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## **Illegal but licit**

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42

underworlds & borderlands



# NEWSLETTER

## Illegal but licit

Itty Abraham

A housewife in Kolkata buys *bhindi* (okra) from her neighbourhood vegetable seller for her child's dinner. In doing so, she may have participated in an illegal activity. Depending on how far back we want to go, the chain of illegality can be said to have begun with the Bangladeshi farmer who planted the vegetable six months earlier. Or it may be more sensible to start with the social 'commodity chain' of women who transport bundles of vegetables by foot and ferry in the early hours of every morning across the hundreds of legal and unmarked border-crossing points from Bangladesh into India. Crossing without papers or passports, they sometimes bribe border guards to let them pass. This is when the first 'crime' takes place.

The 'criminals' include both the vegetable seller and the state border representative. Once in India, some women sell their produce to intermediaries in border villages and return to their homes in Bangladesh. Others board crowded passenger trains to Kolkata and sell their produce at the city's wholesale vegetable market. Then they return home, sometimes stopping to purchase goods with a high resale value in Bangladesh and other household items. They reach Bangladesh that evening, sometimes bribing border guards again, depending on the tacit, socially sanctioned norms that govern this illicit flow. Before they arrive home, they may have stopped in a border village to meet relatives, drink tea and chat with friends, and to help arrange marriages for young men and women.

From the city vegetable *mandi* (market), mini-wholesalers and retailers fan out into the city's neighbourhoods,

sometimes selling directly to consumers who may include undocumented Bangladeshi maids working in middle class households, who sometimes resell the produce at a slight mark-up to neighbourhood shops. This is where the second 'crime' takes place. Clearly no taxes are paid on Bangladeshi okra: the 'criminals' include the (Indian) vegetable sellers and her (possibly undocumented) consumers. This is micro-business, comparable to micro-credit in scale, and it is not without its dangers. Women, especially those travelling long distances alone, risk conducting business without guarantees of safety or reliability. Credit is rare, as this is almost entirely a cash business, making them vulnerable on their return: they may be caught up in random police sweeps or threatened by *goondas* (thugs). What protects them is the ubiquity of their behaviour and the well-known social rules that govern their international travel and transactions.

### Illicit flows

Illicit movement across national borders takes place worldwide on a daily basis. Operating in the conceptual and empirical gap between these illicit activities and the means of describing and understanding them, the research project *Illegal but Licit* (see p.3) does not seek to condone or justify the undocumented crossing of national borders or the wilful breaking of municipal laws. Our aim, rather, is to understand and analyse the linked chain of social activities that violate one or another country's laws. Furthermore, we seek to do so without recourse to the state's languages of (il)legality or national

continued on page 4 >

SPECIAL ISSUE

Are you a criminal?  
on the illegality of daily life, pp. 1 - 21

- > A personal account of what I did at IIAS, or why I remained a cultural anthropologist, pp. 24 - 25
- > Wertheim Lecture 2006: why the rich get rich, pp. 28 - 29

continue from page 1 >

(in)security. To attempt this is to encroach on the domains of a number of disciplines, including sociology, international relations, economics, geography, migration and border studies. All of these fields offer some insights, yet none is complete in itself. In other words, the subject of enquiry and our analytic approach lie at the margins of national boundaries and disciplinary fields. There are, we believe, considerable rewards for occupying this interstitial position, not least of them being a better understanding of some of the most commonplace human activities today.

What this imagined journey above describes when we consider the tens of thousands of people involved is the vast scale of the daily movement of goods and people, cash and commodities that the city of Kolkata barely acknowledges and yet could hardly do without. This combination of unwitting dependence and structured invisibility under conditions of transnational illegality is characteristic of what we have termed 'illicit flows'. Other examples that make the same point abound. The US Border Patrol, driving along the most militarised and high-tech-defended border in the world, must allow hundreds of undocumented Mexican and other migrants to enter the US every day – or else the price of daily wage labour rises and California's powerful farm lobby starts to complain. In Jakarta's enormous Pramuka bird and pet market, hundreds of illegally trapped birds and animals are openly on sale. And sales are brisk: according to one estimate the average trader sells their stock in two weeks, which would mean 40,000 wild birds are sold to local customers every month. The penalties for illegally capturing and trading in protected species are severe but are of little effect.

To point to these or other examples is not to argue that the world is full of criminals, but that we have not yet begun to appreciate the extent to which formal illegality surrounds us in the course of our daily lives. It should further be noted that people involved in criminality of this order do not consider themselves criminals. Of course it could be said, what criminal does? But the point here is that neither the 'criminal' nor the consumer of the illegal commodity acknowledges the stigma of criminality in their transactions; they are more likely to point to the difficulty of separating crime from licit activity, and, by extension, perpetrators from victims.

The more sophisticated among them will point to the existence of *legally sanctioned* spaces where what can only be called criminal behaviour flourishes: the tax havens of the Cayman Islands, Liechtenstein and the Channel Islands, or the maritime 'flags of convenience' offered by countries like Liberia and Panama, whose sole purpose is to give shipping companies a legal way of avoiding regulations. What makes those sites of non-'criminality' different from slipping across the border between Burma and Thailand to work below minimum wage or buying smuggled Bollywood DVDs in Karachi markets? What we are pointing to is more than a sharp contrast between social mores of acceptable behaviour and the state's own terms of defining the difference between

FORM OF AUTHORITY	LEGAL	ILLEGAL
LICIT	Ideal state (A)	Underworld / borderland (B)
ILLICIT	Crony capitalism / failed state (C)	Anarchy (D)

legitimate and illegitimate activity; it is also the difficulty of doing so consistently and without recourse to circular reasoning.

### The underground and the borderland

A simple matrix (above) can go beyond the contrast between socially acceptable forms of criminality, or 'licit', and legally banned forms of activity, which the state calls 'illegal'. It is useful to think of the *social spaces* that emerge from this simple contrast of two idealised forms of authority, one emanating from the state, the other from society, producing the terms legal/illegal and licit/illicit, respectively.



A Bangladeshi border guard refuses entry to people rounded up in India and deported to the border on suspicion of being illegal immigrants.  
Shibshankar Chatterjee

The left diagonal boxes (A) and (D) are end-points of a continuum, representing spaces privileged by liberal political theory. (D) represents a space where neither social nor political rules matter: it is nothing but a 'state of nature' where individual might and illegitimate force rules the day. For the original social contract theorists, and for contemporary writers like John Rawls, societies seek to move from such 'nasty and brutish' places to (A), which represents the ideal political space where social norms and political rules mesh seamlessly and are indistinguishable.

Far more interesting (and realistic), however, are the spaces represented by (B) and (C). Consider in particular (B), the 'underground' space produced by the intersection of 'illegal' and 'licit'. The underground represents social zones of

interaction that, though banned by formal political authority, are nonetheless sanctioned and supported by prevailing social mores. Among the many sites that can fit this description are physical locations such as gay bathhouses, brothels, gambling dens, pornographic video parlours, certain kinds of social clubs and coffee houses, and virtual locations such as chat-rooms and private list-servers. This space may also be represented by mobility, as in the chain of writers, translators, copiers and readers who circulated *samizdat* literature in the Soviet Union. What marks these spaces as distinct entities are the conditions of entry because, as Igor Kopytoff puts it, 'consumers...must first purchase access to the transaction.' In other words, these are spaces that may exist in plain view, but in order to get access to their offerings an additional resource, usually information, is needed. This resource may be coded in ethnic, political, religious, linguistic, social, sexual or class terms; the effect is to produce what we call the 'underground', a space that is set apart from everyday life by these socially produced and enforced barriers to entry, and where the writ of formal law is suspended.

Also typical of cell B is the 'borderland'. If the underground is characterised by a temporary dominance of private social orders over the legal order, the borderland is a zone where privately produced social order and formal political rules are in a constant state of uncertainty and conflict. As numerous studies of borderlands have shown, these regions are characterised by a complex interplay of power and authority. For those living in the borderland, it is a zone unto itself, neither wholly subject to the laws of states nor completely independent of them. Their autonomous practices make border residents and their cross-border cultures a zone of suspicion and surveillance; the visibility of the military and border forces an index of official anxiety. Yet the militarised border seeks not only to protect the nation from external forces, but to control those already 'inside'. What the Indian political scientist Ranabir Samaddar calls a 'nationalist lament' emanates among border security forces because, as they put it, 'people here do not have the feelings of nationalism so that they would point out or tell us who the outsiders are.' The difficulty of distinguishing insider from outsider produces confusion in the minds of state forces that can no longer tell where they themselves are located. This uncertainty is a product of the interplay of the licit and the illegal, an effect produced by the coincidence of the geographic and political limits of the state.

In summary, this project seeks to draw attention to the intertwined nature of the legal and the illegal – the illicit – in many cross-border activities, emphasising the conceptual and practical difficulty of establishing fixed criteria for identifying one or another activity as 'criminal'. Its ultimate goal is to help analyse the effects of illicit flows on spaces that are produced by the intersection of legitimate social and political authority, and to do so without (circular) recourse to the state's own categories of legitimate and legal. We developed this framework in order to help advance the study of the varieties of everyday social behaviour that break laws and cross national borders, but which in our view do not constitute 'criminal behaviour' as conventionally understood. Nowadays, when so much activity is described by the all-encompassing term of international terrorism, it is important that scholars do not unwittingly endorse and participate in the fulfilment of powerful state interests without due reflection and concern for human rights. ◀

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Border crossing at Tachilek, northern Thailand. Here, at the heart of the Golden Triangle, legal and illegal flows of goods and people intermingle with little regard for official state borders.

Willem van Schendel