitoring of measures leave little room for civil society, even if relative progress has been made almost everywhere, often through struggles and negotiations. The clientelism of the positions adopted, the political opportunism of certain statements or the unexplained disappearance of measures that appeared relevant are part of the panoply of forms of intervention or laissez-faire action in the cases presented in the volume.

In connection with these general dimensions, our case studies confirm several familiar themes that emerge from research on local responses to migration. In the first place, it is evident that national governments and local authorities have fundamentally different priorities in regards to the management of migrants. Responsible for national security and the sovereignty of its territory, the State must at least attempt to control the movement of populations across borders, and it maintains the authority to confer or deny legal status to these migrants, in accordance with domestic expectations and regional geopolitical dynamics. From the perspective of local government, however, distinctions between citizen and foreigner, much less between legal permanent resident and unauthorized migrant, are not necessarily relevant to the pursuit of the more pragmatic goals of public health and safety. This tension can apply both to

the benefit and to the detriment of migrant protection; city authorities can prioritize the delivery of services and the prevention of victimization among migrants over exclusionary national imperatives, as in cities with more or less robust sanctuary policies such as New York or, more recently, Mexico City. On the contrary, they can choose to emphasize public order upon the arrival of migrants whose entry and transit within the national territory is tacitly or openly accepted by the State, but who are categorized as unwelcome ‘Others’ by local populations, as in the case of Lima, Peru, or in response to Central American migrants in Tijuana, Mexico. In contexts of hostility to migrants, racial, ethnic, and cultural factors can have more salience to receiving populations than those relating to legal status, as in San José or Santiago.

Also common to many studies of local migration policy, as well as to urban and public policy more generally, is a focus on the discrepancies that inevitably exist between official discourse and observable practice. Indeed, public agents do not always execute policies as envisioned by elites, or lack the funding or clear instructions that would allow them to do so. The cases of Toronto, Mexico City and Santiago are emblematic of the substantial gap that often separates policies that theoretically offer protection to migrants from their manifestations in day-to-day interactions with representatives of municipal authorities. As Hudson demonstrates in the case of Toronto, designating a city as a sanctuary can be a hollow act of messaging that is not supported by a political will to establish municipal policies that could create conflict with regional and national governments. In Mexico City, the banner of sanctuary city was promoted in the context of returning Mexican migrants, which had little to do with local efforts in receiving migrants from other countries. In these contexts, urban leaders try to reap the benefits of a label that signals the cosmopolitan character and progressive orientation of the city, without mobilizing the necessary resources to realize their stated objectives. Furthermore, references to sanctuary implicitly conceptualize migrant protection as a moral imperative, making policies particularly ripe to accusations of hypocrisy. This phenomenon is exemplified by the case of Montréal, Canada, where criticism of the shortcomings of the city’s policy led to the adoption of a name that is more representative of its substance.

The limitations and failings of policies intended to provide sanctuary to migrants can often find their source in a more fundamental flaw in many attempts to manage migration, which is misunderstanding about migration processes among public authorities. In particular, lack of precision about the distinctions between various categories of migrants is common, in both official discourse and actual institutions of migration governance. Atak highlights the

confusion between the status of refugees and that of undocumented migrants perpetuated through the use of the vague term “newcomers” in debates and resolutions in relation to Montréal’s sanctuary policy. In Mexico City, the association of policies for irregular migrants with those intended to re-integrate Mexican nationals deported from the United States (retornados) is also revealing of the conceptual haze surrounding the beneficiaries of programs of migrant protection. The same distortion is at stake in Lima, where the recent influx of Venezuelan population has made the category of international migrant more complex and ambivalent. Clearly, the needs of these specific populations are easily overlooked in the objectives and mechanisms of policies constructed on such imprecise definitions. In many situations, insufficient knowledge about the diversity of foreign populations and migration dynamics is a limitation, and blurred categorizations can be counterproductive for the measures developed. In cities with great pressure on the social programs developed for disadvantaged populations, as in Tijuana, San José or Lima, “migrant” can function as a distinctive category, creating stigma or the perception of undeserved entitlements, according to various populations’ eligibility for public aid. However, from the perspective of local government, it is possible that this confusion is deliberate at times, allowing authorities to assuage demands for action in regards to vulnerable migrants without legal status, while creating programs that offer assistance more appropriate to highly skilled workers, whose economic contribution is more immediate. The “Welcoming Cities Initiative” implemented in Austin, Texas, is a case in point.

Another point of convergence that emerges from the cities studied in this volume is the reactive nature of many local migration policies and initiatives, which are adopted in the context of a conversation on a national or even international level. Certainly, parts of municipal government and civil society in cities like Tucson have struggled to resist the restrictive orientation of state and federal immigration laws through local policies of protection. Indeed, the sanctuary movement, which originated in Tucson, was largely crafted as a rebuke of federal immigration laws, as well as foreign policy. Outside the United States, while national debates about migration remain relevant, support for policies of migrant protection is influenced by factors on a still larger scale. Leaders of Canadian cities responded to the unfolding crisis of Syrian refugees blocked from entry into most European countries, as well as the increasingly xenophobic discourse and exclusionary immigration policies from the new presidential administration in the United States, by making declarations of solidarity with migrant populations with whom the public expressed sympathy. The policies that ensued clearly

attempted to distinguish the city's position on migration issues from unpopular examples abroad. The communication of a message of hospitality in Mexico City, faced with escalating threats from the United States of increased deportation of Mexican nationals, follows a similar pattern. The influence of U.S. immigration policy decisions on local migration dynamics can be observed particularly clearly in Tijuana, Mexico, situated along one of the busiest and most highly regulated border crossing points in the world. Nevertheless, as París and Montes show in their development of the concept of the "resonance" of restrictive immigration policy models, in a city like Tijuana where the transit of migrants is dependent on decisions made in the United States, municipal authorities and local populations can either adopt a similar frame of reference as its more powerful neighbor or support a counter-narrative of solidarity with migrants, depending on the social, political, and logistical circumstances. Elsewhere in Latin America, other international points of reference also hold sway among municipal leaders, and influence the circulation of policy models. Global discussions or European efforts on sanctuary policies have had an impact in Costa Rica, Mexico or Chile, among other places. In those cases, the international context gives opportunities for local policies, as the engagement of some United Nations divisions such as CEPAL or UNESCO on the matters of inclusive cities has gained importance. Traditional exchanges between Latin American city leaders and their counterparts in Europe also provide a platform to share experiences and strategies in migrant reception, although the transposability of models is a dimension that remains insufficiently analyzed.

Given local migration policies' permeability to external factors beyond city leaders' control, frequent fluctuation in cities' responses to the presence of migrants is unsurprising. Indeed, the case studies show that the temporality of local migration policies is a significant element of analysis in most cities in the Americas, which resist classification into immutable categories as welcoming or restrictive urban environments. The permanence of the United States' massive undocumented population, leading to fairly stable migration policies of protection in certain large, progressive cities, is not widely representative abroad. Especially in regions facing a sudden influx of migrants seeking refuge, the goals of migrant protection, urban development, and public safety can come into conflict, or require prioritization. This is true of Mexican border cities that become the sites of blocked transit migration, or of Canadian cities confronted with the unexpected arrivals of irregular migrants from the United States. The management of migrants becomes a politically sensitive issue, leading to the readjustment of directives to municipal departments and of relationships with regional and federal authorities,

as well as humanitarian organizations, particularly when newly elected administrations arrive in power. The case of Austin, Texas, is illustrative of the manner by which successive city governments, while trying to maintain a semblance of coherence and continuity in the city's image as both cosmopolitan and humane in regards to migrants, frequently waver in their commitment to protect undocumented immigrants, considered less desirable to the development of the city's knowledge economy.

In countries with little experience in receiving migrants, vacillation between protective and exclusionary local policies towards newly arriving foreign populations is particularly striking. The embryonic policies that emerge are truly experiments in migration management at the local level, by actors often more familiar with the dynamics of emigration than immigration. Many Latin American countries that have long histories of sending migrants abroad, to the United States or other prosperous nations in the Western hemisphere, have only recently passed major legislation on immigration that updated their national legal framework to account for the increasing presence of irregular migrants, both long-term residents and those in transit. Costa Rica and Mexico are examples of this trend, where national legislation was adopted in 2009 and 2011, respectively. In the first case, Morales points out that measures promoting social integration were incorporated into law for the first time with this reform, but also that governmental actors in the urban area most directly concerned, San José, did not take full advantage of the opportunity by translating the legislation into the city's municipal code. In Mexico, Faret recalls that the political autonomy of the nation's capital was obtained very recently (formally in 2017), creating significant new instruments, but that this institutional framework has yet to become fully effective. In the case of Chile, Arellano and Orrego observe that disagreements between governmental agencies over their respective powers and responsibilities in the management of migration effectively prevented the enactment of reform for several years amidst increasing Haitian and Venezuelan immigration, leading to the eventual adoption of more restrictive legislation in 2018.

Despite these relative commonalities, this study highlights that the ultimate form that local migration policies assume is largely constrained by institutional factors, including the manner in which national, regional, and local governments interact, and the degree of overlap in their respective powers in regards to migration. In the United States, the political autonomy given to individual states provides an arena in which local governments can establish and maintain an extraordinarily contentious relationship with the federal State, by international

standards. Lawsuits between the national government's Department of Justice and sanctuary jurisdictions, spurred by threats to withhold federal funding from these localities, are common. They are often settled by court decisions that run counter to the on-going immigration policies of the Executive Branch, allowing local governments to continue defying State demands for increased collaboration in immigration control, with judicial support. This constant tension over authority in the governance of migration, in particular over the protection of deportable migrants from identification by federal authorities, is reflective of a broader conflict between progressive states and cities (proportionally under-represented in federal government) and increasingly restrictive national policies relating to public surveillance and security. It is this political polarization, combined with a conducive institutional framework, which has allowed sanctuary cities to become more prevalent in the United States.

A particular point of divergence among national contexts can be found in the role of the police. Canada, the United States, Mexico, and many other countries in Latin America have largely delegated public security to regional and local law enforcement forces, whereas immigration remains regulated by national agencies. However, the argument made by sanctuary jurisdictions in the United States, that entanglement between immigration enforcement and criminal justice is detrimental to public safety in that it discourages irregular migrants from reporting crimes to law enforcement, has not gained traction abroad. Municipal governments throughout the Americas, even in cities with official sanctuary policies, have not chosen to translate the theoretical separation of roles into clear directives to law enforcement officers, instructing them to refrain from reporting individuals who cannot prove their legal status to immigration authorities. Generally, such collaboration is mandatory in the case of irregular migrants who are the object of a criminal investigation, but is largely a matter of voluntary, proactive communication on the part of police officers in most other situations. As underlined by Hudson, only by considering irregular status as a crime in of itself can such a practice be justified. Yet it is the refusal of this logic that ostensibly defines sanctuary cities such as Toronto, which promise to deliver public services to all, regardless of legal status, and thus implicitly affirm their legitimacy as residents. This contradiction is central to the tenuous status of cities that claim to be welcoming and hospitable to migrants, while assisting national agents in identifying "aliens" eligible to be expelled. Urban situations in Mexico, as the chapters on Tijuana and Mexico City show, present different patterns. Police operations directed towards undocumented populations are less frequent in cities in comparison with what occurs on

migration routes, where security and legal mobility are more and more intertwined.

Nevertheless, this relative tolerance of migrants in urban areas does not translate into safe havens, and local police officers frequently take migration status into account during routine operations, even though the law prohibits officers from inquiring about legal status. In many cases, such situations generate extortion or other forms of corruption as a regular basis of interaction, and efforts to combat these practices are still of limited effect. In this respect, Sanders suggests that local governments can avoid some of the conservative backlash and the conflict over rule of law created by sanctuary policies by decriminalizing or creating a civil procedure for low-level offenses: the debate over whether or not to « protect » an undocumented immigrant accused of an infraction ends at the moment when said infraction is no longer a criminal offense.

Furthermore, it is significant that in Canada and much of Latin America, local governments have generally avoided conflict with national governments, eschewing policies related to irregular migrants involved with the criminal justice system and focusing on noncontroversial strategies such as improving access to accurate information about immigration law, individual rights, and available services. Urban leaders often maintain close relationships with national immigration authorities, usually located in the same large cities that attract the largest number of migrants, and turn to them for guidance and funding, when possible. Even in the case of the Chilean Sello Migrante program, which specifically aims to assist irregular migrants with regularization of their status, municipal policy does not directly contradict or obstruct national strategies. Indeed, this label that signals the immigrant-friendly political orientation of the city is awarded by the national government itself, allowing it to maintain a clientelistic relationship with participating municipalities.

The absence of municipal identity cards outside sanctuary cities in the United States is illustrative of this aversion to jurisdictional conflict in most contexts. Indeed, the need for government-issued identity documents to access public or private services (like banks and money transfer operations) is a crucial issue that limits cities' ability to pursue the goal of improving access to services for irregular migrants. In Canada, as the cases of Toronto and Montréal highlight, most essential public services are not administered by municipalities, but at least partly by regional or national authorities that require formal identification, often a province-issued driver's license. In Latin America, although various forms of identification are considered valid by law, the national electoral card is regularly required for many day-to-day

operations, and the matter has been a frequent point of tension between civil organizations and local governments. The former regularly argue that a municipal ID would be a more effective form of protection for migrants than specific programs aimed at this population, however ambitious those programs may be. However, the latter are reluctant to produce such documents, exposing themselves to the risk of jurisdictional illegality, as was the case in Mexico City in 2019, where a local identity card program was abandoned.

Whether during administrative procedures or interactions with police authorities, with or without formal identity documents, concern about possible abuse or mistreatment remains high for newcomers or longer-term migrants, who often apply representations transported from their countries of origin. This is another transversal dimension that manifests itself with varying intensity across the case studies: the trust placed in local and national government representatives by migrants themselves. Not surprisingly, it is in countries where impunity, corruption, and abuse by public authorities are the most rampant that mistrust is strongest. In some cases, local programs for migrants are avoided by eligible persons, as a result of such negative experiences. Distance from authorities is particularly noticeable in contexts where discrimination is part of the daily experience of racialized populations in cities, as is the case of Haitians in Santiago or Nicaraguans in San José. Moreover, distinctions between different authorities and their intricate territorial and bureaucratic organization remain unclear to many. Fear of national immigration agents does not disappear simply because another governmental official from a separate jurisdictional level delivers a speech of hospitality. From the perspective of the migrant, they are both agents of the State.

Finally, limits to local governments' ability to shield the most vulnerable of migrants, those with irregular status, remain considerable across the Americas. The threat of deportation, the fear of abuse, and the uncertainty of future possibilities for mobility compound struggles involving entangled vulnerabilities. The political capacity and willingness of urban stakeholders to address these issues in a long-term and stable perspective is a central point, especially when national strategies for preventing the entry of unwanted migrants and deportation regimes are still on the rise. Given that insecurity and poverty in many regions of origin continue to generate human mobility, migration will remain a visible and pressing policy question for local governments in the future. As highlighted in this volume, the outcomes will depend on several elements: accurate information provided to policymakers, a pluralistic perspective including civil society, the accumulation and appraisal of previous experiences, among others. These are

the conditions for stable and consistent measures, for sufficient awareness within public services, and for collaboration between territorial jurisdictions, as well as for nondiscriminatory daily practices by all actors at stake. On a more general level, outrageous statements and populist or xenophobic positions that feed on and fuel sentiments of fear and social withdrawal will have to be countered. In many aspects, the local arena is a particularly appropriate scale at which to address these issues, as urban environments have historically been sites of effective multiculturalism, co-presence, and the shared construction of both knowledge and communities of destiny.