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# Governance Beyond the Law

The Immoral, The Illegal, The Criminal

*Edited by* Abel Polese · Alessandra Russo  
Francesco Strazzari



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Alessandra Russo • Francesco Strazzari  
Editors

# Governance Beyond the Law

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# ACRONYMS

ANPA	National Agency for Fishing and Aquaculture
ANR	Romanian Naval Authority
APROSOJA-MT	Associação dos Produtores de Soja e Milho do Estado de Mato Grosso
ARBDD	Biosphere Reserve Authority of the Danube Delta
CAMP	Campaigns Against Marijuana Planting
CBD	cannabidiol
CBD-8j	Convention of Biodiversity, Chapter 8j
CCR	Road Traffic Police
Cheka	Vserossiiskaia Chrezvychainaia Komissiia Po Bor'be c Kontrevoliutsiei, Spekuliatsiei i Sabotazhem = The All-Russian Extraordinary Commission For Combating Counter-Revolution, Speculation and Sabotage.
CIVAJA	Conselho Indígena do Vale do Javari
COIAB	Coordenação das Organizações Indígenas da Amazônia Brasileira
CPSA	Centro di primo soccorso e accoglienza
DDR	Disarmament, Demobilization, Reintegration
DEA	Drug Enforcement Administration
DPIM	Directia Politici si Inspectii Maritime
DTM	Digital Terrain Model
ECOWAS	Economic Community of West African States
ESRI	Environmental Systems Research Institute
EU	European Union
Eurodac	European Dactyloscopy
FAMATO	Federação da Agricultura e Pecuária do Estado de Mato Grosso

FBI	Federal Bureau of Investigation
GDP	Gross Domestic Product
GIS	Geographic Information System
GRECO	Group of States against Corruption
IBGE	Instituto Brasileiro de Geografia e Estatística
ILO C 169	International Labor Organization, C 169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169)
IMF	International Monetary Fund
INCRA	Instituto Nacional de Colonização e Reforma Agrária
IR	International Relations
ISO	International Organization for Standardization
ITERPA	Instituto de Terras do Pará
LANDSAT	Land Remote Sensing Satellite
LANDSAT ETM+	Landsat Enhanced Thematic Mapper Plus
LANDSAT OLI	Landsat Operational Land Imager
LANDSAT TM	Landsat Thematic Mapper
MDMA	Methylenedioxymethamphetamine
MMIC	Medical Marijuana Identification Card
Moldavian SSR or MSSR	Moldavian Soviet Socialist Republic
MP	Member of the Parliament
MUJAO	Movement for the Unity and Jihad in West Africa
NAMSA	NATO Maintenance and Supply Agency
NASA	National Aeronautics and Space Administration
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NKID	Narodnyi Komissariat Inostrannikh Del' = The People's Commissariat for Foreign Affairs
NKtiP	Narodnii Komissariat Torgovli i Promishlennosti = The People's Commissariat for Trade and Industry
NUTS	Nomenclature of Territorial Units for Statistics
PCCDAM	Plano de Ação para Prevenção e Controle do Desmatamento na Amazônia Legal
PGP	Pretty Good Privacy
PSDN	Parti pour le Socialisme et la Démocratie au Niger
SHIK	Shërbimi Informativ Kombëtar, National Intelligence Service of Albania
SIGURIMI	Drejtoria e Sigurimit të Shtetit, Albanian Directorate of State Security
SRTM	Shuttle Radar Topography Mission



THC	Tetrahydrocannabinol
TI CPI	Transparency International Corruption Perception Index
Tor	The Onion Router
Ukrainian SSR	Ukrainian Soviet Socialist Republic
UNEP	United Nations Environmental Program
UNODC	United Nations Office on Drugs and Crime
US	United States of America
USGS	United States Geological Survey
USSR	Union of Soviet Socialist Republics
WHO	World Health Organization
WTO	World Trade Organization

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## CHAPTER 1

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# Introduction: “The Good, the Bad and the Ugly”: Transnational Perspectives on the Extralegal Field

*Abel Polese, Alessandra Russo, and Francesco Strazzari*

### THE INFORMAL EVERYDAY: FROM MARIJUANA FOR BREAKFAST TO ITINERANT JUDGES

On November 6, 2012, Colorado was the first US state to legalize marijuana for recreational use. In the span of one night,<sup>1</sup> behaviours that were once repressed became permitted, acts that could be considered a legal

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<sup>1</sup>The legalization was approved in 2012 and not technically implemented until 2014 due to the 18-month delay between electoral consultation and full application. It was not, really,

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offence became as legal and regulated as buying any other stimulant, such as chocolate or coffee, in a store. Queues of marijuana-hungry people of all ages formed outside the few shops that had dared to invest in the recreational side of the business and were equipped to provide people the umpteenth legalized drug on the market. Tellingly enough, in the first 30 months, the legalization of marijuana consumption and regulation of its market brought in state revenues amounting to several hundred million dollars<sup>2</sup> that would have otherwise been offered to the informal sector.

The example cited above is a clear example of how labile and volatile the boundary between legal and illegal really is. The day before the political decision, marijuana was illegal. The day after, it had become legal and, a few months later, widely available in shops. At different latitudes and in different contexts, we all live in an environment in which rules are pre-defined, almost “parachuted” onto politically organized communities (most often, modern states) through legal and civil codes the design of which is neither consensual nor participatory. We are innately members of social groups with their own social rules, conventions, behaviours, attitudes and perceptions about what is morally acceptable and socially appropriate and what is not. We are educated and indoctrinated with the rules that are necessary to survive in our given society, fed with laws that we need to know in order to avoid bringing the coercive or punitive arm of the state down on ourselves. We learn the “dos” and “don’ts” of the environment(s) in which we are born, raised and eventually decide to live. Sometimes rules are relatively similar across environments, sometimes they differ radically and at other times they change significantly over time, either gradually or all of a sudden.

an overnight change, technically speaking. What we seek to emphasize here is that mere political will made an illegal drug legal, drawing attention to the International Narcotics Control Board—that is, the body that the United States itself wanted to form decades ago, which would receive obligatory estimates and statistical reports concerning narcotics production and distribution from governments.

<sup>2</sup> Colorado state statistics report about \$67 million from tax revenues (medical and recreational purpose-marijuana) and \$683 million in total sales for 2014. From January 2014 to July 2017, the statistics reported by CNN and Colorado Government media are in excess of \$506 million, whereas other sources (i.e. VS Strategies) mention \$76 million in 2014 and \$200 million in 2016, reflecting rapid and steady growth. We wish to thank Liza Candidi for all this information and data as well as her expertise on the topic.

Whatever environment we choose or end up living in, whatever the rules we need to comply with, there is a common feature that seems to apply to all such contexts: they are constructed. They are based on interpretations and they require interpretation. They are agreed on at a certain point in the history of the country or its society. They may eventually be enshrined as formal laws or be performed as customs and conventions within a given social class, ethnic group or geographical area. When they are written, and thus codified, they are usually considered "formal". When they are not, they are often considered "informal". However, this distinction in itself raises two apparent contradictions. First, formal rules are not fixed, static, reified entities; second, and conversely, informal rules may be relatively steady, stable or resilient to exogenous changes. These rules can go on never being officially acknowledged by formal authorities and still be used to communicate with specific groups.

Formal-informal encounters bring us to a further example attesting to the multilayeredness of the concepts explored in this edition. There is an art-house movie<sup>3</sup> narrating the story of a judge whose job is to travel to remote villages that are too distant from a court for their residents to bring an issue before the authorities, and check if there are any unsolved disputes that could escalate into violence or conflict between individuals or groups. He is an itinerant judge who provides his judicial services by horseback, riding around the mountains of Southern China. One day, he finds himself in a Buddhist village where some cattle belonging to a certain family have been killed by members of another family. According to local tradition, financial compensation is not sufficient to settle the case; the offenders must also say prayers to show respect for natural forces. The judge is caught between two realities. As a representative of a secular country where religion has no place, he is supposed to abide by the state-provided guidelines, decide on an amount of financial compensation and leave. However, he knows that such compensation will not be enough and that the conflict will continue to simmer after his departure. Although it is not mentioned in his written account, his final verdict includes a request to pray for the souls of the dead animals, as per local tradition.

Likewise, many decisions have been and are being made by civil servants and officers complying with different forms of rationality, decisions lying in the interstices between what is official and codified, the grey zones of

<sup>3</sup> *Courthouse on the horseback* by Jie Liu, see <http://www.imdb.com/title/tt1064775/>

informality. Even in law, usually formalized to the utmost degree, there is a distinction between how the law is conceived and written, on one hand, and how it is actually applied, on the other. That is, there is a gap between how things should be or are supposed to be and how they really turn out to be. Ultimately, this gap between how things should be and how they come to be in reality is at the core of the concept of informality.

The blurred boundaries (Gupta 1995) between formal and informal, public and private, legal and illegal, acceptable and unacceptable have been documented in a wide variety of cases in international scholarship. It remains to be theorized how these shifting mechanisms function, but recent efforts have been directed at classifying a wide range of empirics on informality—a fundamental starting point to support any theory of informality.<sup>4</sup>

### INFORMALITY AS A CONCEPT AND SOURCE OF SCHOLARLY INSPIRATION

The “informal sector” has long been defined in terms of either unregulated forms of labour aimed at ensuring subsistence and survival in the “underworld”, or actual illegal business ranging from unofficial earning strategies and unregistered activities to smuggling, bribing and corruption. Whilst originally defined in relation to economic milieu (Boeke 1942; Lewis 1954; Hart 1973), the field of informality has been enriched by multidisciplinary contributions as well as gradually over-extended by the manifold ways practitioners, policy-makers and scholars have deployed this term. On one hand, a sub-current of economic anthropology and qualitative sociology has studied symbolism and the market (Parry and Bloch 1989; Pardo 1996; Gudeman 2001) to understand the rationale behind informal transactions. On the other, a body of literature has also emerged at the crossroads of legal studies and political science.

In spite of ongoing conceptual advancements and the addition of an ever-growing number of case studies and empirical materials, since it first came into focus the definition of the informal sector has been influenced by the prescriptions of neoliberal orthodoxy, which has interpreted informality as a pathology caused by the state’s excessive involvement in

<sup>4</sup> *The Global Encyclopaedia of Informality*, edited by Alena Ledeneva, is the largest collection of informal practices currently available.

the economy and the subsequent inhibition of entrepreneurial initiatives. Accordingly, informality—or, in De Soto’s phrasing, extralegality (De Soto 1989)—is understood to emerge in situations characterized by high administrative and bureaucratic barriers to formal market entry, and can be curbed through deregulation. Even though these premises have been mitigated and/or challenged, the definition of the informal sector oscillates between its two constitutive dimensions: on one hand, informality as a coping strategy and instrument of survival; on the other hand, informality as an expression of deviance and outlawness, with the latter interpretation also including critical perspectives on the dynamics of criminalization and prohibition. Since its early conceptualization, the boundaries of the field of informality have been redrawn to include any social and political actor and/or process located behind and beyond formal arrangements and institutions, official rules and procedures. In other words, “the informal” seems to be defined as a residual category vis-à-vis “the documented”, “the codified”, and “the certified”. Further, informality has conventionally been seen as something transitional, exceptional or marginal in society (suffice to survey the literature on informality in post-Soviet/post-socialist contexts as well as in developing countries, on one hand, and on urban informality, on the other). This take has come under attack from at least two directions. First, Scott (1977) was one of the major frontrunners in seeing informality as longstanding, enduring and socially embedded: by reflecting on moral economies, he introduced the notion that informal economic practices had a major impact on power relationships (Scott 1985). Second, the opening up of post-socialist spaces after 1989–1991 reignited debates on development, governance and corruption that have continued to this day (Dutt and Kerikmäe 2014; Harboe 2015; Jancsics 2015; Polese and Morris 2015; Polese and Rekhviashvili 2017; Rekhviashvili 2015; Smith and Stenning 2006; Urinboyev and Svensson 2013; Sayfutdinova 2015; Wamsiedel 2016).

Traditionally considered distinct realms, relatively recent scholarship from different backgrounds has come to question the dichotomous and polarized framework that tends to separate the legal and illegal (or “extra-legal”, see De Soto 2000; Varese 2011; Strazzari and Kamphuis 2012). Once more, Scott has pioneered this strand of debate by focusing on the co-constitutive dialectics linking formality and informality (Scott 1998, p. 310) and arguing that formal rules parasitically rely on informal networks and practices. Multiple forms of morality and normativity, plural sources of authority and legitimacy seem to characterize current-day polit-



ical and social orders in international and transnational politics (Hann and Hart 2009; Dreher and Schneider 2010; Bhattacharyya and Hodler 2010; Henig and Makovsky 2016; Morris and Polese 2014; Polese and Rodgers 2011).

A number of more or less contested cognate concepts can be subsumed within this line of reasoning: for instance, hybrid orders, fusion regimes, ungoverned spaces, extralegal governance and grey zones (see e.g. Anten et al. 2012; Meagher 2012; Bagayoko et al. 2016; Harboe Knudsen and Frederiksen 2015, Reno 2009), while having deep roots in the (violent) history of state formation and transformation (Strazzari 2012), all imply the dissolving of territorial and legal boundaries, the social and political relevance of zones of ambiguity that challenge dichotomies and polarities (inside and outside, order and disorder, rule and deviance), and the significance of actors, practices, processes and structures that operate “in the shadow” even while governing “underworlds and borderlands”. This field is, in other words, a story of spaces and contexts that are often not confined to the margins of communities, societies and states. In that respect, while considering informality as part of survival and coping strategies developed by agents and institutions whose status and positioning vis-à-vis “the formal” may vary, this book intends to avoid the common “orientalizing” narration of informal politics and social practices: accordingly, our endeavour is to offer a collection of contributions that exemplify the formal-informal continuum differently manifested in many contexts, not only the so-called Global South (or Global East), that is, an amorphous assortment of developmental and transitioning countries allegedly characterized by pre-modern and backward organization.

Inspired by sociological institutionalism (Hall and Taylor 1996; Hall 2010), a large component of scholarship on informality has tended to consider it a coherent, culturally codified legacy arising from a path-dependent social, economic and political past that countries may take decades to “overcome”. Instead, informality can also be seen as a by-product of more recent social and economic realities, shaped by market-oriented economic and institutional reforms that actors resist and contest precisely by “going informal”. According to this perspective, not only does the informal complement, accommodate and overlap with the formal, the two are actually intimately intertwined along processes of development and modernization (Morris 2011, 2016; Morris and Polese 2014; Polese et al. 2014). The extralegal, in other words, is not simply the underside of the formal; it is intimately connected to and intertwined with

it, and it exhibits varying but significant degrees of resilience and persistence for reasons that can only be illuminated through a political economy perspective, focusing not only on survival economies but also on profit-making, enrichment and success (Strazzari and Kamphuis 2012).

These considerations indicate the extent to which studies on informality have gradually encompassed not only multiple sites and geopolitical expanses where these phenomena may manifest, but also multiple levels of analysis: whereas some seminal works on informality focused on micro-processes and transactions occurring in very localized and circumscribed settings, more recent strands of scholarship have also engaged with the meso- and macro-levels, looking at how the informal unfolds both regionally and internationally. At the theoretical level, this scholarship has been grounded in sociological and anthropological work linking state and society (Migdal 2002) as well as defining the relationship between market and social norms (Gudeman 2001; Hann and Hart 2009). Empirically, this has translated into a growing literature on public and social policy and different approaches to governance more generally (Polese 2012, 2016a, b).

This volume can be regarded as stemming directly from a book in the same series. In 2017, Polese et al. (2017c) focused on informal economic practices, exploring them in multiple senses beyond their exclusively economic significance. Their goal was to show that informal economic practices can feed, inform and in general affect the way we understand governance on a global scale. They built on Scott’s understanding of infrapolitics (2012) to suggest that a particular action, performed by a substantial number of people, can simultaneously but uncoordinatedly (i.e. individuals are unaware that other people are acting in the same way) affect state policies. It is the aggregate of informal practices or transactions that feeds the very life of informal or shadow economies. Instead of looking normatively at informal transactions as a way to engage with illegal practices, such practices can be regarded as an act of insubordination, dissidence, a rejection of state rule or acceptance that the state should be governing a particular aspect of societal life. Further, the emergence of informal practices may pave the way for different trajectories: either they are particularly visible or perceived as dangerous, or they are neglected by state authorities. The cost of repressing a practice performed by a limited minority is too high and its social and political relevance too limited to invest in tackling it. However, if a growing number of people become accustomed to certain informal practices and such practices begin to be considered socially and/or economically dangerous, state authorities are

likely to intervene by choosing among several options, ranging from institutionalization/formalization to criminalization and law enforcement. Depending on the effectiveness and perceived legitimacy of the positive and negative incentives developed to curb informal practices, societal reactions and responses can be rather diverse; the ongoing decision to go informal may become an intentional instrument of protest.

As a matter of fact, informal practices are to be conceived as acts of *non-compliance*: although we need to make conceptual distinctions in relation to rebel and insurgent governance, the field of informality takes shape through the neglect, denial or challenge of a formal source of authority and rule-making, including the state and its prerogative to regulate a particular aspect of its social or economic life. In that respect, this book also attempts to reflect on the way state-society relations are affected by formal-informal interplays and encounters. This line of inquiry has fuelled an understanding that informal and illegal practices can be produced, reproduced and developed “in spite of” and “beyond” the state (Polese et al. 2017a; Polese and Morris 2015). “In spite of” the state refers to cases in which state institutions already regulate a given situation but citizens decide that state governance is not enough (or not appropriate or effective). “Beyond” the state refers to cases in which state institutions do not regulate a particular exchange and interaction, so citizens mobilize in response to make up for this deficiency.

### “IN SPITE OF” AND “BEYOND” THE STATE

Central to our discussion is an understanding of the multilayered nature of morality as revealed by individuals engaging in informal practices and the possible conflict between individual and state morality, documenting and conceptually fine-tuning a vision of the ways they do not necessarily overlap, with informal activities emblematic of how such a mismatch can best be explored.

Recent studies on citizens’ interpretations of their moral behaviour in relation to a state (Horodnic et al. 2017; Ledeneva 2013; Morris 2012; Morris and Polese 2015) distinguish between informal practices and actions which the actors themselves view as “positive”: not merely harmless, but enabling and sometimes empowering; and negative: harmful, ineffective—at least from the state’s point of view. In this moral frame, citizens articulate justifications and social mores about the justified, legitimate and illegitimate character of practices and exchanges described as informal.

A taxonomy of informality based on direct and indirect harm, understood in moral terms, may help in locating informal practices and their function in society. In a large variety of cases, a society’s distinction between what is good and bad depends on the kind of direct harm an action causes to fellow individuals. Killing, torturing or stealing from an individual is punishable in most societies and they become justifiable only in exceptional circumstances (war, conflict between clans or families) or not even in such cases. This is what we see as causing direct harm to fellow citizens. These same actions are, incidentally, also classified as unlawful by civil and penal codes. The further we venture into the impersonal, however, the more certain behaviours may become easier to justify to one’s peers. It is specifically in the interstices where the licit and legal diverge or, as we have suggested, where individual and state morality fail to overlap (Polese and Stepurko 2017) that informal practices emerge and consolidate, possibly contesting the state, its symbolic power or its areas of competence (Polese et al. 2017a, b).

The harmful-harmless spectrum of actions intersects with another set of nested distinctions between what is legal and what is licit, as conceptualized by Van Schendel and Abrahams (2005), outlined in the table below (Table 1.1). There are actions which are illegal according to local criminal codes, but people do not perceive them as “bad” (Fogarty 2005; Rasanayagam 2011). Instead, they are socially acceptable and, thus, licit. There are even actions which are perfectly legal, but a population or part of it does not accept them, at least in the short term, as licit.

The conflict between the legal and the licit can be quite evident when and where perceptions and interpretations of social reality significantly diverge. According to Gill (1998), for example, corruption in India may simply be generated by a different understanding of ethos between locals

**Table 1.1** The relationship between legality and licitness

<i>Legal</i>	<i>Illegal</i>
Licit State and society norms overlap	Society accepts and regards as legitimate something that is forbidden by state institutions or codes
Illicit The state does not punish actions that are socially stigmatised (by one or more communities)	State and society norms overlap

Adapted from Van Schendel and Abrahams (2005)

and international organizations. Werner (2002) has suggested that we compare the way corruption is understood by international organizations and locals to grasp the complexity of this issue. Indeed, while international organizations' understanding of corruption may be stretched to the point that it denies the very Maussian concept of gift (Tanzi 1998), the understanding of "normal" and "normality" with regard to interaction between people, institutions and civil servants has sometimes been distorted, reinterpreted and framed in a logic that has even been used to justify practices which clearly damage fellow citizens or ascribe to dangerous and harmful logics.

Similar conflicts may emerge between state rules and society rules: outlawing a given practice does not automatically create a social stigma around an unlawful behaviour; furthermore, illegal practices are sometimes not only socially accepted but even commended and considered a source of pride in having managed to steal from the state. On a more everyday level, some definitions of corruption clash with local habits of taking and giving that are considered perfectly normal, even between a citizen and a state representative (Palmier 1983).

However small the step from the formal to the informal, from the legal to the illegal, from the moral to the immoral might be, and however blurred the boundaries are between these sets of binary concepts, the authorities entitled to draw such boundaries are traceable and identifiable. Usually it is the state through its institutional infrastructures and agents, the same state which is likely to be informed by its different constituencies, sectors of the establishment, interest groups and lobbies, powerful families, and so on. In some cases, the above-mentioned boundaries are drawn by international standards, which are designed to be adapted to a specific context and then transferred to others—a situation which fosters the development of informal practices and habits. Indeed, the latter are often nourished by the fact that some segments of the population are incapable of complying with a given rule or unwilling to do so, a state is unable to drive behavioural change, or there is conflict between what is dictated by international organizations and what people are used to do. Informality lies in the time that it takes for a change in behaviour or attitude to be understood, and adopted, at either the institutional or societal level (or both). This gap is likely to be normatively assessed in negative terms, as a "bad occurrence" that needs to be regulated, enforced through laws or even punished. The perspective adopted in this edition, however, takes a different stance vis-à-vis this matter: rather, we suggest that the *de jure*/

de facto hiatus actually offers interstices for social and political actions, and may contribute to the governance structures of a given territory or community (Table 1.2).

Where the state regulates most relationships with and among its citizens, most exceptions to state rule—“in spite of” the state—are illegal by force of law, that is, from the perspective of the state. There are, of course, several kinds of illegality, as seen in the examples above, and different societal perceptions of what is illegal; the result is that not all situations or practices are equally illegal or illegal in similar ways. The concept of illegality is imbued with social meaning, making it too broad to lend itself to an in-depth understanding and, in turn, help policy-making or inform public debates. That is, actions that may challenge legal codes might be experienced by people as “normal” or at least acceptable. This problem may arise, for instance, when overarching rules have not been developed pragmatically in response to a societal need, having instead been copied from elsewhere and uncritically transplanted into a new context (De Soto 2000); or, for example, when so-called global prohibition regimes are localized, often producing frictions between different scales of norms, standards and values. This is frequently the case with law enforcement models whose other-direct import or transfer come into fundamental conflict with local customs (Scott 1998). Such incongruences are crucial: if the eradication of informality substantially equates to criminalizing, indicting, convicting and punishing, it is by establishing the boundary between the formal and the informal that the state defines its authority, modes of governing and rationales for legitimate action.

Beyond-the-state informality, on the other hand, refers to an economic sector or activity, policy domain or region that the state does not effectively regulate, for whatever reasons. This could be due to the fact that the social problem or social need has not been identified or there is insufficient polit-

**Table 1.2** Direct (affecting fellow citizens), indirect (affecting a society) harmfulness of informality

	<i>Direct harm (mostly illicit)</i>	<i>Indirect harm (might be licit)</i>
Illegal	Trafficking, drug dealing (might be seen as licit)	Fiscal fraud, nepotism, discrimination
Legal	Use of legal action to extort money or property; ‘small print’ or administrative measures applied disproportionately or in a discriminate manner	Laws that favour one (ethnic, religious) group over others (are licit for the favoured ones)

ical interest in addressing the issue. Examples could include economically depressed regions, an ethnic or linguistic minority that enjoys insufficient political leverage, an emergency situation stemming from a natural catastrophe or war in need of policy response. In these circumstances, instead of describing these as cases of a state not regulating (not being there), it might be more accurate to say that the state is trying to get there, but it is unclear when or whether it will arrive. Alternatively, the state might be doing something that people perceive as insufficient; it might be taking weak measures or ones that are considered lacking or there might be a tacit understanding that people should take care of things themselves. In certain contexts, the intervention or policy might not be cost-effective or the discontent arising from not addressing a particular social issue is estimated to be sufficiently low as to not worry decision-makers. In these circumstances, individuals and entire communities often resort to informal practices, some of which may be explicitly illegal according to the law but still legitimate in the view of those engaged in them.

Alongside this need to locate informality beyond and behind the state (i.e. as an alternative to state bureaucratic and administrative formalities and prerogatives), this volume intends to contradict the widespread idea according to which the informal, illegal and criminal lie outside the purview of the state. This approach is indebted to van Schendel and Abraham's intellectual enterprise of replacing the dyad "legal/illegal" with "legal/licit" and transcending the law/crime dichotomy that univocally equates the state with order and justice, and crime, unfolding outside the state, with social danger, a parallel system which is internationally networked and threatens the moral, social and natural economies of the world (van Schendel and Abraham 2005, p. 2). Building on their premises, we share the view that the (nation-)state is *a* (one among many) form of modern political authority whose practices of predation, appropriation and redistribution (or extraction and protection, using the traditional Tilly-inspired concepts of comparative historical sociology) reveal a continuity with other forms of ruling and governing such as banditry, warlordism, piracy and so on. What distinguishes law from crime, as well as, for example, taxation from racketeering, is legitimacy: the latter ultimately grants the power to legalize and criminalize or—under certain conditions—criminalize while turning a blind eye to illegal practices that are either considered legitimate or which nobody really cares to contest. In that respect, the book intends to view the fields of the illegal, illicit, informal and criminal as multiply traversed by overlapping regulatory spaces, governed by rou-

tines and rules that organize mobility, borders, actors’ inclusion and exclusion and their access to resources, as well as the production and distribution of goods and commodities across societies, weaving “in and out of legality, in and out of states, in and out of individuals’ lives” (van Schendel and Abraham 2005, p. 9).

### THE ILLEGAL, THE IMMORAL AND THE CRIMINAL

Positioned in the above-mentioned debates, this book explores what we see as the continuous line stretching from the sphere of the informal and unrecorded all the way up to criminal practices, performed and reproduced by both individuals and organizations. In doing so, we propose to shed light on the significance that informal, illegal dynamics may have beyond the binary opposition legal-illegal by offering more nuanced accounts. In particular, by inquiring into the ways informal and illegal practices can be understood outside of a “survival strategies” framework, we propose to classify them as alternative, subversive forms of governance. The case studies we present highlight the ways informal practices may persist and outlive political and economic transitions (to formality, rule of law, liberal institution-building etc.) by constructing alternative accounts and paying attention to overlooked, or understudied, governance actors.

Recent empirical work has drawn attention to the range of activities and practices that operate outside the state’s control (see e.g. Schroeder et al. 2014; Harboe Knudsen and Frederiksen 2015) and formally outlawed by state authorities. Although concepts such as informality and illegality have been used to define these practices, we assert that the above-mentioned activities are quite different in nature and would need to be investigated through further deconstruction. They may be illegal, that is, contravening legal codes; informal, that is, legal in their nature but concealed from the state; or immoral, that is, violating either public morals or morality as defined by one or more groups embedded in state structures.

The interplay and interactions among actors, institutions and networks involved in these activities has been studied in the relation to specific cases and contexts with little attention to comparative and interdisciplinary dimensions. This volume has been conceived as an attempt to fill this gap and contribute to the re-conceptualization of actions and processes that take place beyond and against the law. Initially considered marginal (and often invisible) practices performed by a minority of peripheral actors, such actions and processes have been recently “rediscovered” and recognized as key in shaping various forms of governance.



This volume acknowledges the societal embeddedness of extralegal activities and practices, locating them as fundamental aspects of state life. We aim to offer a classification of relevant activities while firmly resisting the temptation to slip into normativity. At the same time, we intend to engage with the literature on informality and the governance of grey zones by challenging and complementing scholarship that draws on a traditional “crime and justice” approach. Indeed, this book critically explores how development and governance produced through formal bodies are questioned, challenged and renegotiated through informal mechanisms and institutions.

The underworld, deviant and dangerous have frequently been managed, controlled and countered via the development of “more intrusive, authoritarian, and muscular forms of law enforcement, which at their limit become forms of pre-emptive international violence” (van Schendel and Abraham 2005, p. 4) together with sensationalism and alarmism propagated by a variety of mouthpieces such as political and cultural elites, the non-governmental sector, epistemic communities and the media. In contrast, we begin from the assumption that no clear line can be drawn between the legal (legitimate as defined by state or other formal authorities, enshrined in and codified by their rules and norms) and the licit (legitimate according to informal actors, networks and institutions).

This volume addresses variation in space. One of the distinctive features of our endeavour is the fact that it investigates how the informal and criminal unfold transnationally and, in particular, how and why they have been/are being progressively criminalized and integrated into the construction of global and local “dangerhoods”; how the above-mentioned phenomena are embedded in a post-liberal security order; and whether they shape new states of exception and generate moral panic, the ultimate function of which is to deregulate, discipline and craft practices of political ordering. The case studies we present outline the dynamics of so-called grey zones in different areas of the world, engaging on one hand in an effort to historicize elements of continuity and discontinuity in the sites, spaces and infrastructures in which informality materializes while, on the other hand, seeking to trace the process of politically, socially and discursively constructing these sites. In so doing, the authors shed light on the ways different actors (international, local, state and non-actors) contribute to the (re-)definition of the informal, criminal and extralegal though their strategies of governing and coping with these phenomena, especially in fields dedicated to disciplining forms of mobility and territoriality.

To this end, the *fil rouge* weaving together the various chapters consists of carrying out conceptual problematization across methodological pluralism: indeed, the individual chapter authors make use of different instruments of inquiry and research, from genealogic to discursive approaches and from site-intensive methods to digital ethnography. The volume thus aims to foster a cross-disciplinary dialogue among multiple bodies of scholarship all of which focus on informal practices. The overall objective is to establish an interdisciplinary research agenda that would account for instances of governance mediated by informal mechanisms, institutions and practices, and to provide a wider understanding of how governance is composed of the formal and the informal in a relationship of constant competition as well as complementarity.

### A "LIVING" EDITION: OUR GROUNDS FOR DEBATE<sup>5</sup>

The book offers a rich selection of chapters presenting rather diverse case studies explored, investigated, analysed and interpreted through different disciplinary perspectives, approaches which employ conceptualizations of licitness/illicitness, legality/illegality, formality/informality that are sometimes divergent. We do not intend to square any circles: the illegal, immoral and criminal appear in all their ontological and epistemological plurality throughout the edited volume. A number of themes do repeatedly resurface, however, in the manner of karstic rivers: first and foremost, as mentioned in the previous sections, the dialectic relationship between state infrastructures and the pluriverse in which the informal, illegal and criminal are enacted. Having left behind the misleading assumption that the extralegal is performed exclusively outside the perimeter of the state, the chapter authors raise fundamental questions about who "goes informal" with(in) the state, and why. The quintessential manifestation of the state might just be the provision of public goods, and therefore the delivery of public services by state agents and officials. At the same time, however, the administrative and bureaucratic machine of the state frequently operates "in the shadow" of its own regulations, laws and procedural rules and codes. Even when the agents of the state do not violate the

<sup>5</sup> Authors have met and debated on the topics and matters explored by this edited book, on the occasion of the fourth European Workshops in International Studies (EWIS), Cardiff, 07–10 June 2017, organized by the European International Studies Association (EISA).

law, and policy implementation does not result in instances of corruption, front-line civil servants might act in the interstices between what is codified, formalized, institutionalized, and varying degrees of discretion they allow themselves, acting according to informally established criteria of morality and licitness (Lipsky 1983). While the above-mentioned dialectics has been explored in the context of public programme execution (a micro-level focus on the role of individuals in shaping and re-shaping state functions), the same issue has also been investigated by approaches drawing on the historical sociology of state formation and ethnographies of the state. This work, for example, examines non-state political orders, alter-state politics and stateless societies in ways that cast off the conceptual yoke of entities deterministically and theologically progressing towards fully established statehood, thus paving the way for a re-consideration of the state in a non-normative perspective. The fact that non-state, alter-state and anti-state politics exist and proliferate has often been considered a pathology of the international system, on the assumption that all social organizations inherently tend towards statehood. Problematising these assumptions helps us to better understand informality and illegality as a by-product of state-making, the latter being expressed by the marginalization, peripheralization and criminalization of other ways of ruling and administering “the public” by taking specific sources of legitimacy and morality and rendering them socially acceptable and legally permitted. Informality may thus come to represent an instrument of contestation of and resistance to statehood (Scott 1985, 2012).

### STRUCTURE OF THE BOOK

As a whole, the book aims to offer insights into the way different actors (international, local, state and non-actors) contribute to the (re-)definition of the key conceptual dyads under consideration: legal/illegal, formal/informal, moral/immoral.

The first part of the volume is concerned with what we call “the social morality of crime”. While a number of top-down approaches developed to fight organized crime cast the state (criminal justice, intelligence, police and the army) in a pivotal role, they tend to overlook the social and economic embeddedness of organized crime and its relevance for a number of communities and individuals whose daily survival is at stake. Organized crime does not take place in a social and political vacuum; it may not be regarded as deviant at the local level, but it is deeply entrenched in social

structures and networks in that it provides an alternative to formal authority and formal economic structures. A relatively high number of people may end up making a living thanks to the structures and networks liaising with, or rooted in, criminal organizations. This results in a state of affairs in which criminal organizations are not only tolerated by the state and society through selective forms of pressure and measures to fight informal and criminal activity, but even supported at times. Indeed, the state apparatus (and its national and local representatives) should not be considered, by default, an institution engaged in an all-out war on "illegality". On the contrary, it is worth scrutinizing the existence of areas of tolerance, co-existence and collusion.

These issues are engaged through an account by Giovanni Zanoletti which draws on a case study in Mali to explore the "criminalization of everyday life" as a mode of existence rather than a systemic dysfunction hindering state formation. The evidence from field research shows how criminalization not only constitutes an important process in shaping how people think, live and do politics, it is also capable of producing state and governance.

This point is further developed in the chapter by Giulia Prelz Oltramonti and Mihnea Tanasescu exploring the informal practices of residents of the Romanian Danube Delta with particular attention to activities connected to fishing, the most important local occupation. While officially regulated, fishing activities are based on a labyrinth of regulations designed in such a way that nobody could ever abide by all of them simultaneously. The authors thus argue that this regulatory complexity is a way for the state to control peripheral territories, minimizing dissent by maintaining people with a single food source in a condition of illegality.

The ideas of criminality and criminalization also inform the chapter by Gulzat Botoeva, focusing on the process of legitimizing illegal hashish production in a northern Kyrgyz village. The chapter reveals the apparent contradiction between people's self-perception—they do not see themselves as criminals—and the understanding that drug-related activities (production, selling) are relegated to the underground criminal world. This contribution shows that villagers are able to accept themselves as honest workers by blurring the boundaries between legal and illegal, constructing a "grey space" in which multiple different legal and ethical interpretations of hashish production are developed and co-exist. Indeed, the legitimization of illegal hashish production passes through denial strategies deployed to overcome the feelings of guilt triggered by using hashish money.

Luis Rivera Vélez's chapter explores the narratives employed by mothers of sick children to propose cannabis as an alternative to ineffective treatments. He demonstrates that these actors have been the most influential in pushing for a most effective approach to drug policy in recent debates throughout Latin America. Despite their double-sided fear of cannabis, linked to the narcotic nature of the substance and to the illegality associated with it, a condition which might lead to them losing custody of their children, mothers mobilize and succeed in changing the moral conception of the substance and, therefore, its legal status. Ultimately, the chapter explores a change in the moral perception of crime leading to the legitimization of the cannabis market in societal narratives.

Anna Markovska and Yuliya Zabyelina study the impact of the 2009 ban on gambling in Ukraine to develop the concept of negotiated prohibition, a condition in which power holders and banned service providers engage in mutually beneficial relations in order to secure illicit profits. Their chapter suggests that negotiated prohibition leads to contrived semi-legitimacy characterized by discretionary enforcement of the ban and a fragmented and flexible legal order that is actually conducive to corruption and limited accountability for public officials.

In the chapter by Olena Levenets, Tetiana Stepurko, Milena Pavlova, and Wim Groot the investigation turns to bribes, gifts, donations and personal connections. These practices are part and parcel of the health care systems of many Eastern European countries, and in this contribution they are addressed as coping strategies resulting from essential shortcomings in health care provision, including gaps in service quality and access to medical care. The chapter thus illustrates the coping strategies Ukrainian health care users and their families enact as a response to problems in health care provision. Specifically, informal payments and informal practices as coping strategies have become deeply rooted in the Ukrainian health care sector because the decades of transition after the Soviet period have not substantially improved public service provision. Although such strategies can help individual patients receive the services they need despite poor health care provision, relying on individual-level patient-physician arrangements can jeopardize future health care reforms aimed at improving access and the more efficient use of resources.

Regine Schönenberg's chapter illustrates how rapid social transformation powerfully impacts on all informal survival strategies. She delves into the effects of national and global governance from the bottom-up perspective of the periphery of Brazil. Since the 1990s, the interests of local

populations have become increasingly interlinked with various global interests, such as the search for land to use for agro-industrial production; the protection of Indigenous peoples, forests, biodiversity and the climate; the fight against terrorism and pursuit of secure borders; and the demand for precious timber, oil, iron ore, gas and cocaine. In this context, the livelihood and security of local populations are often overlooked; instead, local populations become a part of the multiple discourses in place.

The second part of the book inquires into the opposition "us" (the people, often informally organized) versus "them" (the elites, formally representing the state). We look at the way in which the romanticization of the role of the criminals and outlaws often supports a narrative of "us" (the people) against "them" (the state), especially in cases in which state capacity is weak and informal criminal structures provide governance. This can lead to justifying illegal activities against the state as a way of contesting it and participating in political processes. In other words, we understand mechanisms of informal resistance towards the state as including not only active gestures (actions that harm the state and contrast or deny its material and symbolic power) but also passive ones (non-compliance). As a result, social support for actions classified as illegal contributes to the construction of a societal narrative, opposed to the narrative promoted by the state, through which excluded or marginalized actors play a role in the political field (Gupta 1995).

Joseph Nicholson analyses the concept of informality through the prism of the revolutionary state, focusing on Russia in the period 1917–1920. This chapter considers how Bolshevik revolutionaries conceptualized a new kind of society whereby state and law would become mere instruments for liberating people from repression, to then wither and fade as people learned to live in communist harmony.

Régis Darques brings us to the Balkans, where historically the national heroes have often been smugglers, bandits and resistant fighters, all at the same time. Even today, many ordinary people share a sense of distrust towards any form of higher authority. When discussing (former) Eastern European politics, such distrust has often been seen as an indication of "backwardness", in contrast to the modernity embodied by "advanced" Western countries. However, with the post-communist transition and outcomes of the global economic crisis, informality and illegality have become a tangible advantage, the expression of a kind of resilience. Fanni Gyurko explores the complexity of informality in the post-socialist Hungarian context by employing a socio-legal perspective to focus on

low-level corruption and informal economic practices. The narrative framework of “us” (the people) and “them” (the state) offers a starting point for looking into interactions between people, state officials and institutions. The chapter considers the complexity and interconnectedness of formal and informal domains when dealing with state officials. In these situations, there is a significant difference between law posited by the state and law as it is lived, a state of affairs which results in plural normative ordering.

Luca Raineri’s chapter explores how entanglements between immorality, in-formality and il-legality contribute to the governance of the trans-Saharan migration. The analysis of informal practices reveals, in fact, that the organization and protection rackets dedicated to migratory flows nourish the patronage networks upon which the Nigerien regime relies. Their disruption would have destabilizing consequences, both internally and externally, since Niger is currently a loyal ally of the West in the struggle against terrorism in Africa. The paradoxical result of this assemblage is that, contrary to the expectations of policy-makers and scholars, illegalization does not lead to criminalization; at the same time, informal protection brings about a decrease in prices and increase in the safety of migratory patterns, albeit illegal. From this perspective, the chapter explores the contradictions and opportunities resulting from the intersection of different informal networks of power at different levels and responding to different normative orders.

Ruth Hanau Santini and Stefano Pontiggia’s chapter examines how the 2010–2011 uprisings in Tunisia have exemplified mutually reinforcing discourses about two social justice claims, namely redistribution and recognition. The chapter looks at the way struggles for redistribution are locked into struggles for recognition by examining the politics of informality in marginal areas of the country, spaces where standard social injustice claims unfold in the absence of alternative visions of the state and state-society relations.

Liza Candidi’s chapter is based on a study of the “Emerald Triangle”, the largest region of cannabis production in the United States. She offers a reflection on the undercover practices, organizational forms and rules of the different actors involved in illegal cannabis production as well as their positioning within the community and strategies for evading law enforcement. In doing so, she analyses how regulatory powers are capable of reframing informal communities and explores how self-managed, counter-cultural and marginal practices may become mainstream and institutional-

ized. Community narratives about the recent legalization of recreational-use marijuana in California, which threatens the long-established informal economy and identity of this district, are also analysed.

The third part of the book explores the continuity between informal actions and practices, on one side, and the contestation of state structures and institutions, on the other, especially given that acts of resistance to state authority and power often occur informally. For example, informal resistance is developed through instances of infrapolitics: a social or protest movement may exist for an extended period of time without ever becoming aware of its role within a broader phenomenon. Infrapolitics can evolve into a more defined movement, with a leader and a common ideology, or simply remain in the shadows. Similarly, resistance can take the form of contentious politics or escalate into open confrontation or conflict, a phenomenon that might also help explain the emergence and development of insurgent and terrorist organizations.

The chapter by Petru Negură is based on a study of the first cohort (academic year 1990–1991) of students from the Moldavian and Ukrainian republics (USSR) and their attempts to take advantage of border-crossing liberalization with Romania. He argues that this engagement with shadow activities assumed a form of significance that went beyond economics, influencing and in turn being influenced by ideological commitment, bringing innovation and change to and across the region.

Annalisa Lendaro discusses various forms of resistance enacted by migrants held in administrative detention, using the case of the small Italian island of Lampedusa. She attempts to shed light on the role played by the subtle, everyday struggles that precede the emergence of open and intermittent protests in public space. By paying serious attention to migrants' repeated refusal to obey the law—in particular, their refusal to have their fingerprints taken under the procedure known as the "Dublin Regulation"—her study highlights the fact that the subversive potential of rule transgression lies in its ability to sabotage the system of asylum seeker classification and transfer, prior to the organization of a collective protest outside the centre.

Building on James Scott's "infrapolitics", Jaime Moreno-Tejada introduces the concept of "affective infrapolitics"—a bodily response to modernity's agenda, operating beneath (infra) the realm of communitarian activism. Moreno-Tejada conducted fieldwork in a gentrifying space of contemporary Bangkok, where affective infrapolitics may be detected in *the air of quiet dignity* emanating from the otherwise derelict streetscape.



Affective infrapolitics can sometimes be illegal and illicit; more often than not, affective infrapolitics are immoral, in the sense that they are viscerally opposed to “culture”, “manners” and “civilization”.

Meropi Tzanetakis explores anonymous drug marketplaces on the Internet. She begins from the first marketplace of this kind, called “Silk Road,” and analyses the development of practices of resistance in relation to anti-drug policies, practices that unfold through anonymous drug marketplaces. This contribution describes how users on cryptomarkets follow a self-proclaimed libertarian ideology to systematically by-pass drug control policies. It also reflects on the fact that economically disadvantaged, socially excluded, marginalized and technically non-skilled users and drug addicts, as well as drug producers in the Global South, are systematically excluded from these expressions of informal resistance to prohibition-based drug policies by their inability to participate in cryptomarkets.

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PART I

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The Social Morality of Crime



## CHAPTER 2

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# *Conversations Bamakoises* in Time of Crisis: Criminalisation of Everyday Life and State Formation in Mali

*Giovanni Zanoletti*

### INTRODUCTION

In 2012, the quick progression of northern rebel forces, paralleled by the coup d'état that followed the strategic withdrawal to the central region of the country by the Malian army, brought into question the very existence of Mali as a unitary state. Till then, Mali had been considered one of the brightest successes of democratic transition in Africa. It was widely praised as a stable country: in 2006, the Fragile State Index of Fund for Peace ranked Mali below Morocco, for instance.<sup>1</sup> Between 2010 and 2012, Mali was ranked by the side of India, and considered less fragile than neighbouring countries such as Algeria, Niger, and Chad. Similarly, the World Bank's Country Policy and Institutional Assessment (CPIA) ranked Mali 10th out of 38 sub-Saharan states, with 3.6 points well ahead of Niger and

<sup>1</sup> The higher the rank, the more a State is considered fragile.

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Chad. In 2012, within a couple of months, international reports on Mali took a rather different turn: chronic corruption, rotten institutions, and widespread ‘narco-terrorism’ became the new leitmotifs (Abderrahmane 2012; Bigot 2012; Global Initiative 2014).

In light of these contradictions, one is tempted to see assessment criteria in use, transparency, accountability, and representativeness, among international institutions, agencies, and think tanks as fetish-like concepts. Similarly, widespread analytical categories such as *quasi-states* (Jackson 1990), *collapsed states* (Zartman 1995), and *failed states* (Ignatieff 2002; Rotberg 2003) appear in need of drastic revision.

This chapter aims to bring in alternative analytic lenses to shed light upon the multi-faceted intertwining of formal and informal, legal and illegal, moral and immoral practices in political and economic governance. To do so, it takes Mali as a case study. The chapter first aims to overcome reductionist and normative analytical perspectives that tend to blindly apply the abstract and historically constructed categories of corruption, deviance, crime, and so forth by focusing instead on a bottom-up approach stressing the historically rooted social meanings and functions of both legal and extra-legal practices in the local context. Second, it intends to bridge the analytical gap between fictitiously concurrent repertoires of political action that rely on the legal-illegal divide, by highlighting instead their complementarity in shaping power relations. Third, it seeks to single out the role of the “criminalisation of everyday life” as the largely unintentional and accidental response of Malian social and political structures to the globalisation of what are considered orthodox norms, standards, and patterns of behaviour—in other words, the way Malians have appropriated current imperatives and have produced their own syntheses.

This chapter employs the following conceptual tools: with a fair share of heuristic cynicism, it aims to dilute the category of *State*—the nation-state model that accompanies the emergence of the Westphalian system—within the broader category of *state*—that is, the reticular power structures which the *State* partakes of, whose ultimate effect is the establishment of a particular governmentality model (Foucault 1984) and the hegemonic ‘production of modes of existence’ (Deleuze 1990: 156). By relying upon Tilly’s reflection on analogies between state-making and organised crime (Tilly 1985), I explore the notion of criminalisation of everyday life as a mode of existence rather than a systemic dysfunction hindering *state* formation—where the latter is understood to be the erratic process of power concentration and uniformisation of societies via ‘the vulgarisation of



power' (Berman and Lonsdale 1992). In other words, I assume that criminalisation thoroughly constitutes a mode of existence shaping how people think, live, and do politics and hence it produces *state* and governance.

The chapter will first analyse what constitutes the *State* in Mali. Notably, it will focus on how Westphalian *State* rationality as hegemonic discourse (Foucault 1971: 11–12), transposed in international law and domestic legislation, constitutes an imaginary that materialises politics in Mali: what does *State* mean in Mali? How does it display itself in the everyday life of people? What kind of expectations do people have for it? What do people make of it? Then, the *state*—the reticular power structures which the *State* partakes of—will be examined through the analysis of how diverging registers of meaning coexist and combine in a historically situated moment. Third, the relations between the *state* and the *State* will be analysed through the lens of how politics is produced in everyday life, namely how the dialectic combination between a rigid structure of norms and the underlying cultural repertoires would originate the criminalisation of everyday life as a mode of existence. In conclusion, the impact of criminalisation on *state* formation will be apprehended: the Malian crisis will be the analytic prism prompting a reflection on how criminalisation produced the *state* by fostering power concentration and incorporating new actors. As mentioned above, this chapter will rely on the relevant academic literature and extensive fieldwork carried out in Bamako in 2016 and 2017.

### LOOKING FOR THE *STATE*

Bamako is the capital city of Mali. A fort and a trading post of growing importance in the nineteenth century, its recent evolution exclusively displays the setting up of colonial authority. Wandering around Bamako can give some useful glimpses of how the relationship between the people and the *State* is constructed in everyday routine. First, despite its intrinsic links with political power, concrete signs of the *State* are far from being ubiquitous in Mali's capital; on the contrary, religion-related signs are more visible than the signs of the *State*, and clearly dominate the urban panorama. Government traces—like ministries and public buildings—are visible mostly in the central district of the city, whereas the presence of mosques is as ubiquitous in the city centre as it is in the neighbourhoods—like the Bamako Grand Mosque, funded by Saudi Arabia, for example. Regional processes of re-Islamisation became involved in Mali in the wake of the democratic transition, multiplying the tangible signs of Islam in the

urban context: in the recently constructed exclusive neighbourhood of Hamdallaye ACI 2000, among the headquarters of banks, ministries, hotels, and firms, one can easily note the abundance of Muslim institutions (including a supermarket: the Wahhabi *Mille et Une Merveilles*): *Centre Culturel Islamique*, *Haut Conseil Islamique du Mali*, *Union Nationale des Jeunes Musulmans du Mali*, and *Conseil Fédéral National de la Tariqa Tidjaniya*.<sup>2</sup> The stickers on people's scooters of Ousmane Haïdara, founder of the Sufi movement Ançar Dine, are as numerous as those of the most popular European football teams. Radio stations broadcasting marabouts' speeches and prayers accompany thousands of peoples stuck in traffic jams for several hours each day. However, the ubiquitousness of Islamic institutions should not be read as inherently confrontational vis-à-vis *State* sovereign prerogatives: on the contrary, the *State* appears to have retracted from citizens' everyday life as far as health, poverty, and education are concerned, in favour of financially autonomous private institutions taking charge of local welfare. The *State*, in some ways, dismissed care for people's everyday lives, and the urban panorama rightfully demonstrates this retreat.

In the streets, the *State* displays itself rather almost exclusively in its most sovereign form: protection activities whose display of violence implies forms of taxation. Police pickups with machine guns stand normally around the central roundabouts, banks, and government buildings, as well as in proximity to the three city bridges, patrolled by policemen in war gear. The other side of violence is extortion. The *Compagnie de la Circulation Routière* (CCR) is designated to enforce traffic law; yet, it perpetrates any sort of exaction on travellers. Sotrama<sup>3</sup> drivers normally circulate with a 1000 CFA francs banknote (a trip provides around 3500 CFA francs) among the vehicle documents to "buy" policemen when they are controlled. Driving licences can be bought, as can police connivance when one drives with no licence and no knowledge of traffic law. Similarly, the CCR agents regularly place themselves

<sup>2</sup> I thank Pierre Prud'homme for attracting my attention on this point: this list is drawn from his PhD thesis *La Trace de Dieu: une anthropologie des régimes d'orthodoxie au Mali* (2016), an excellent reference as to the evolution of Islam and its political function in Mali, as well as its relationship with the *State*.

<sup>3</sup> Popular private-owned buses with 20 places, operating as public transport.

at the entrances and exits of the city's three bridges and main junctions to fine those in transit:

It is eleven o'clock in the morning. While getting on the third bridge, we are stopped by a couple of policemen, as are many other bikers. They make us get down from the vehicle, take the keys, and park the scooter in a roadside space. My friend inquires of the policeman about the reasons why his vehicle has been detained: 'the tax disk has not been renewed for 2017', he answers. It is January, the year has just started, and getting the tax disk from the relevant office may require a six-hour queue. My friend decides to inquire about the amount of the fine: '5,000 francs<sup>4</sup>', the policeman answers him. 'It is too much' he comments, 'normally it never exceeds 1,000 francs: I will negotiate'. As anticipated by my friend, negotiation is the strategy chosen by all people stopped by police: the policemen are constantly followed by a clique of individuals trying to catch the opportunity of a few words in private with the policeman concerned with explaining their arguments. When this is settled, the auxiliaries direct people to the chief policeman to get his ultimate approval and to pay the fine. Around them are people on the phone, calling friends and relatives in the police or in other public departments that could intercede. The amounts paid by people for the same offence clearly vary from 0 to 5,000 francs, depending on the position of the individual within the network relevant for the policemen. After thirty minutes, my friend comes back asking me whether I know someone in the police: 'it is the only way I have to get my scooter back, I do not want to pay 5,000 francs, it is unfair'. I answer in the negative. A low truck appears and scooters are loaded onto it: people are now in hurry, time is running out. Interestingly enough, getting one's vehicle back from the CCR vehicle dump would cost 6,000 francs, only 1,000 more than the 5000 francs fine: as an evidentiary matter, paying in cash on the spot appears to be the "suggested" choice avoiding a money-consuming and time-consuming trip to the CCR dump. The low truck turns the engine on and off several times, simulating its departure: each time the chief policeman tells the driver to stop. My friend is left with no choice: he takes the suggested exit-strategy. He gives a 5,000-franc banknote to the chief policeman: he puts the bill in his pocket and gives him back the key. No receipts are produced. We are free to unload our vehicle and leave.<sup>5</sup>

<sup>4</sup> It is important to recall that often the monthly rent of a room/apartment in a popular *concession* does not exceed 8000–10,000 CFA francs.

<sup>5</sup> Fieldwork notebook, Bamako, January 2017.

Popular discourse does not associate these kinds of police practices with corruption as such, but rather with the sentiment of *fatigue*: ‘*les policiers nous fatiguent, ils font rien de bon. L’État c’est pareil, c’est des voleurs*’, a taxi driver explains to me.<sup>6</sup> Beyond the populist discourse, blaming “power” for no matter what reason, the emphasis on *fatigue* is very familiar in the streets of Bamako, from regular people going to work, to professional drivers. On top of expensive petrol, continuous car upkeep—due to ageing cars and very bad road conditions—congestion, and the partition of daily earnings among a plethora of actors (the taxi owner, the licence owner, etc.), taxi drivers have to face the CCR harassments as invasive as those mentioned above. Policemen “eat” too much—*ils sont trop gourmands*<sup>7</sup>—without doing anything in return. A similar point is emphasised by truck drivers, who on average spend one-third of the total trip budget in *droits de passage*. At the same time, exactions did not imply any sort of protection along the route: security forces reportedly turned back or fled when trucks or even checkpoints were attacked. On the contrary, many among the truck drivers interviewed praised the Movement for the Unity and Jihad in West Africa (MUJAO)’s route policy in 2012: not only was no *droit de passage* asked for, the mujahidin would also escort convoys, give a phone number to call in the case of breakdown or bandit attacks, and track them down.<sup>8</sup> This is a very low price for an effective service.

These elements trigger a reflection on the relation between protection and extraction, that Tilly (1985) conceptualises as the core tension fostering ‘state making—quintessential protection rackets with the advantage of legitimacy’. Although protection and extraction represent the basis of political enterprises, the current nation-state Westphalian model needs to be apprehended in its character of a historical accident in European history. According to Weber, the present institutions of the nation-state and their rationality would result from the ‘practical mobilisation of natural sciences [...] methodically at the service of the economy’ and the transposition of this methodical spirit in terms of ways of life as ‘Pharisean rigorous legal formality’ (Weber 2003: 436–445). The nation-state, then, originates from the spread of rational formalisation as *Weltanschauung*.

<sup>6</sup> Interview with taxi driver, Bamako, January 2017.

<sup>7</sup> Interviews with several truck drivers, Bamako, June–July 2016.

<sup>8</sup> Interviews with several truck drivers, Bamako, June–July 2016.

In Mali, the *State*—intended here as the Westphalian-inspired nation-state institutions—has to be reframed in the light of a key process: the appropriation by local political structures of the nation-state *Weltanschauung*. Legitimacy within the international system results from the reproduction of Westphalian-inspired nation-state institutions and norms. Yet, such legitimacy is twofold: if, on the one hand, it produces international recognition and places Mali as an equal within the community of States, on the other hand it brings about the hegemonic discourse—paralleled by legal constraints—on what good/bad, legal/illegal, right/wrong is, as this results from the evolutions of the international system. In Foucault’s words, ‘discourse is not simply that which translates struggles or systems of domination, but is the thing for which and by which there is struggle, discourse is the power which is to be seized’ (Foucault 1971: 6). Political morality appears, then, as an imposed grid of values structuring both the field of legitimate action in politics and the popular imagery of what the *State* should be. However, what is more interesting is that, according to the interviewees I interacted with, the shortcomings of the *State* do not correspond to a lack of legality, as one might expect, but to a lack of fairness: the lack of getting a receipt when fined is acceptable; the real issue is not getting “fatigued” by policemen and to not pay too much money to them beyond their fair share. For truck drivers, the MUJAO route policy was legitimate because it was fair. The invocation of a need for more *State* appears first and foremost as a means to question unfair economic relations, not necessarily to be resolved by enforcing legality. This position certainly appears at odds with the ‘Pharisean rigorous legal formality’ mentioned by Weber (2003: 436–445). The following section will inquire into how this *State* imagery co-exists with different registers of meaning, words, and values co-structuring the ensemble of “actions over actions”.

## THE STATE: THE INTERWEAVING OF REGISTERS

*MP<sup>9</sup>: ‘Eh boy, are you married? You’re not like François Hollande, are you? If you are not even able to manage your women, how could you expect to run your country? So, listen to me carefully boy. The State [the government institutions] in Mali is like an old man married to several women*

<sup>9</sup>Interview with Northern Malian Member of the Parliament, Bamako, July 2016.

*[rebel groups, communities...]: if one of the wives leaves the husband's house, a member of the family or a friend of the husband can persuade her to come back; he can give her 200,000 or 300,000 francs to calm things down and she will come back... But the problem will not be settled for good: she might leave again the next day. And what would the other wives, who stayed loyal by their husband, say? Their loyalty is not rewarded. They will try to leave the house to get presents as well, competing to get the most benefit... There is only one solution: the husband should settle the problems with each of his wives in the dark of the bedroom, alone'.*

Me: *'But the husband is old and tired, how could he do that?'*

MP: *'Ah boy it is simple: he must negotiate, I give you something – you give me something. Black people here do not understand it, they understand nothing at all: Arabs love luxury, beautiful girls, beautiful houses, they are businessmen. They love money'.*

This interview excerpt can lead us through the multiplicity of registers implicit in the reticular power structures, producing a peculiar governmentality model in Mali. It also stands as a good metaphor for how its functioning is perceived by one political actor or another. First, government institutions appear as one actor among others; second, rather than a depersonalised machine operating on the basis of a blind rule of law, the *State* appears as an individual with precise physical features and inclinations, and it is evoked *as such*: political issues become personal issues of loyalty and honour, interplaying between the several components of the political family. Again, the concept of fairness, or fair treatment, plays an essential role in the political imagery: loyalty should be fairly rewarded, notably through economic recognition. Yet, loyalty does not imply any sentiment, but a posture that is political in fact. This point brings us to the category of gifts: gifts are the manifestation of economic transactions unveiling hierarchical pre-eminence. Notably, they are not apprehended as forms of formalised payment, but as a “spontaneous” (though a socially required) recognition of one's status. Money then appears as the main mediator of social relations, bearing one's personal success in reinventing tradition (Guyer 2000), and bringing about its tangible signs: cars, houses, and girls. Legality is not an end in itself, rather a repertory to be mobilised to foster fairness through negotiation—the clearing-house space between different points of view on what fairness is.

A digression can help to clarify some of the points raised about the interweaving of multiple registers and the historically rooted political

meaning of money, gifts, tributes, and economic relations. The establishment of institutions inspired by rational formalisation as *Weltanschauung* under colonial authorities and later under Independence leaders prompted the interaction between formality and the historically rooted governmentality model and symbols. First, in the not fully monetised precolonial economies, gifts used to constitute the backbone of the tributary system. In the words of Olivier de Sardan (1982: 68), beyond the appearance of egalitarian relations, *‘les Touaregs “protègent” les sédentaires, ceux-ci leur fournissent “bénévolement” nourritures et prestations’*. Charles Grémont (2010: 308–309) similarly emphasises the great diversity among the tributary relations between the Tuareg Iwellemmedan and their subordinates: the understanding of “services” could swing between the notions of obligation and consent (sometimes they could even take the form of a mutual exchange) on a case-by-case basis. However, the gift relation also binds people the other way around: in the Mandé cultural area,<sup>10</sup> accepting or refusing a gift from the king corresponded to a sign of willing submission or rebellion (Bagayogo 1987: 103).

Second, colonisation imposed the price as a new power technique, fostering the spread of a salary-based economy and the settlement of economic activities: ‘tax-price became a political technology that exemplified the materialisation of colonial power in its fiscal form’ (Roitman 2005: 10). The homogenisation of monies and the monetisation of the economy turned political equilibria upside down. Simultaneously, the *pax gallica* triggered the disappearance of war as a source of social prestige and wealth for the aristocrats, who turned—at least some of them—to trade and agriculture, instead of violence. Money became the instrument for aristocrats to maintain their social status, while clienteles substituted the court of warriors (De Latour 1982: 262–263).

Third, when the Malian Republic was established in 1960, the founding fathers heavily relied on the re-invention of the Mandé repertoire of power (Bagayogo 1987: 106) and the new nation-state got structured accordingly. The precolonial *masaké*,<sup>11</sup> whose state-making enterprise was considered the accomplishment of his personal destiny, laid the conceptual foundation for justifying the personal power of the head of State and his grasp on power. Similarly, the concentric circles of the historical *gens de*

<sup>10</sup> The Mandé is a cultural and linguistic region in West Africa extending on parts of Mali, Senegal, Guinea, Gambia, Burkina Faso, Sierra Leone, Liberia, Côte d’Ivoire.

<sup>11</sup> King or ruler, head of state.

*pouvoir* around the king were reconstituted on the basis of kin, school year groups, and interest groups. These people in close contact with the head of State would represent the ruling class, the new *faama*.<sup>12</sup> For “lower people”, personal allegiance and clientelism became the spaces where they could mediate with central power. Thanks to this mediation, the individual could “touch” power, and thus acquire an “individual” existence. The contact with power and its recognition is what triggers differentiation from the mass: power, wealth, and knowledge are thus inextricably bound, and cannot be devised outside the power-State. The *faama* acts as the source of the social and economic order thanks to the bureaucratic rent produced by the state apparatus through wealth distribution among relatives and the reproduction of power signs—the increase of dependent people and the conspicuous consumption of luxury goods (Bagayogo 1987).

It is crucial to insist on these historical references in order to clarify the following point: the role of negotiation and mediation vis-à-vis the *state* formation process. These concepts have often recurred in these pages and, as has already been observed, intermediaries take up a fundamental place in this mode during the foundation of the Malian Republic. Intermediaries acquire greater importance when bridges between different systems are needed: bridges of language, monetary and cultural ones, but also systems of meaning and differing rationalities. What colonial schooling triggered, to be continued later by an independent Mali, was the creation of a social class able to master the fluctuating relations between formal rationality and the other registers of meaning, and to play between the two to its own advantage. The process of *state* formation—still underway—thus corresponds to the mostly unintended work of the intermediaries who ‘vulgarised’ power (Berman and Lonsdale 1992), imposing their own synthesis between different registers of meaning. The *state*—as governmentality—developed around these intermediaries. Who these actors are, how they have produced politics in Mali, and the effects of such processes will be analysed in the following section.

<sup>12</sup> Tenants of the state, power people.



## “BEING SOCIAL”: THE PRODUCTION OF POLITICS IN MALI AS THE CRIMINALISATION OF EVERYDAY LIFE

As mentioned above, primary school teachers and labour union leaders constituted the core of the winning party (Sudanese Union—African Democratic Rally) when independence was proclaimed. While the socialist inspiration of that party was instrumental in developing centralised industrialisation, economic planning, state-owned companies and collective agriculture, at the same time, all these measures were functional for the state bourgeoisie in power to ensure its grasp on rents and clientele stemming from the newly established bureaucracy and nation-state’s legal framework (Amselle 1987). First, one should underline how “politics” and state officers got to play the role of intermediaries between, on the one hand, a fragmented non-national—or plurinational...—society with all its complexity and, on the other hand, the bureaucratic rationality and the theoretical monopolies of the *State*. It is informality that bridges the gap between formality and the historically rooted governmentality model: historically rooted references such as heroic tales, secret societies, and the self-made man do not disappear vis-à-vis the standardisation of government and the logic of formal legality (Bayart et al. 1999). On the contrary, the “document” is used as the technology of power to bridge between these two spheres: according to this logic, the document is used to legitimise reality, rather than to push reality to match a legal standard.

Consistently, the implementation of “good governance” principles in the 1980s as a technocratic apolitical vision of a universal economic rationality further broadened this space. The waves of privatisation of public patrimony prompted another moment of massive accumulation by state officers: fraud became the space where political allegiances could reproduce. The privatisation of public companies, the reform of the public sector following sponsors’ constraints, international aid and public orders responded to other logics than those intended at the source. Their logic rather belonged to the pillage repertory: they represented moments of destiny that might change one’s life vis-à-vis the community, windows of opportunity to seize instantly, before the opportunity fades, on a large or small scale. If the 1994 devaluation of the CFA francs by 50% constituted an opportunity for some well-positioned state officers to double their cash patrimony by converting it to foreign currency before the devaluation and

to bring it back to CFA francs straight after,<sup>13</sup> a state department order of some stationery can equally represent—through overcharging on receipts—another occasion to get some extra money<sup>14</sup> and—let’s hypothesise—to cover the social expenses of buying a more expensive gift for a relative’s marriage.

Two points might now be raised on the basis of what has been mentioned. First, breaking legality is not stigmatised a priori; on the contrary, social blame addresses those who do not share what they have taken, whether it be legally or illegally. Again, social fairness overcomes the judgement about legality. If we follow Kedzierska-Manzon (2014), the judgement of the value of an act in Mandé ethics is strictly situational: in other words, it does not depend on the mechanical application of abstract typologies of “good” and “bad”, rather, it depends on how the consequences of acts are mastered, it is an a posteriori judgement. Social legitimacy is, then, given after the fact as a concession or negation of recognition, based on how much consensus one can raise around one’s act, in particular by sharing the profits—again, the register of the gift is mobilised.

Second, this set of elements produces what I have called the criminalisation of everyday life as a mode of existence. Handling fraud and dealing with intermediaries—thanks to the discretionary use of the document technology—became the inescapable path to social success and became the main source of social subjectivisation: money is the bearer of sociability, no matter where it comes from—the judgement is a posteriori. Young people who were *minimisés*<sup>15</sup> as unemployed persons—with unemployment being the most sensitive issue for the youth in Mali, *sont devenus hommes* thanks to the MUJAO. In 2012, mujahidin paid fighters a monthly salary of 100,000 CFA francs, allowing them to “be men” by accumulating the resources to get married and to support the family as tradition prescribes.<sup>16</sup> It is the capability to perform this ensemble of actions that produces the social recognition of what a man is, rather than, let’s say, his age.

However, if on the one hand, this mode of existence provides the individual with social existence, on the other hand, it raises the dependence of

<sup>13</sup> Interview with State officer, at the time an attaché to the Prime Minister’s office, Bamako, June 2016.

<sup>14</sup> Interview with several stationery sellers, Bamako, February 2017.

<sup>15</sup> Malian French for “being considered a good-for-nothing”.

<sup>16</sup> Interview with Gao truck driver, Bamako, June 2016.

the younger people in society towards intermediaries and their dependency vis-à-vis the networks of accumulation. First, the distance between the lavish lifestyle of successful people and normal conditions of life materialises the dependence of the young through desire: the ownership of a big car, a villa, a farm, and the possibility of sending children to study abroad (Amselle 1985) become the unequalled markers of social ascent. When accessing state employment, people are expected in short order to start to build a house, something that is still quite hard with a monthly salary of 100,000–150,000 CFA francs. Dismay spreads among friends and relatives if the newly appointed functionary is not able to find enough money to undertake house construction. Second, as has been mentioned, the real non-compliant behaviour is seeking one's own personal way: frauding is a social fact. Intermediaries and *big men* are needed to legitimise one's aspirations to acquire extra income, while demanding their fair share—from a *prix du cola* to a *cadeau* of several millions. This fact prompts a sort of bottleneck system whereby relatively few people may rotate between several public offices and ministerial positions and accumulate enormous patrimonies by just “being social”. As mentioned previously, one should be careful here to take into consideration the diverging rationalities attributed to standard institutional acts: the rationale of “liberalisation”, “privatisation”, “decentralisation”, and “nationalisation” waves should be constantly led back to the necessity of synthesising global imperatives and entrenched social logics of particularism.

Moreover, democracy and politics in Mali are a business for rich people: sharing and displaying wealth are the core of social prestige, and politics needs important resources to build one's electoral consensus. Even traditional authorities, especially in the northern part of the country, require resources to keep their pre-eminence. Of course, some cases waive the rule, but they are few. In this sense, on the traces of Amselle's reflection about the national bourgeoisie, family links established through marriages both within the national bourgeoisie and later between the former and the re-established business class since the time of Moussa Traoré are of capital importance to the functioning of the political system. Big businessmen finance politicians' and state officers' public—and sometimes private—expenses, while state officers and politicians “support” businessmen. It should be no surprise that presently three categories constitute the great

majority of real estate buyers,<sup>17</sup> especially since the 2012 crisis: Malian expatriates, businessmen, and state officers. Whereas Malian expatriates' financial situation is not directly concerned by Malian events, one expects that those of big businessmen and state officers would be. However, the 2012 crisis either did not affect their financial situation, or even improved it, thanks in part to the repercussions of international organisations and missions embroiled in the peace process. As to logistics, renting out houses for international personnel as well as 4×4 s and trucks to carry supplies for the UN bases in northern Mali constitutes an enormous turnover for those who are able to reach the required market standards or who can afford to catch up with them.<sup>18</sup> One could count these in the dozens. Equally, the proliferation of political commissions, structures, and committees for peace at the national level, though mostly funded by international organisations and donors, increased the bureaucratic permanent staff in Bamako, granting salaries to a number of current and former politicians, along with their staffs.

### CONCLUSION: THE 2012 MALIAN CRISIS AND *STATE* FORMATION

In the above, I have underlined how the *State* and government institutions represent both a source of political legitimacy and a legal constraint stemming from the principle of rational formalisation. The nation-state is not only a set of institutions, but rather a *Weltanschauung*. At the same time, I have demonstrated how this *State* rationality co-exists with different registers of sense and values acting constantly on one another and co-structuring power relations around the—peculiarly declined—notion of fairness, in spite of legality. The capital role of money as a cultural mediator and a preponderant sign of success within society was also highlighted. Thus, fraud appears as the space wherein the dyscrasies between the different registers are settled through the 'unintended' and accidental action of intermediaries 'vulgarising' power, producing the criminalisation of everyday life as a 'mode of existence' (Deleuze 1990). Acting—and thinking—on the basis of reference patterns other than the law—though strictly related to it—constitutes a common lifestyle, structuring power

<sup>17</sup> Interviews with several real estate agents; Bamako, February 2017.

<sup>18</sup> Interviews with several transport companies and businessmen; Bamako, February 2017.

relations and social recognition. Finally, I proposed the concept of “being social” as a reading key by which to better reframe the peculiar rationality of politics.

A comprehensive reflection on the relationship between crime and *state* formation is necessary at this point: how does “criminalisation” shape *state* formation? What role did the 2012 crisis play in it? First, the establishment of several armed groups during the crisis prompted the relinquishment of the northern part of the country by the Malian State. Even though elections were held in 2013, May 2014 marked the ousting of Malian authorities from the regions of Kidal, Gao, and Timbuktu. State authorities have—with difficulty—started to be redeployed only two years later, and the enforcement of the Algiers Accords faces multiple challenges by contracting and non-contracting parties. Yet, it is the institutional figures—like locally elected MPs—belonging to the *State* repertory who have monopolised the role of pivots between Bamako—and the *State*—and the northern regions’ communities. A singular straddling of positions occurs: MPs belonging to the presidential party (*Rassemblement Pour le Mali*) are state officials enjoying judicial immunity. Despite this, they are nonetheless involved in the peace process as counterparts vis-à-vis the government, and financially and politically support armed groups through allegedly illicit activities such as drug and arms trafficking. In some cases, they are prominent figures of armed movements. Simultaneously, they represent their electoral constituencies as well as, in a certain way, the “ethnic” community they belong to within and beyond the borders of constituencies, even though they all usually live in Bamako.

Second, one should attentively consider how this pivotal role and the physical and institutional proximity to Bamako affected actors’ projection *en brousse*—in the bush. Being an MP does not imply aligning with the government: on the contrary, local and community-oriented agendas seem to prevail. Northern intermediaries’ economic accumulation has been peaking during the crisis years, prompting the reinvestment of dirty capitals in the sub-region as well as in Bamako. Housing, import-export, and transport companies represent the best-known domains for money laundering: this phenomenon enhanced the political and economic leverage of peripheral actors vis-à-vis “historical” power holders. Yet, the other way around, this same phenomenon has been seen—one could say paradoxically—strengthening the role of Bamako as the political and economic centre of Mali *as a whole*—including its northern parts—intensifying the dependence ties of recent-comer elites towards Bamako-based political

and economic networks. The enhanced transfer of skilled people—like functionaries and businessmen—and their own family members from northern regions to Bamako, though already ongoing since the mid-1990s, is a telling example of its new role. Seizing Bamako’s resources—both economic and relational—has turned out to be essential in acquiring or maintaining power in the bush. Consistently, traditional authorities incapable of getting close to *State* resources have been losing political weight since the early 1970s, whereas those capable of exercising political power nowadays have rallied the *State* as MPs and officers.<sup>19</sup>

Third, the democratic turn of the early 1990s further strengthened the contestation of power balances: expanded political rents and local discretion on public spending opened up the political arena to challengers under the interested gaze of central power trying to build its own network of clients. The position of an MP—and other local institutional positions—came to strongly determine the power balance between co-existing communities by giving access to constantly increasing public resources<sup>20</sup> in a situation where relational patterns had been already put under pressure by the 1991 rebellion and growing trafficking activities. Northern MPs and intermediaries strengthened their pivotal position between the centre and the periphery—formal rationality and local registers of sense—as well as between legal and local economic activities, and the public budget—including international aid—and communities’ needs. Despite this, only in very few cases did traditional chiefdoms translate their political weight into a seat at the National Assembly, in favour of former subordinate communities favoured by demography, now representing the backbone of several armed groups and economic enterprises.

In summary, it is the former subordinate communities’ calling into question of historical domination patterns thanks to triangulation with Bamako that appears to have prompted national integration. This occurred in such a way that the 2012 crisis may represent a *redde rationem* between conflicting actors *en brousse*: the Malian State is thus targeted as the incarnation of an integration project led by former “subordinate” communities—a project that is unsuitable and contested by historical power holders.

<sup>19</sup> Interviews with several traditional chiefs; Bamako, February 2017.

<sup>20</sup> Since the beginning, Malian democracy enjoyed the support of international community and attracted substantial foreign investments and international aid, boosting government budget and Malian economy.

The 2012 rebellion—or revolution as some may call it—and the Azawad<sup>21</sup> project may be read as a movement that is countering an already-ongoing national integration benefiting subordinate communities, rather than a real attempt to produce a renewed social order through secession. However, paradoxically enough, the crisis and the subsequent *impasse* seem to have ended up accelerating national integration thanks to political and economic opportunities prompted by the conflict and the management of a ‘neither war nor peace’ situation (Marchal 2002), whereby MPs and intermediaries assumed a central role.

Yet, questioning what kind of national integration is being produced remains an unavoidable issue. The criminalisation of everyday life thus appears to be an inescapable layer and lets us reconsider the central place that criminal activities can play vis-à-vis *state* formation—the erratic process of power concentration and uniformisation of societies. First, an illicit economic accumulation that has picked up since the 2012 crisis called for a more solid national space to be reinvested in, with historical Saharan regional economies being too segmented to generate strong political impact and profitability. While the transnational patterns of economic investment have been preserved, guaranteeing the spreading of risk, they have been complemented by a national dimension wherein political ties are capable of securing laundered money and shielding its reinvestment via enhancing economies of scale. In some ways, the crisis also re-affirmed the importance of the *State* as a source of power, in spite of the (temporary) relinquishment of portions of its territory and a harsh peace process imposing the sharing of political power in northern regions with rebel groups. Second, lacking any sort of long-term political project, the only truly “national” consensus seems to have emerged around what are labelled criminal lifestyles and activities. The *politique du cadeau* represents the clearest elective affinity encompassing territorial, ethnic, cultural, and political cleavages, and is the national common denominator grouping the newly established national politics and elites. Bamako appears as a clearing-house wherein the political mood can be apprehended, relevant people met and influenced, and business matters settled.

In conclusion, Tilly’s reflection on analogies between state-making and organised crime enterprises (Tilly 1985) appears very telling with respect

<sup>21</sup> Azawad is the name given to the northern part of Mali by the National Movement for the Liberation of Azawad (MNLA) when the independence was proclaimed in 2012.

to the Malian case: formality and legality do not a priori represent the exclusive bases prompting state-making and political and economic governance. In fact, normative approaches underestimate the leverage of social meanings and the functions of extra-legal practices, historical sediments of meaning, and societies' inertia vis-à-vis institutional innovations and the nation-state *Weltanschauung*. On the contrary, time is a plural and open quantity, wherein different temporalities, historical references, and states of mind co-exist: on these bases, people *bricolent*—cobble together—their own syntheses and, by doing so, produce politics, governance, and peculiar patterns of power relations—that is, the *state*—regardless of abstract concepts like legality/illegality and formality/informality—or analysts' notions of such concepts. Beyond current narratives, the criminalisation of everyday life in Mali does not underpin a moral issue or a lack of civic consciousness, but emerges as the unintended and accidental response of Malian social and political structures to the spreading of what are considered orthodox norms, nation-state institutions, political and economic standards, and appropriate patterns of behaviour. In other words, the way in which Malians have appropriated current imperatives and have produced their own national synthesis.

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## The Criminalization of Informal Practices in the Danube Delta: How and Why

*Giulia Prelz Oltramonti and Mihnea Tanasescu*

In the Romanian Danube Delta, many activities involve some degree of concealment from state authorities. Residents live off strategies that are largely illegal, and authorities are generally in the business of making sure that everyone knows that most of their strategies are illegal. If the phrasing of the previous sentence sounds vague, it is because it is formulated to reflect the vagueness of the law and its implementation by the authorities, as well as the lack of certitudes that residents have regarding their daily activities—the only certainty being that it is almost impossible for them to abide by all formal regulations. Why is it so? If formal regulations are designed in a way that they cannot be abided by, what are they for? And what does this say about how governance is produced through formal institutions and informal strategies co-opted into those same governance structures?

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In order to answer these questions, this chapter unpacks the case of the village of Sfântu Gheorghe in the Romanian Danube Delta and, more specifically, the issue of fishing. We focus on this activity in order to show how state presence and governance are shaped and what they mean to locals: a minefield of regulations that make it impossible for them not to fall into illegality and devise complex informal systems. The chapter is based on extensive field research, which took place during the course of three years (2014–2017).<sup>1</sup> The result is an insight into how the state forces residents of borderlands into illegality. Governance is based on the imposition of regulation and on the tacit understanding that such rules cannot be abided by. Why this is so and how residents respond to it is explained in the last section.

This chapter adds a new dimension to the exploration of informal practices in Romania. In fact, informality in Romania has been looked at in terms of a survival strategy in the framework of economic decline and insecurity, as a way to reduce tax burdens and therefore costs for businesses and individuals, or as a response to a wide distrust of the state (Djankov et al. 2003). This contribution shows that the state creates large areas of forced informality, and controls territory by criminalizing it.

### REGULATION, INFORMALITY, AND THE STATE AS A PARTAKER

There are endless ways of classifying human activities in relation to the law, moral codes, or a matrix of the two. It is worth noting that interpretations and perceptions of what pertains to each category vary between different actors, and also within specific societal groups. A multiplicity of distinctions can be sketched out, including those “between what states consider to be legitimate (‘legal’) and what people [...] consider to be legitimate (‘licit’)” (Van Schendel and Abraham 2005, 4). While the two are not mutually exclusive, there are many cases when they do not overlap. As a

<sup>1</sup>This research was carried out as part of a larger project, funded by the Research Foundation Flanders (FWO), on the political and cultural implications of rewilding projects in the Danube Delta. It gathered data through participatory observation and unstructured in-depth interviews which took place over the course of three years and focused on different aspects of the residents’ strategies in the Danube Delta. These interviews targeted, among others, authorities, law enforcement agents, fishermen, residents, and NGO workers. Unless otherwise specified, the information on the Danube Delta provided in this article is drawn from this research.

response, people develop informal systems to skirt regulation and carry out activities that are necessary to their social and economic strategies.

What is undeniable is that informality is everywhere (Misztal 2000); while often considered a marginal phenomenon, in this chapter we look at a case in which informal systems are actually mainstream. Looking at an Eastern European case, we could be lured into shoehorning it into a simplistic pattern of state collapse after 1989 (and hence growth of the informal sector) and modernization of the state in the 2000s (which should entail a reduction of the informal sector). However, it is undeniable that informality soldiers on, notwithstanding modernization and generous EU funds poured into state institutions in the last decade. This is because informality is not a prerogative of a weak or absent state, but can develop wherever there is a mismatch between the state's regulation and people's needs in terms of regulations. This is why, as shown by Morris and Polese (2015), an analysis of the management of informality tells us much on state-society relations.

How the above-mentioned mismatch is dealt with by states and people has already been a matter of enquiry for quite some time (Heyman and Smart 1999). Interestingly, it has been much easier to systematize the approaches that states adopt, while strategies put in place by people have been less adaptable to cross-cases generalizations, although not entirely so.

Polese states that “[i]n principle, once a state has identified an informal practice to get rid of, they have the power to do it” (2016, 26), although there are operational, social, and broader costs. There are nevertheless cases where the state does not regulate informal practices or, in other words, fails to implement the regulation that it has designed. In these cases informal practices abound just below the surface, with what appears to be a clear connivance from state authorities. Why is it so? Here, we leave aside cases where the state does not have the capacity or territorial control to regulate social and economic activity (e.g. as in Somalia or Abkhazia; Prelz Oltramonti 2017) and focus on a case drawn out of a specific area of Romania where the state has the capacity both to legislate and to enforce its laws.

As Polese points out (Morris and Polese 2015, 6), the state actually has three options with regard to social practices: “to regulate, to ignore or to repress”, or a combination of them. There actually is a fourth option, namely that of partaking, as shown in Prelz Oltramonti (2017). This chapter demonstrates that authorities can opt to govern through the imposi-

tion of a regulatory framework that makes informality inevitable and, hence, to a large extent, they are partakers of informality.

In theory, costs and opportunities are the determinants of the state's choice among the options that it has in dealing with unregulated activities. The process of regulation is dictated by complex assessments carried out by various state bodies. This means that there might be variations in the appraisals of the various actors and therefore differing strategies might emerge. At the same time, there can be a wide gap between the state's discourse and practice with regard to these options. This is why thorough analysis of specific case studies are needed, dispelling the notion, too often taken for granted, that states with sufficient capacity equal rule of law: "Open-minded, empirical studies of state-illegality relations enable us to transcend the stultifying assumption that states always uphold the law" (Heyman and Smart 1999, 1).

Regulation does not mean that the state is fully invested in regulating a given social or economic practice. A state can *de jure* opt for regulation, passing laws or creating institutions that formalize a specific social practice, while pursuing a *de facto* strategy of ignoring the issue—by creating governing bodies with poor implementing capacity, for example. This is often done by exploiting the gap between criminalization (or the law in its written form) and incrimination (or the decision the relevant authorities to act upon a given deed in accordance of the law).<sup>2</sup> The tendency is to "regard as criminal those political, social and economic practices which are the object of a 'primary criminalization' either by the laws and other texts of the states which are under discussion or, more particularly, international law, or according to international organizations or acknowledged guardians of international morality" (Bayart et al. 1999, 15).

The lack of respect for state regulation does not mean that the social practices in questions are unregulated; on the contrary, there is a vast web of informal mechanisms of regulation, which include trust, threats, legitimacy, reputation, cooptation of formal actors, and thick ties between formal and informal practices that allow for the accommodation of formality into the dimension of regulated informality.

<sup>2</sup>These have been defined as following: "'primary criminalization' [...] is pronounced by an investigating body, and 'secondary criminalization' [...] occurs when a matter is effectively submitted by a due process of law" (Bayart et al. 1999, 13).

Before proceeding further, it is worth specifying that in this chapter we look at the state as a relatively centralized but far from unitary ensemble of institutions that both cooperate and compete for control over space and people. As shown below, the state finds its expression in numerous agencies and seats of power, with the specific commonality that is the ability to regulate.

### SPECIFICITY OF THE DELTA: CENTER-PERIPHERY AND STATE CONTROL IN BORDERLANDS

A study of the management of informality in the Danube Delta is a window on state behavior in its borderlands. The area is poorly accessible from the center(s)—whether the national capital, Bucharest, or the regional one, Tulcea—or anywhere else. It is geographically part of the Romanian borderlands (straddling Romania's international borders) and it is treated not only as the margin of a state, but also largely as a frontier in terms of its local economy (in decline since the end of the Socialist period) and nation (it is inhabited by several ethnic minorities with their own customs and languages).<sup>3</sup> The Danube Delta is perceived as the end of the known world by the state and the residents alike.

As such, it benefits from being looked at in light of a vast literature on borderlands and center-periphery relations. Incidentally, this literature shows that borderlands are not always so remote as to need hours of navigation in order to reach them. Goodhand uses the term borderland as “non-state space” and differentiates between three distinct types of borderlands: classical borderlands situated on the edges of states, internal borderlands, and global borderlands (Goodhand 2008, 228–229). The region of the Danube Delta clearly falls into the first category, although, as explained later, this borderland status was significantly lessened starting from the 1950s as the center—Bucharest—was eager to exploit its resources and integrated it substantially into state networks.

Much of the research on borderlands focuses on the point of fracture between two or more borderlands, and on the interaction among them, largely in terms of flows. As shown by Donnan and Wilson, and corroborated by numerous studies afterward, “[the] existence [of borders] as bar-

<sup>3</sup> It is worth underlining that this was not the case until 1989, when the Socialist government invested considerably in the integration of the Danube Delta and of its economy into the larger Romanian sphere by providing infrastructure and services.

riers to movement can simultaneously create reasons to cross them” (Donnan and Wilson 1999, 87). There are significant gains to be made from crossing international borders, and economies of borderlands (whether formal or informal) often rely on connected services.

However, flows of people and goods across borders are not the only component of borderland economies, especially when a borderland expands into large areas away from a specific border, and many places in the borderland have little connection to the border itself. In this respect, the southern part of the Danube Delta can be seen in terms of an internal borderland, whose defining feature is not the international border, but which is characterized by being on the margins of a power center, and being an identifiable unit to itself (Zartman 2010, 6–8). This might be due to physical characteristics, which make the establishment of state structures more cumbersome and costly, as in the case of the Danube Delta, which can be reached and crisscrossed only by navigation or air and where population density is low. While the image of “non-state space” is useful to understand an extreme case of borderland, in order to nuance the characterization it is more appropriate to see borderlands in terms of a continuum, where informality wrestles the state of its regulatory prerogatives.

Whereas there are cases in which this results in non-state spaces, in the case of the Danube Delta the picture is more varied. As shown in the following section, the state has traditionally been very present in this Romanian borderland and, after a short hiatus in the 1990s, it is present again. The perception, however, of residents in the Danube Delta, is one of extreme distance from the seats of power and the rest of the country. This is due to a variety of factors, including cultural ones. Most of all, however, this perception is given by the time that it takes to travel in and out of the Danube Delta, which can be done exclusively by boat. The residents of the Danube Delta need to travel to the rest of Romania for higher education, medical visits, and most interaction with the state (such as obtaining permits, documents, registering deeds) that is not of law enforcement nature. If looked at from this point of view, they live in a remote borderland. But the state, with its multiplicity of agencies, agency representatives, and legislation developed in the regional and national centers, is present on the ground and water in the Delta.

The Danube Delta can therefore be seen as a periphery of the state in terms of service provision; but in truth the state is present in the Delta, through an interesting application of regulation which we will explore below.

## AGENCIES AND SEATS OF POWER: OVERLAPPING JURISDICTIONS AND CONFLICTING REGULATION

We focus here on the web of regulation and informal practices in the village of Sfântu Gheorghe, in the Romanian Danube Delta. This location is chosen because it is the largest village in the Danube Delta, historically important for its exploitation of fish and reeds. During communist times, this village was the center of the sturgeon industry which produced caviar, a key Romania export.<sup>4</sup> It sits at the confluence of the Danube with the Black Sea, therefore also straddling a natural border. Lastly, and for all of the above reasons, it is the scene of overlapping jurisdictions and conflicting regulations.

The Danube Delta as a whole was significantly transformed during the communist regime. Though the beginnings of its anthropogenic transformation date from the end of the nineteenth century, large-scale and sustained efforts of modifying the whole deltaic environment started in earnest in the beginning of the twentieth century and accelerated markedly from the 1950s onward (Constantinescu et al. 2015). During this later period the goal of transformation was gaining access to the riches of the Delta, primarily its fish and reeds. Practically this meant the digging of numerous channels, the straightening of the main branches of the river (in order to decrease travel time), and the building of dams to protect and secure strategic locations.

The anthropogenic intervention in the Delta has resulted in a highly anthropic environment that nonetheless maintains high levels of biodiversity and resources. From the 1950s onward, Sfântu Gheorghe village was crucial in extracting fish resources (Constantinescu and Tanasescu 2018). The fishermen were provided with state-issued boats and tools and were organized in fishing brigades that operated year-round. The local *cherhana* (fish processing plant), now a ruin, was the central node in a network that stretched into the Romanian export markets for processed fish and caviar. In this sense, the village was no longer on the periphery of the state, but rather crucial to the economic engine at the center of state power.

The collapse of the communist regime in December 1989 untethered the Delta, and Sfântu Gheorghe with it, from the state networks it was previously inscribed in. Instead, the Danube Delta became a biosphere

<sup>4</sup> Sturgeon fishing has been subject to a moratorium since 2006.



reserve, marking a dramatic shift away from resource exploitation and toward environmental protection (Van Assche et al. 2011a, b, 2015). This new status came with a new regulatory agency, the Biosphere Reserve Authority (ARBDD, created through law 82/1993), and with a new way of zoning the territory of the Delta into economic zones, buffer zones, and strictly protected areas where no activities whatsoever are allowed. The ARBDD has far-reaching competences throughout the territory as it is the *de jure* and *de facto* administrator of the Delta region, sitting under the wing of the Environment Ministry. However, besides the ARBDD, there are other state agencies with jurisdiction over parts of the Delta, many of which intersect in and around the village of Sfântu Gheorghe.

As the status of the deltaic territory changed from absolute control from the center to a biosphere reserve, different agencies staked their claims to different areas. The planted forest protecting the village, though also part of the ARBDD jurisdiction, is under the management—and therefore partial jurisdiction—of RomSilva, the state forestry agency.

Similarly, the waterways of the Danube, which dominate the landscape and are the most effective and therefore used way of getting about, are under the jurisdiction of ARBDD, the National Agency for Fishing and Aquaculture (ANPA), and the Romanian Water Authority. Whereas this latter institution is tasked with water quality, the other two authorities are tasked with controlling the activities of fishermen. Though in theory ANPA is the one that grants fishing licenses, in practice ARBDD also has a say on the use of the license given its enforcement capacity.<sup>5</sup> A commercial fishing license comes with restrictions on the tools one is able to use, and therefore the tools the fisherman plans to employ during the fishing season need to be homologated. This means that both ANPA and ARBDD need to be in agreement over homologation. However, this is not always the case, leading to situations where fishermen have tools recognized by one authority and live in fear of controls from the other authority. This kind of overlap gets even more complicated when fishing in the Black Sea or the littoral areas of the Danube Delta. There, the Border Police Coast Guard also has jurisdiction.

<sup>5</sup> Both agencies have an enforcement branch. For ANPA this is the *Directia Politici si Inpectii Maritime* (DPIM), and for ARBDD it is the *Comisariatul de Control Integrat*, a branch that reunites seven previously active branches of the ARBDD, each with enforcement and control capacities. This, according to a press release by ARBDD. On the ARBDD website portion dedicated to the new enforcement agency there is no information at all.

A fisherman is not worth much in the Delta without a boat. And if one has a boat, one is subjected to a further series of checks and regulations, administered and enforced by other agencies. The Romanian Naval Authority (ANR), based in Tulcea, gives boat licenses and registers them. The Transport Police, however, gives permits for transporting the catch in a particular boat as opposed to another. These two agencies intertwine with the previous ones, which ostensibly have nothing to do with boats, because the boat registration and driving license of the fisherman appear on the fishing license. ARBDD also has competencies in restricting the access to certain areas to certain kinds of boats, defined by size and power of the outboard engine. It also has the power to restrict access and/or economic activities in the majority of the deltaic territory through its zoning prerogative.

The village of Sfântu Gheorghe is part of Tulcea County, which also has administrative jurisdiction over the territory. Finally, the municipality of Sfântu Gheorghe is responsible for municipal lands. Though on paper the various jurisdictions seem clear enough, in practice the mayor himself often does not know if an area is under his jurisdiction, that of the county, or of the Biosphere Reserve Authority. The seat of the county is in the city of Tulcea, 120 km to the north, and only accessible by boat. Access is difficult in the winter, when the navigable branch of the Danube connecting the village to the city is often frozen. Despite these difficulties, locals wishing to renew their fishing license and their boat registration need to travel to Tulcea or Constanța to do so, as there are no facilities for this purpose in the village. There is a village office of ARBDD, but it does not accept permit applications. For tourists or visitors, getting a fishing permit is infinitely easier, as it can be done online.

### THE DIFFICULTY OF FISHING

From the perspective of locals, fishing is by far the most important activity in the Delta. In terms of traditional economic activities, reed gathering and cattle farming have also played an important role. Law 82/1993, which founded the ARBDD, gave it powers to restrict both reed gathering and cattle farming. However, art.8 guarantees the right of locals to continue traditional economic activities, without defining what these are. In practice, reed gathering today is highly restricted through the status of the territory as a biosphere reserve, and the social organization needed for efficient gathering has fallen apart. Similarly, the ARBDD has the power to

issue licenses for cattle to graze in specific areas of the reservation. The grazing of cattle in strictly protected areas is always forbidden. In practice, cattle roam everywhere in the Delta and are an important safeguard for locals. They are not generally milked, and are used primarily for meat. This use of cattle is in part a result of regulatory and infrastructural pressures. There is no slaughterhouse within easy reach of the Delta,<sup>6</sup> and the local breed of cattle is not recognized as pure and therefore cannot be commercialized as easily as modern varieties. As important as cattle may be for lean times, by far the most important activity for locals today is fishing.

There are two relevant categories of fishing within which locals fit: commercial and familial. Inasmuch as one lives in Sfântu Gheorghe village, one can fish for subsistence. But this age-old activity is regulated through the granting of a familial fishing license by the ARBDD. At the time of writing, the familial fishing permit is nominal and given to each apt member of a family. It allows him<sup>7</sup> to catch a maximum of 3 kg of fish per day. If one happens to catch a single fish that is heavier than the designated amount, one can keep it but can no longer fish for that day. These permits are brought to the village every year by agents of ARBDD. Although the maximum catch allowed is written on the permit as 3 kg, everyone we spoke to knows the limit to be 5 kg. We will come back to the significance of this confusion.

Commercial fishing is the biggest economic activity of the village, only rivaled in recent years by tourism. The line between commercial and familial fishing is itself an administrative one. Informally they are always blurred, if they exist at all—what you do not eat, you sell. Sfântu Gheorghe is a fishing village, which means that most men, at one point or another, go fishing. But under the rules and regulations prevailing today, the informal relation to the capture of fish is de-legitimized and, in many cases, criminalized. For example, sturgeon used to be the most important local catch, and the state itself organized the capture and commercialization of both the body of the fish and its eggs (caviar). Since 2006, a moratorium on sturgeon is in place, and therefore anyone that is caught with a specimen is liable for criminal prosecution with significant prison sentences possible. Given the traditional importance of sturgeon, however, many local dishes, including the soup served each year for the Saint George celebrations (the

<sup>6</sup> During the communist regimes, barges used to regularly visit villages and gather their cattle for slaughter, paying cash. The slaughterhouse in Tulcea has since closed.

<sup>7</sup> The use of the masculine pronoun reflects the local reality: only men fish.

village feast, one of the most important days of the year) is made of sturgeon. The capture of sturgeon for sustaining a traditional way of life, supposedly guaranteed by art.8 of law 82/1993, is criminalized. However, incrimination—the application of the law—is rare, and locals and enforcement agents alike feast on sturgeon soup of unknown provenance during the village celebrations.

Local fishermen must decide whether to fish on a family permit or commercially, a choice imposed by the administrative system itself. This choice leaves out a significant number of people that will nonetheless go fishing for subsistence purposes, but that cannot, for a variety of reasons, do so fully legally.<sup>8</sup> One can have a sports fishing permit, as tourists do, to complement the family's catch. This kind of permit is subject to the same restrictions as the familial one, and imposes certain catching techniques.

If fishing commercially, the fisherman needs to apply for a number of authorizations and permits, which cannot be done locally. At least one trip<sup>9</sup> needs to be made to Tulcea (120 km by boat) and, in case the fisherman plans to also fish at sea,<sup>10</sup> at least one trip to Constanța (140 km by land from Tulcea). The fact that fishing at sea needs another set of permits, in a littoral village, also means that a spontaneous decision to venture out to sea to fish (according to natural patterns like weather and seasonal migrations) is surely a step into illegality. The decision to fish at sea needs to be premeditated in order for it to be inscribed in the legal framework.

The fisherman needs a license for himself and his boat. These are given by ANPA, ARBDD, and The ANR, respectively, all based in Tulcea. The characteristics of the boat are written on the fishing license. He also needs a permit, from the Transportation Police, to transport fish. This permit is given per particular boat, so it is not transferable to another boat the fisherman might be in. It is normal for locals, given the centrality of waterways, to have several boats, but not all of them will be allowed to transport fish. Given that the characteristics of the boat are inscribed on the fishing license, if an engine breaks halfway through the fishing season and needs

<sup>8</sup> For example, if one is old and only knows how to fish with tools by now forbidden.

<sup>9</sup> It is highly unrealistic to think that one trip could acquire all the necessary permits. In practice, people either make the trip several times, or have to stay overnight in Tulcea, relying on informal networks or paying for a hotel room in the absence of such networks.

<sup>10</sup> For the villagers of Sfântu Gheorghe, the sea is a natural place to fish in, given its proximity to the village, which is located literally at the mouth of the Sfântu Gheorghe branch of the Danube.

to be replaced, the fisherman no longer has a valid registration and, therefore, no longer has a valid fishing or transportation license. In case he plans to fish at sea, he needs another set of permits for sea species, as well as a permit to navigate at sea, given by the Border Police, based in Constanța.

Lastly, he needs to have his tools homologated, a process with contradictory instructions coming from ARBDD and ANPA, each fighting to have more say over the territory. The homologation is inscribed through a plastic seal that is placed on his tools and that control agents can check when in the territory. Only certain tools are allowed, and which those might be changes frequently. Given the frequent change in legislation, it sometimes happens that fishermen will invest in one set of tools only to throw them away the following year. There is no compensation awarded for the lost investment, or any communication ahead of time about the authority's intentions. There is in fact no meaningful consultation on any of these policies.

The species that the fisherman can catch are strictly regulated. As already mentioned, catching sturgeon is always illegal. Besides this, there is a prohibition on fresh-water fishing given yearly by the Environment Ministry through the ARBDD, for various periods of time in the spring depending on the location in the Delta. There is a further prohibition on Pontic shad<sup>11</sup> fishing halfway through its spring migration. There is a quota on what the fisherman can catch, which also changes yearly. There are no consultations for establishing the quotas and the fishermen do not know the mechanism through which they are established. Lastly, there are vast areas, some former village fishing grounds, which are now always illegal to fish in.

The above minefield of permits and regulations leads to extremely high frustration among the population. However, this frustration is kept in check by the deployment in the territory of control agents representing all of the different institutions with some jurisdiction over the territory. Interestingly, anyone can check anything. So the border patrol can check the fishing license of a fisherman 20 km from the sea (because the whole Danube Delta is considered a border region), and an ARBDD agent can

<sup>11</sup> This species of migratory fish (it lives in salt water in the Black Sea but reproduces in the fresh water of the Danube) has become increasingly important for the local economy since the moratorium on sturgeon came into place. It is considered a high-value species and fishermen during the migration season of the shad will fish round the clock.

check the homologation of the tools as well as the boat registration and the transportation permit. Given that the territory itself (ecologically speaking) and the practices that inhabit it are not as clear-cut as administrative rationality would have it, there are many situations when the fisherman is outside the bounds of legality despite having followed, to the best of his ability, the regulatory requirements.

The village of Sfântu Gheorghe being a littoral one, it has direct access to the area where fresh and salt water meet, a dynamic space that changes constantly following climatic and environmental conditions. Because of this dynamism it is also a good place to fish. Given the blurring of the border between fresh and salt water, a fisherman that deploys nets in this area is liable to being charged with fishing with the wrong tools. An agent (of whichever institution) can claim that the fisherman is using fresh-water tools in salt water, or vice versa, and write a fine or confiscate the tools. The power that the agents in the territory wield can also lead to abuse, such as when agents control tools deployed in water only to remove the fish caught in them and take it for themselves. The fisherman, in all of these instances, knows to likely be on the wrong side of the legal system.

Fishermen know that they are always at risk of being fined or having their tools confiscated or being prosecuted. This knowledge is key to understanding the overall logic of a seemingly dysfunctional system: whenever the fisherman does not get incriminated, he feels lucky, as if he got away with something. This mentality, cultivated through regulation and criminalization of economic activities, encourages him to grant favors and privileges to the officials tasked with enforcing the law. Inasmuch as he does not get fined he feels like the authority is granting him a favor, which he has to repay and maintain through granting the state representatives favors in return (free meals, cheap or free fish, silence when witnessing abuse, etc.).

## DISCUSSION: CONTROLLING TERRITORY AND RESISTING CONTROL

So far we have focused on fishing because of its centrality to life in the Delta. But the formal system does not only criminalize informal practices related to fishing, it criminalizes most subsistence economic activities predominant in the region. For example, after powerful storms come through the area—a relatively common occurrence in the cold seasons—driftwood

is washed on the wide sandy beaches of the village. Villagers gather this wood to use for heating during the winter. Technically speaking, this is not allowed, because the beach is in the administrative territory of the Biosphere Reserve, and nothing can be removed or added to it. Similarly, boar hunting in the nearby forest is not allowed, for similar reasons. Allowing a cow to decompose where it died is also illegal, because it needs to be cremated by the owner, regardless of there being no facilities for doing this. Allowing cows to roam freely, which is in line with traditional husbandry in the area, also leads one into illegality, because cows know not the border between a strictly protected and a buffer area. Burning reeds, another traditional activity, is not allowed without a permit, which is never given.

We could continue through most of the villager's activities, but the point is that the current regulatory system has been incredibly successful at criminalizing traditional practices under the guise of protecting them and the environment on which they depend, while only making the step to incrimination relatively rarely. Locals know to always be on the edge of illegality, and this engineered state of affairs is a very good way of controlling the territory and exercising power. The sentiment of always being out of sync with the authorities is reinforced by the convoluted nature of the regulations affecting the villagers' activities and their poor communication in the territory. Most residents of the Delta do not know exactly what regulations they are supposed to follow, or what their exact content is—which is why the familial fishing permit gives rights to one quota on paper, and another one in practice. Locals have devised ways of circumventing the contradictory and overlapping regulations which are supposed to rule their lives. They fish at times when controls are unlikely, coordinate among each other via mobile phones continuously, and have developed an extensive informal system for carrying out banned activities. These range from fishing practices to grazing cattle in protected areas to gathering firewood from the beach.

Informal practices are a way for residents to resist the state. There is no political opposition to the state, but an attempt to live with it and in spite of it. And this is a considerable level of resistance, given that the state is, in the end, encouraging an exodus from the Danube Delta. In fact, it uses the complex web of regulation and the tool of illegality as a way to make it increasingly hard for residents to live there, so eventually expelling them. The mere act of enduring in an environment that is both ecologically challenging and administratively forbidding can be seen as an act of resistance.

After withdrawing most services to the population, the state granted locals the right to traditional economic activities, but these have nowhere been defined. There is of course a huge difference between what the locals themselves consider to be traditional activity and what the authorities regulate, de-legitimize, and criminalize. There is no local consultation for establishing what the right to traditional activities might entail, and therefore the state is seen as using its power arbitrarily at best, or as a tool for demonizing traditional activities at worst. Traditional activities as understood by locals are rendered illegal, as shown above, but are also vilified. For example, boar hunting is undeniably a traditional subsistence activity, but the authorities refer to it as poaching, which not only has an implication of illegality, but also has a connotation of immorality.

Similarly, on all other aspects pertaining to the residents' lives, no consultation is ever carried out. Fishing quotas or fishing tools are not determined in consultation with local fishermen, though they have acute ecological knowledge and are best placed to define their own needs. The switch, in the early 1990s, from state exploitation of resources to ecological protectionism, offered an ideal cover for the progressive marginalization of local informal practices. Among all of the various institutions with local authority, the Biosphere Reserve Authority looms largest. But the most important institution in the Danube Delta has a specific mandate to protect the wetland, over and above its inhabitants. We have shown that despite the inclusion of a guarantee to traditional lifestyles, in practice ARBDD criminalizes local practices. The environmental protectionism dominant at the ideological level in the Danube Delta functions as the perfect excuse for the criminalization of informal practices. In truth, it is much easier for external investors to operate in the Delta—for example, large tourist or agricultural companies based in Bucharest—than for locals.

It would be tempting to think of the convoluted system of regulations described in this chapter as the result of state incompetence. Our analysis shows that a more credible interpretation sees it as a deliberate way of controlling a marginal territory and inscribing it within networks of state power. If the regulatory system that chokes local practices is successful in deterring locals from living in their home, then the Delta is free for the taking for external powers. If the system in place does not manage to eliminate locals, it ensures that the only form of resistance they are capable of is survival. Being always on the edge of incrimination, locals are rendered politically innocuous.



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## Use of Language in Blurring the Lines Between Legality and Illegality

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### INTRODUCTION

This chapter focuses on the role that language plays in legitimating the process of hashish making, from its harvesting to its further sale, in the mountainous regions of north-east Kyrgyzstan. During the late Soviet era, local people were not involved in hashish making and *nashakur*<sup>1</sup> were socially stigmatised; my study, instead, aims to provide a context for understanding how ordinary people had become part of the illegal drug economy since the beginning of the 1990s, the time of Kyrgyzstan's emergence as an independent post-Soviet state. My focus on local hashish harvesting, even though it was not made on an industrial scale such as hashish in Morocco (Decorte et al. 2011) or heroin in Afghanistan (UNODC 2011: 45), has allowed me to concentrate on the issue of how an illegal activity can become part of the local culture (Botoeva 2015) and economy (Botoeva 2014).

<sup>1</sup> *Nasha* [hashish] user.

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The current paper further argues that language has played an important role not just in neutralising the illegal nature of hashish production but in transforming the meaning of hashish harvesting, which allowed people to reflexively question the illegality of this practice. I argue that the words used in describing the different elements of the hashish economy in Toolu not only disguised the illegal nature of hashish making, and therefore neutralising the feelings of guilt (Sykes and Matza 1957), but that the naming process allows for a re-interpretation of the illegality of hashish making and helps form new interpretations rooted in the local moral system. Words taken from everyday culture, without negative connotations and links to the criminal culture, are used by people to transform the meaning of hashish harvesting, shifting it from illegal and negative into a grey area, where it could be socially accepted (Heyman 1999). The ‘grey area’ between legal and illegal practices is the framework that lets us to develop a nuanced approach to il/legality and suggests that it is not always possible to separate the legal from the illegal and therefore clearly demarcate the boundaries between them.

In other words, the notion of what is legal and illegal, stated and formalised by states, can be contested by other actors. Various studies have demonstrated how illegal practices, despite the pressure from the states and relevant social control institutions, can be legitimated by the population (Galemba 2008; Galemba 2012; Webb et al. 2009; Westermeyer 2004). The activity could still be illegal, as many groups that practice illegal activities do not hold powers to change and revise the law according to which their actions are outlawed, but could be considered as socially accepted by certain groups of population. Such social acceptance of illegal practices could be seen as a form of a moral economy as they base their judgements on moral principles of what justice means for them (Engwicht 2016; Thompson 1991; Scott 1985). These principles could be based on local cultural values and contradict the state’s definition of illegality. Although many groups involved in such acts of resistance cannot transform the criminal justice system, they engage in local acts of transformation of the meaning of il/legal.

In the next section, I will first introduce my methods of data collection and then discuss the use of language in developing a legitimating narrative for harvesting of cannabis plants in Toolu. I will pay close attention to how specific words such as ‘kara-koi’, ‘work’ and ‘Kumtor’ are used in naming particular aspects of hashish harvesting, and locating and legitimising the practice as part of a local moral economy.

## RESEARCHING HASHISH HARVESTING

Before I started my fieldwork, I decided to conduct my research in the Ak-Suu or Tyup administrative districts of Issyk-Kul oblast as they had larger areas of wild-growing cannabis on their territories compared to other regions (Zelichenko 2003) and more of the local population involved in the production of hashish. According to the survey that mapped the areas with wild-growing cannabis plants conducted by the law enforcement with the financial assistance of the UNODC (United Nations Office on Drugs and Crimes) at the end of the millennium, the largest areas of wild-growing cannabis were found in Djeti-Oguz, Tyup and Issyk-Kul administrative districts of Issyk-Kul oblast—with total of 1931.6 hectares of wild-growing cannabis comparatively to 278 in Djalal-Abad and 94 hectares in Talas oblasts (Zelichenko 2003) (Fig. 4.1).

During the summer of 2005, I spent three weeks conducting interviews in different villages of Tyup. When I returned for some more fieldwork in 2009, I started in the Ak-Suu district and moved back to Tyup again, where upon I decided to ground myself in one village. It was Toolu village where I spent most of the time between July and December of 2009, and July and September of 2010. In 2005, I collected more than 20 interviews. In 2009 and 2010, I collected and recorded 64 interviews. All of



**Fig. 4.1** Administrative map of Kyrgyzstan. (Source: Taken from the World Factbook site, <https://www.cia.gov/library/publications/the-world-factbook/docs/refmaps.html>. Last accessed on 15 Oct 2018)

these interviews lasted between one and one and half hours. Some of the interviews, with the key participants, were conducted repeatedly, three-four times to enable to clarify some questions. Overall it took ten months to conduct my fieldwork in different locations of Tyup.

One of the challenges of doing fieldwork was related to the illegal nature of hashish production. As many ethnographic studies focused on drug markets reported, the illegal nature of drug production and dealing made it difficult to collect data at the initial stages (Adler 1993; Bourgois 2003; Morales 1996). Gaining trust was not a straightforward process as people were cautious, sometime suspicious of being asked about hashish making. It took some time for people to understand that my role was not to inform law enforcement officers about illegal drug harvesting, but to gather information for academic purposes. Ethnographic fieldwork remained the best methodology to collect the data on an illegal hashish harvesting as it provided me with the space and time to develop trusting relationships with my main gatekeepers and their networks of friends (Adler 1993; Calderón 2016). Ethnography was also the best method to learn about the complex nature of social relations and the meanings that the social actors ascribed to their world (Dwyer and Moore 2010). This method allows the researchers to get outside of existing social theories or perspectives that especially dominate the field of drug studies and allows us to look at the phenomena from a different alternative perspective (Ibid 2010). Therefore, this methodology allowed me to gather the local voices and narratives on hashish harvesting which become the core of my argument in this and other papers (Botoeva 2014, 2015). While conducting an ethnographic fieldwork I had various opportunities to observe the everyday village life, listen to the conversations that people had in their everyday interactions. As my fieldworks were mainly conducted during the summer and the autumn, the hashish harvesting seasons, many people talked about hashish, shared information for selling it and strategies of avoiding militia officers with each other. My findings about the use of language in re-interpreting the meaning of cannabis crops and hashish making derived from different sources: conducting interviews with various people in the village, listening to conversations during the informal social gatherings and formal meetings, even talking to people on popular streets where everybody meets and greets each other. Thus, an ethnographic fieldwork allowed me to triangulate the methods of data collection and listen to how people responded to my questions about hashish making in the interviews and how people referred to it amongst one other as in a lot of cases the

price of hashish or arrangements for getting together to make hashish in the fields were done in their everyday interactions on the streets or social gatherings.

To ensure that the research respected the participants and the data collected followed ethical principles, I asked for the consent of each participant before starting the interview process (Madison 2011: 129). I have conducted interviews only with those people who gave their consent to take part of the study. Prior to receiving their consent I explained in detail the aims of my study and that the information they share with me would be kept confidential.

At the end of my fieldwork I had a variety of different types of data to analyse. I had digitally recorded and had written down interviews with people, as well as copious observation notes which were collected during the fieldwork. All the data which I gathered was in Kyrgyz language. The fact that interviews were conducted in Kyrgyz did not create many practical and epistemological concerns due to ethnography being focused on using interviewees' own concepts from the beginning of the project (Gobo 2008: 197). Following this approach, I learned during interviews the local concepts and was able to use them in the analysis. During the analysis I matched them with second-level concepts developed in the literature on illegal economies and legitimization of illegal practices.

### CONTEXTUALISING HASHISH HARVESTING IN TOOLU

Certain drugs, such as cannabis and opium, have been present in the territories of Central Asia for a long period of time. Opium was used as a traditional medicine before the beginning of the twentieth century (Madi 2004). However, drug use and production in pre-Soviet (before 1917) societies remains a blind spot in the existing literature. However, the literature reveals that between 1916 and 1974, the territories of what is now one Issyk-Kul region of Kyrgyzstan were used to cultivate opium plants to produce morphine for medicinal purposes (Djakishev 2004). The cultivation of opium in Issyk-Kul region started in the midst of the First World War when Imperial Russia found itself cut off from its opium supply from Turkey. However, the demand for morphine remained and it was decided that it would be produced within the territories of the Russian Empire,

specifically in Turkistan region (Ibid 2004).<sup>2</sup> Later, the successors of the Russian Empire, the leaders of the Soviet Union, decided to retain the production of medicinal opium within the territory of the Kyrgyz Soviet Socialistic Republic (Kyrgyz SSR) until it was believed that it was influencing the trafficking of opium to China (People's Republic of China) (Zelichenko 2003). This region was highly important, as it used to collect 88 per cent of the opium produced in the whole Soviet Union, and 16 per cent of opium in the whole world at that time (Djakishev 2004). Therefore, Issyk-Kul region had a long history of official drug production, which significantly accounted for the employment of a large amount of the local population in the first part of the twentieth century.

After the decision was made to stop the cultivation of poppies in the Kyrgyz SSR the law enforcement sources informed about an increase in production of hashish on the territories of Issyk-Kul region. Starting from the 1970s, this region was popular for harvesting cannabis as it had large territories of wild-growing cannabis plants, which contained higher tetrahydrocannabinol (THC) than in other regions of the country.<sup>3</sup> Law enforcement agencies also reported that mainly people belonging to the criminal underworld were involved in harvesting hashish and marijuana during summer seasons, and transporting drugs to other countries of the Soviet Union. The local population was mainly busy with the agricultural work provided by the state kolkhoz and sovkhoz farms, growing wheat, barley, potatoes and other agricultural products. However, the demise of the Soviet Union and the consequent collapse of the economy changed the situation. People that found themselves with no jobs, and subsequently with no salaries, turned to hashish harvesting as an illegal but alternative way of earning some money (Botoeva 2014). However, it was still not an

<sup>2</sup> Poppies were cultivated around the Issyk-Kul of Turkistan region which happened later to become part of Kara-Kyrgyz Autonomous Oblast within the Russian Socialist Federative Soviet Republic (RSFSR) in 1924, Kyrgyz Autonomic Republic within RSFSR in 1926, Kyrgyz Soviet Socialistic Republic in 1936 (Djakishev 2004; Amanaliev 2004), and the Kyrgyz Republic independent from the Soviet Union in 1991.

<sup>3</sup> Wild-growing hashish was a constant feature of parts of the Kyrgyz countryside. In 1974, 2500 hectares of wild-growing hashish were detected, and, in 1984, the identified area increased to 4000 hectares (Amanaliev 2004). In the late 1990s, a programme funded by the UNODC (United Nations Office on Drugs and Crimes) conducted a survey mapping the areas of wild-growing cannabis plants. It found 8322 hectares of wild-growing cannabis in Kyrgyzstan alone (Zelichenko 2003).



easy process and it required them to learn to overcome their own negative view towards hashish harvesting. Instead of cultivating and therefore increasing the production of drugs, people continued to harvest hashish and marijuana from the wild-growing cannabis plants, as plants could be found growing on almost any uncultivated patch of land (Fig. 4.2).

People could find them around the edges of small plots of land between houses, in larger fields outside of the village and higher in the mountains near sheep barns. Harvesting cannabis leaves was done without use of any technology, by rubbing the upper leaves of the plant between the palms, to gain the sticky dark substance. When the substance was thick enough they would peel it off from their hands and put into used small match-boxes, which worked as a measuring unit. This technique of gathering hashish was also useful in the process of re-naming of hashish and its later legitimization, which is the focus of the next part of the chapter.

### RE-INTERPRETING HASHISH MAKING IN TOOLU

As well as the hashish-making process, different names with various symbolic meanings and ways of interpreting them are ascribed to hashish itself. This has occurred over a comparatively short period of time—within the last 25 years. The early years of hashish making, during the 1990s, is mostly linked with the attempts to move away from the negative connotations that hashish has had and trying to locate it within local cultural values. The names given to hashish itself and hashish making do not only hide their illegal and immoral nature, but also reflect the role that hashish subsequently assumed in the local economy and culture. In the case of



**Fig. 4.2** Cannabis plants and hashish harvesting. (Source: Fieldwork pictures, summer of 2009 and 2010)

hashish, people knew that it was illegal to make it but they could not simply claim that it was ethical because it did not have any cultural or religious significance, as is the case in India, Latin American countries and Africa where coca and opium are locally consumed and/or used as part of local religious rituals (Allen 1999; Coomber and South 2004; Smith and Thongtham 1992).

Here the process of re-naming of hashish should be understood in relation to how hashish has been perceived by the local population prior to the country pursuing a new economic trajectory after the demise of the Soviet Union. During the Soviet times, as most of the people were employed as kolkhoz workers and there was no economic necessity to make extra money, people mainly followed the legal approach to the drug with some occasional hashish makers being called drug addicts. However, the early years of independence meant that state-owned assets were all privatised, and land, livestock and technologies that used to belong to kolkhoz farms were distributed among the population in the region. This economic transformation did not go smoothly for kolkhoz workers and many working in the agricultural sector experienced a rapid decline in their quality of life and therefore an increased necessity to supplement their agricultural work with some alternative ways of making money. In this particular region, hashish making became one such alternative to income diversification for households. Although most of the local population were not involved in this process during the Soviet times, some groups from other regions of the country and even other republics of the Soviet Union used to be commissioned to prepare cannabis and hashish resin during the summer months. However, economic hardship often induced whole families, including the elderly and children to go to the fields to learn how to extract resin from cannabis leaves. This quick shift from the non-acceptance of hashish and the stigmatisation of hashish users towards families making hashish openly required contextualising in terms of the feelings this produced. In the early years of involvement of local people in harvesting the drug, re-naming hashish therefore, could be seen in light of the 'neutralization' strategy (Matza 1964). According to Matza (1964), language is an excellent tool, not only to hide the practice of an illegal activity from other people but also to help someone to believe that the activity in which an individual is involved is not wrong. This strategy is used by people when they are unable to deny the fact that they are involved in an activity that is considered as illegal but instead try to interpret it differently. This framework allowed to understand how delinquents used different

techniques in suppressing their feelings of guilt and let them hide from other people what they were involved in.

In the case of hashish makers, the agricultural nature of their everyday work allowed people to come up with some neutral words that have been commonly used when referring to hashish harvesting. In many of my conversations people would say 'I went to the fields', 'let's go to 'arkybet' [the other side of the hill], 'let's go to the mountains' or 'let's go to the forest'. As mentioned before, little matchboxes were used to shape the hashish for measuring purposes, the neutral word 'matchbox' become almost identified with hashish in certain conversations.

The law enforcement played a big role in the re-naming of the cannabis plants and the harvesting of hashish. Most people and even the law enforcement officers that I talked to said that by the beginning of the mid-1990s, militia officers mostly tolerated people making hashish as there were not many arrests made.<sup>4</sup> However, in the mid-2000s, militia officers were much more present in the fields during the hashish-making season time starting from mid-summer till the beginning of autumn. They also started making more arrests compared to the 1990s. However, their strategy was more to develop an 'aura' of law enforcement (Dewey 2012; Watt and Zepeda 2012) rather than actually uprooting hashish production from the local economic and cultural system. This could be seen in their practice of demanding bribes from hashish makers and offering protection to some middle persons that made money by collecting hashish for drug dealers, and usually came from outside of the region. So, in order to hide their topic of conversation from other people and possible law enforcement informants, they simply started using the word 'it' to talk about hashish. On a number of occasions, I conducted interviews with people who made hashish and talked about the drug by using only the word 'it'. This can be seen in a number of quotes from across the interviews; in fact, many people talked about hashish, referring to *it*, without even noticing it.

However, 'neutralization' framework has its limitations as it focuses on the denial of responsibilities for breaking the law rather than on understanding the transformative power of re-naming which might question the

<sup>4</sup> Similar patterns of almost non-presence of law enforcement in the 1990s has been described by Paoli et al. in relation to drug trafficking in neighbouring Tajikistan (Paoli et al. 2007: 966).

status quo of the law. By mostly focusing on legal and illegal categories, it does not create the space for categories such as legitimate and illegitimate. Therefore, instead of arguing that the ‘neutralization’ was the end goal of re-naming hashish making, I propose that it has helped hashish makers to prepare the grounds for its further legitimation within the community at later stages. By locating hashish, for instance, in the culturally accepted and highly valued sphere of gift-exchange people were able to remove the negative connotation attached to hashish and move it from an illegal sphere to a ‘grey zone’ (Heyman 1999; Ledeneva 2006).

However, in order to analyse this specific practice of re-naming of hashish ‘kara-koi’, which can be literally translated as ‘black sheep’, we need to separate its meaning into two segments as the first word ‘kara’ makes references to cannabis crops, while ‘koi’ refers to the traditional system of gift giving, referring thus to a much more complex process of rooting hashish within the cultural values of closely knit family relationships. In a society which had century-long traditions in herding livestock, sheep was used as one of the traditional gifts that families with close ties used to give each other on big lifecycle events celebrating the birth of children, circumcision of boys, weddings and so on. However, in the 1990s livestock numbers decreased substantially because of its widespread slaughter or sale. Individual households found themselves not able to herd big numbers of sheep that have been privatised by the state following the steps towards the neoliberalisation of economy (Abdurasulov 2009; Steimann 2011). Despite the faltering economy, people continued to maintain their relationships with other families that formed their security network for hardship times. Because gifts were exchanged, especially between families, an unreciprocated gift would taint the reputation of the whole family. Gifts given at social celebrations allowed families to develop social ties with other people and obtain social status and prestige (Mauss 1990).

The practice of gifting hashish also coincided with the period in which traditional gifts such as livestock began to be replaced with cash, even though the importance of livestock did not deteriorate. In order not to violate the social order and be part of social life those with no livestock and no money at hand started taking hashish to social celebrations. While giving hashish they would whisper: ‘This is my “kara-koi” as a contribution to your celebration’. By referring to it as ‘kara-koi’ they not only re-named it as the conventionally expected gift but located it within the gift giving economy. This made it possible for some of the people to accept hashish as a gift.

Although, re-naming hashish as ‘kara-koi’ had wider and much more important implications than simply turning it into a gift. I understand this specific re-naming as a symbolic process which was used later for the legitimization of hashish making, as I heard many people referring to hashish as simply ‘kara-koi’ even though they were not going to use it as a present in social celebrations. Such acts played a huge role in making hashish acceptable to many people in the region: this highly symbolic re-naming of hashish to ‘kara-koi’ or ‘black sheep’ allowed it to enter the sphere of cultural traditions. Named as a ‘black sheep’, most importantly, it allowed for the location of an illegal activity among the culturally accepted, shifting from a ‘black and white’ division between legal and illegal and locating it in a ‘grey zone’ (Heyman 1999; Ledeneva 2006; Smart 1999).

On the other hand, such re-naming also conveys some uneasiness of accepting cannabis plants and hashish harvesting as totally moral. According to the local system of beliefs, cannabis plants and hashish, although not used directly by people and mainly harvested for sale, should be used with caution as money obtained from them could be ‘bitter’ (Shipton 1989), that is, money earned through selling morally prohibited products by the community, that could not be enjoyed and could not lead to wealth unless a cleansing ritual was performed. In the case of hashish makers, they should have been careful in making hashish but did not need to perform any cleansing rituals. Instead they needed to follow an agricultural work ethic first. For example, finish all their farming jobs before heading to the fields to harvest hashish. Secondly and most importantly, people should not be greedy and attempt to make a lot of money through hashish. Otherwise, the belief that most of the people shared was, their money would be tainted, which could bring more losses, financial and otherwise to their family. Calling and treating hashish making as their ‘work’ helped them to believe that they are not going to get the tainted, ‘bitter’ money by making hashish.

The re-naming process did not stop there and people that were involved in hashish making needed some more support in shifting its meaning from an illegal to a licit, more commonly accepted one. For instance, many people also started referring to hashish making as their work locating this illegal practice within the local work ethics (Galemba 2012). While conducting fieldwork, most of the men and women said that they were going to work when they were going to the fields to harvest cannabis plants. By calling hashish making as their work, people were able to invoke various aspects of ethics of the local moral economy (Thompson 1991; Scott

1985). First of all, calling hashish harvesting as work was important as the work ethic was rooted in the culture of farmers who were judged according to how well they looked after their land and livestock. This is linked with another interpretation of the work ethic: that it includes coping with difficulties and not waiting for help to be provided, either by other people or the state, which is encouraged by neoliberal economic policies and strategies implemented in the country from mid-1990s.

Secondly, by drawing parallels between the work of making hashish and the work done by older generations during the Soviet times, hashish making is re-interpreted as ethical, and the question about its illegality is posed. Tolubai, a man in his 30s, recalled hashish making at the beginning of 1990s, stating thus: 'Our parents used to cultivate poppies and collect opium. After the state stopped producing opium, they started cultivating beetroot and potatoes. Now kendir [another Kyrgyz name for a cannabis plant] emerged, coinciding with our own time' (Author's interview, Toolu village, August 2009). Furthermore, elaborating on this parallel and using the collective and individual memories of red poppies growing on the fields of state collective farms during the Soviet times, people were able to question the illegality of hashish making. For instance, Tolubai continued in his interview, 'What is the difference between their and my work?', which meant that all generations did not act differently from each other, they all worked and continue working on the fields and collect the harvest. It is mainly the state's interpretation that is different here.

However, much younger generation of hashish makers, in their late teens and early 20s, did not feel much the bitterness of hashish money. For instance, during my fieldwork in 2009–2010, I discovered that the younger generation of hashish makers started referring to the fields where they made hashish as 'Kumtor' after the 'Kumtor Gold Company' owned by the Canadian Centerra gold mining company, which has been extracting gold from the mountains located in the Issyk-Kul oblast since 1996. Again, although not all hashish makers were able to earn a lot of money, referring to fields as Kumtor created a symbolic association with gold and wealth. This particular practice of re-naming the fields full of wild-growing cannabis plants as 'Kumtor' demonstrates how for a younger generation it meant not only work but work that could bring wealth and success. Although, the majority still followed a work ethic in making hashish and did not make hashish day and night and forget about their other chores, some of the younger hashish makers interpreted hashish making as their way to becoming rich, similar to some drug producers in other parts of the

world (Steinberg et al. 2004; UNODCP 1999). Interpretation of hashish making as work allows them to still perceive it as ethical, which lets them to achieve the culturally desired goal of getting wealthy. In particular, re-naming the fields as ‘Kumtor’ does not contradict the general logic of legitimating hashish production in the village as this practice meant that the illicitness of hashish making could be concealed and moved to a grey area, where the illegal nature of hashish making became questionable as it provided people with work and subsequently with wealth.

## CONCLUSION

By exploring how people in Toolu village re-named and re-interpreted the meaning of hashish harvesting, I discuss the role of the language in the legitimization process of an illegal activity. This was possible by shifting the meaning from illegality of hashish making and locating it within the economic ethics (Galemba 2012) of the local population. Although the re-naming of hashish making is a useful strategy so as not to openly disclose their illegal activities, I argue that it is part of the wider process of legitimization of hashish within the community. It illustrates how re-naming hashish and hashish harvesting is not a simple technique of disguising this illegal practice from other people. It is also not just a simple technique of neutralising the social pressure and creating individual shields of protecting themselves from self-blame (Matza 1964). It is more a group process of re-interpreting the meaning of hashish, although still acknowledging that it is outlawed by the state, and subsequently licit.

On the one hand, re-naming hashish was used as a strategy to hide illegal activities from the law enforcement officers. While the population of Toolu was engaged in the local re-interpretation and transformation of the meaning of hashish making and its role within the local economic and social relationships, the state has started putting more pressure on people by locating this practice on the illegal side of the equation. The more visible presence of the law enforcement in the region and more arrests done in late 2000s have meant that people used different linguistic codes to hide the fact that they were making hashish. Still, the re-naming of hashish making is a much more complex process than just simply hiding the illegal nature of hashish making. It should be seen in light of ‘neutralization technique’ strategy used by hashish makers which, in turn, prepared the grounds for shifting the meaning of hashish making from an illicit to a grey area where the illegality of hashish could be challenged and questioned



rather than accepted. For instance, by locating the legitimisation processes of illegal hashish harvesting within the broader historical framework and linking it with the state controlled, legal drug production in the region during the early years of the Soviet Union this chapter allows us to understand how local responses to the law can be critical of the state's own practices and definitions.

On the other hand, the re-naming of hashish is not a static but rather a dynamic process with different names being used at different times. For example, 'kara-koi' has given way to 'Kumtor' over 15 years. It is also symptomatic of the changes that are taking place regarding ethics and morality that guided the everyday practices of Toolu villagers, as the older generation referred more to their right for work (work that does not necessarily makes someone rich) while talking about hashish making, and younger generation using the term 'Kumtor' referred more to their right to get wealthy. The latter is more in line with the values and at the same time of inequities created by the neoliberal market societies where the marginalised and poor 'can get an access to global wealth that they otherwise would not be able to reach' (Galemba 2012). Still, despite the fact that they acknowledge and use different economic ethics, such re-naming is done within the local moral economy that provides an overarching narrative that hashish should be socially acceptable in times of economic hardships and state not providing much help to farmers (Thompson 1991; Scott 1985).

This chapter, thus, highlights the importance of analysing the contributing factors for persistence of illegal economies, and especially focusing on the local population's perception of legality and illegality. It discusses how the construction of alternative narrative to the law is rooted in the local moral economic principles but at the same time a dynamic process inclusive of different groups of people. It also highlights that legitimisation of an illegal activity is not a straightforward process, where everybody accepts the activity as moral. Even the morality of the activity could be questioned, which requires an active interpretation and re-interpretation based on the moral understanding of the role of hashish harvesting in relation to the families' present and future well-being and socio-economic status. By focusing on key local concepts used in re-naming hashish, the chapter provides the cultural, historical and social context under which an illegal practice (Heyman 1999: 8) such as illegal hashish harvesting could become part of the rural agricultural economy. The re-naming of hashish and its harvesting among the people of Toolu, thus, should be seen as part



of a bigger process of turning it into a licit commodity and activity, thus locating it within the 'grey area' between legality and illegality. Local values and norms are used in embedding this activity within the moral economic relationships. The questioning of illegality of hashish happened within the local system of values and is also symptomatic of the changes and transformations that were taking place within the local culture that does not exist in isolation but rather in conversation with the changes and transformations taking place in the global world.

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# Mothers as Pot Legalizers: From Illegality to Morality in Medical Use of Cannabis in Latin America

*Luis Rivera Vélez*

## INTRODUCTION

Since 2014, mothers of sick children have become key actors in the debates around the reform of drug policy in Latin America. In Mexico, Chile, Argentina, Colombia, Peru, Brazil, Ecuador, and Paraguay, mothers were the driving force behind the shift toward regulation for the medical use of cannabis, which marked the beginning of a new chapter in the history of drugs in the region: for the first time in some Latin American countries, the production of narcotic drugs started being considered as having a beneficial potential for these nations marked by illicit traffic and an important war on drugs.

However, the mobilization of mothers seemed contradictory at first sight, because of the double judgment that was—and still is—weighed on cannabis. First, there is a legal condemnation that prohibits cannabis in the name of social safety (delinquency) and public health (addiction). Second, cannabis also suffers from a moral disapproval related to the loss

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of control that can induce its psychoactive effects. But after the discovery of the potential benefits that cannabis can have on their children, mothers strongly mobilized to claim a safe access to the substance, creating alternative health networks, non-legal and thus non-moral.

Thus, the mobilization of mothers advocated for the changing of the double judgment of the substance. First, mothers stood as legitimate health actors that could engage with treatment experimentation as their status of caregivers gave them the legitimacy to know their children and know what benefited them. Second, they contested the legality of prohibition because their only purpose was to cure their children and yet, giving a narcotic to a minor is considered an aggravating factor for a felony in all legislations on drug trafficking in the region, so mother's use of cannabis in their children could cause them to lose their custody.

By positioning themselves as defenders of cannabis, mothers questioned the illegality imposed by the states on the substance. Mothers did not see themselves as criminals, even if their practices were labeled as illegal. Thus, they became the most successful advocates of regulation because by mobilizing themselves, mothers questioned the moral condemnation of cannabis and, in doing so, allowed for change on its legal status.

The purpose of this chapter is to understand how mothers mobilized against the non-legality of cannabis defined by the state. Based on an investigation with policymakers, mothers, and other stakeholders in Argentina, Chile, Colombia, and Mexico, it became evident that it is precisely by engaging in illegal activities and developing informal networks that mothers acquired a "lay" expertise on cannabis, and could thus challenge the state. In short, it is illegality that gave mothers the tools to challenge the moral judgment that weighed on cannabis, and that led them to participate in the construction of public policies in favor of cannabis regulation.

What is paradoxical is that women, especially those representing the figures of wives and mothers, have largely participated in the production of the negative morality about drugs. A look at their compromise in the temperance movement (Gusfield 1955, 1963), or the program "Just Say No" to drugs launched by the US First Lady Nancy Reagan in the 1980s shows that women were concerned about preventing any kind of loss of self-control. And this protective view of mothers was wildly shared around the world. In 1985, for example, a huge convention against drug use was organized by the US organization Parent Resource Institute for Drug Education gathering more than 200 delegates from 30 countries, in which

17 first ladies of all around the world, including those of Argentina, Bolivia, Colombia, Ecuador, Mexico, and Panama met with Nancy Reagan to talk about drug use prevention (*El Tiempo* 1985). So the change that occurred after 2013 was important, because instead of condemning drugs, mothers started mobilizing for their legalization, considering cannabis prohibition more dangerous than its regulation.

After recalling the historical mechanisms that have made cannabis a legally and morally condemned substance, the chapter will attempt to show how mothers enter the illegality by creating illicit secret networks for the access to cannabis, at the same time that they publicized themselves to question this illegality. The chapter will conclude on a reflection on the effects of this mobilization of mothers in medical governance in Latin America.

### *Immorality and Illegality of Cannabis in Latin America*

The policy of drug regulation has a global philosophy. Designed at the beginning of the twentieth century, international drug control legislation was conceived to ensure the production of substances used in the pharmaceutical market, especially opium (McAllister 2000; Dudouet 2009). Economic interest as having control of the market, and social obligations like ensuring access to medicines, were therefore crucial to understand that double dynamic of the laws that put “the strictest controls [...] on organic substances - the coca bush, the poppy and the cannabis plant, [whereas] the synthetic substances produced by the North’s pharmaceutical industry were subject to regulation rather than prohibition” (Senate Special Committee on Illegal Drugs 2002).

However, drug control was also, and above all, a moral issue. Beyond its legal aspect, the consumption of psychoactive substances was very soon called “normal” if used for medicine and industry, and “abnormal” if used recreationally. The national stories on drug prohibition in some Latin American countries (Garat 2012; Campos 2012; Pérez Montfort 2015; Enciso 2015; Sáenz Rovner 2007; Mauro and Ramirez 2015) show that the first anti-drug laws in the region responded to the fear of social decay linked to addiction and delinquency (and hence violence) caused by drug use. Since the first years of the twentieth century, governments legislated in favor of punishment and compulsory treatment for all drug users outside of the medical system. The challenge was therefore to control the import and trade of alkaloids, opiates, and barbiturates by imposing strict

rules for physicians and pharmacies in the prescription and sale of these substances (Mauro and Ramires 2015; Garat 2012). This prohibitive view of drugs was not always shared and did not reach consensus,<sup>1</sup> but the immoral conception of drug use outside of medical world was a rule.

The question with cannabis is that, despite its widespread presence of the substance in Western pharmacopoeias, it did not benefit from a medicinal popularity for a long time. Unlike opiates, cannabis products were present in pharmacies but were not as often used (Becker 1966, p. 135). In addition, at the international level, a “moral crusade” was undertaken by the US in order to link cannabis smokers to “deviance”, associated with Mexican immigration and perceived as a source of immediate pleasure that produced a loss of self-control and condemned consumers to madness, delinquency, addiction, and hence, social exclusion (Becker 1966).

This crusade, started inside the US, rapidly moved to the international arena and was embodied in the international conventions that control drug production, use, and sale globally. Under the framework of the United Nations (UN), it is during the process of conception of the 1961 *Convention on Narcotic Drugs* that cannabis was judged negatively. As explained by D. Bewley-Taylor, T. Blickman, and M. Jelsma, “due to its inclusion in Schedule I, the Convention hereby suggest that parties should consider prohibiting cannabis for medical purposes and only allow limited quantities for medical research” (2014, p. 25). Therefore, even though medicinal cannabis was legally accepted, its uses disappeared little by little and the substance gained all its moral condemnation.

In Latin America, drug and narcotics legislations were adapted to fulfill the philosophy of the UN treaties, even if two other factors accentuated the legal and moral condemnation of drugs. In the 1960s, the explosion of drug use in the US, linked to the development of some subcultures and the hippie movement, resulted in the emergence of drug production and trafficking from and through Latin American countries. Thus, this evolution led to the gradual conception of the drug issue as a problem of national security linked to the apparition of the drug cartels. At the same time, the counter-cultural movement was also exported to Latin America, provoking an increase of drug use and a moral condemnation of the youth by the older generations. In this context, the labeling of cannabis as a poison for both individuals and society became evident in the region and was condemned by both the right and the (revolutionary) left.

<sup>1</sup> See, for example, the case of Mexico during the 1940s when drug use was legalized as a strategy of doctors to better treat their patients suffering of addiction (Enciso 2015).

In general, drug laws have tended toward convergence in Latin America (Corda and Fusero 2016). Criminal punishment has become the response to any drug-related action, from production to consumption, and especially for trafficking (Uprimny et al. 2012). Conversely, in regards to consumption, there has always been a debate about the need to penalize drug users, considering that a person cannot be punished by an action that does not affect another person, and that medical treatments for addicts are more useful than penal ones. Some countries have now decriminalized drug use, either by law (Mexico) or by jurisprudence (Colombia, Chile, Argentina) even if the criteria for its definition remain very heterogeneous across countries, in particular concerning the quantities of possession and the forms of supply of substances for personal consumption (Table 5.1). Only in Colombia and Chile the production for personal use is legally accepted. It is in this legal context that the rediscovery of the medicinal potential of cannabis has led mothers to enter illegality.

### ILLEGAL MOTHERS

It is very difficult to synthesize the conditions under which the families of these mothers who decided to give cannabis to their children lived. In general, and according to the numerous testimonies relayed by the press and the social networks, the children of these mothers are diagnosed as suffering from a rare disease (i.e. uncommon), linked to a refractory epilepsy, which also provokes extreme situations of handicap, very low quality of life, and virtually no life expectancy without medical support. Moreover, in Latin America, this physical condition is often combined with situations of socio-economic precariousness in countries with failing health systems and a very high rate of single-parent families. It is then in this context that cannabis presented itself as a “miraculous” help to the mothers.

In August 2013, CNN channel medical chief, Dr. Sanjay Gupta, in the US, decided to change his negative opinion on medicinal cannabis (Gupta 2009) after following the case of a little girl, Charlotte Figi, who stopped having 300 epileptic seizures per week thanks to cannabis. This case was not the first case to be mediatized, since the father recognized that the idea appeared to him in a similar case he saw on television,<sup>2</sup> but it had much more impact. First, the case was aired by CNN in the primetime

<sup>2</sup>This is the case of Jayden, a boy also affected by Dravet’s Syndrome, who was given cannabis by his father in front of the cameras of the reality documentary television series *Weed Wars*, aired on the Discovery Channel on December 8, 2011.



**Table 5.1** Legal status of cannabis in Latin America before 2014

<i>Country</i>	<i>Personal use</i>	<i>Production for personal use</i>	<i>Commerce</i>	<i>Providing cannabis to a minor</i>	<i>Medical use</i>
Colombia <i>Ley 30 de 1986</i>	Decriminalized (20gr) by the Supreme Court (1994)	Decriminalized (20 plants)	Criminalized	Criminalized with longer sentences (Art 37 and 38)	Allowed under special regulation (Art 3)
Chile <i>Ley 20.000 de 2005</i>	Decriminalized (except in public places)	Criminalized (tolerated by the Supreme court from in 2015)	Criminalized	Criminalized with longer sentences (Art 19)	Allowed under special regulation (Art 6)
Argentina <i>Ley 23.737 de 1989</i>	Decriminalized by the Supreme Court (2009)	Criminalized	Criminalized	Criminalized with longer sentences (Art 11)	Possible, but law is ambiguous (Art 9)
Mexico <i>“Ley de Narcomenudeo” 2009</i>	Decriminalized (5gr)	Criminalized (tolerated for one case by the Supreme Court in 2015)	Criminalized	Criminalized with longer sentences (Art 475)	Decriminalized (Art 477)

Source: National laws and case laws

niche of Sunday (August 11, 2013, at 8pm). In addition, the narrative of the documentary highlighted the almost scientific evidence of Charlotte's experience by recalling the parent's despair ("there was nothing more the hospital could do") and the special variety of the cannabis used ("not psychoactive"), as it was low in THC and rich in CBD.<sup>3</sup> In sum, these distinctions recalled that the use of cannabis was exclusively medical, a last resort—so not opposed to conventional medicine—and, above all, that the variety used did not cause a loss of self-control (Gupta 2013).

The press relayed this case very widely and, thanks to the social networks, it reached Latin America very quickly. However, in the region, the situation was different. Medical marijuana had been legal in some parts of the US since its first legalization in California in 1996. As a result, Charlotte's parents resorted to legal producers who could legally manufacture cannabis products. In Latin America, national realities were much more complicated. As we have seen, the production and especially the cannabis trade in the region were prohibited, and the importation of cannabis-based products was not regulated, even if it was not formally banned. Besides, for an average Latin American family, following a treatment in the US involves a high cost when compared to its income, without counting the difficulties of legally migrating to the northern country.

So mothers turned themselves to the local growers. Their main objective was to access a reliable substance, even if illegal, in order to experiment with cannabis on their children. This was difficult because the cannabis available on the black market, even if very easy to get, does not meet the two minimal requirements for medical use: a production certified free of chemicals, and the specifications about the strain of the plant and its levels of CBD and THC. In all the countries, mothers therefore connected with the cannabis movement, although the strategies of getting the substance were different according to the gray areas existing in every country.

In Chile, the first Latin American country where the issue of medicinal cannabis became important, it was the Daya Foundation that organized the strategy. On the one hand, the foundation launched a partnership with

<sup>3</sup> "Tetrahydrocannabinol (THC) is one of the key psychoactive components of cannabis [while] the other key component in cannabis, cannabidiol (CBD), has powerful antipsychotic and anti-anxiety properties" (Bewley-Taylor et al. 2014, p. 19). These are the most known cannabinoids, or chemical compounds in cannabis. R. Mechoulam and Yechiel Gaoni isolate them in 1964. For more information about the chemical compounds of the cannabis sativa plant see Mechoulam (2005).

the small municipality of La Florida to start a cannabis plantation for experimental medical research and thus began giving cannabis legally to patients enrolled in this research, mostly adults needing palliative care. On the other hand, and taking advantage of this legal screen, the organization engaged with the mothers in a strategy in favor of domestic cultivation through the sharing of information and experiences. Indeed, the practitioner responsible for the legal plantation is very close to the Chilean cannabis movement and helped the Chilean mothers to empower themselves through the production of cannabis-derived products at home.

Chilean mothers formed thus a new foundation, *Mama Cultiva* (Mother Grows), which started claiming the right of mothers to produce their own medicine. This solution was viable in Chile because, since 2015, the Chilean Supreme Court recognized that the mere possession of cannabis plants was not susceptible of incrimination, creating a legal vacuum with regard to home production, even if the supply of cannabis to a minor were still condemned by law. *Mama Cultiva* positioned itself as an advocate of the right to use cannabis as medicine, becoming thus one of the major actors for a drug policy reform in Chile and in the region, inspiring and forming similar groups in neighboring countries. Today the association counts branches in six Latin American countries that claim for the right to the legalizing the production for personal use of cannabis, as a way to minimize the importance of traditional pharmaceuticals in the development of this new market.

In Colombia, the situation was different. While cultivation for personal consumption up to 20 plants was legally allowed, Colombian mothers did not use this comfort zone. Conversely, the first doctor that first accepted to treat children with cannabis opposed herself to letting each mother produce her own medicine. Actually, she declared to have created an illegal network for the access to safe cannabis, where mothers could meet local growers credited by her. Thus, the physician stated that she searched for some illegal cannabis producers who were already producing cannabis-based products and, thanks to some of her adult patients, got into contact to them with the purpose “of identifying what their production techniques were, from the seed to the mouth of the patient” (personal interview, 11/11/2016). Even if juggling between legality and illegality, the doctor declared that the most important factor to her was to put “ethics as a paramount principle”, so cannabis-based products were as reliable as possible in the context of illegality. This is how a network of access to cannabis was formed: the doctor gave the prescription that justified the use of the

substance, the producers made available the products according to the strains and the ratios of CBD and THC recommended by the doctor, and the mothers undertook to follow the recommendations in order to create a register of the evolution of the patients, creating thus a data collection base of evidence around cannabis use for medical purposes in Colombia.

In Mexico, access to cannabis was much more heterogeneous. As in Chile or Colombia, some mothers decided to cultivate their own plants while others approached growers within the cannabis movement in order to obtain a substance of quality, and often at a very low price. But due to the illegality of cultivation even for personal use, many families preferred to use the cannabis-based products legally available in the US. For example, some of the mothers decided to cross the border to buy the products, violating the legislation on drug trafficking when bringing the substances back to Mexico. Others, on the contrary, turned to the courts to find a temporary permit to import these products, thanks to the help of doctors who argued about the exhaustion of alternative treatments available in the country, and lawyers advocating for a drug policy reform which saw in these cases an opportunity to mediate their claims. The most famous case was the one of seven-year-old “Grace”, the first Mexican patient to have obtained such permits (Benavidez and Elizalde 2016).

In short, mothers became illegal producers and users of cannabis. But in so doing, they become cannabis specialists: they learned to know the different strains, their chemical components, and their effects. This empowerment was achieved through parallel networks of support, kept secret very often, even for people very close to the family, and functioning thanks to the anonymity that digital communications allow. As one Mexican mother put it, “at first, everyone was afraid to use cannabis in children, but we did it because we had nothing left to lose” (personal interview, June 13, 2017). Thanks to the help of some brokers (doctors and lawyers), mothers could link themselves to the cannabis movement. A movement often forgotten in drug historiography but which has existed at least since the end of the twentieth century (Hernández Tinarejo et al. 2013; Quesada et al. 2008) and has built transnational networks to preserve the plant of cannabis—thanks to the creation of seeds banks—and to claim its “freedom”—through public demonstrations all around the world in what is called the Global Marijuana March.

Witnesses of the positive effects of the plant on their children, mothers in all countries declared themselves to feel being trapped in a double exile. A medicinal exile linked to the lack of “official” information given to them

in the traditional health systems; and a legal exile linked to the use of the illicit substance in which they were forced. It is this situation that drove mothers to mobilization in favor of a change on perception and legality of cannabis. As they took the stand to challenge the immorality of the plant in public arenas, mothers became “moral entrepreneurs” (Becker 1966). As they permeated the political debates, taking the floor as lay experts, mothers became “policy entrepreneurs” (Cobb and Elder 1972; Kingdon 1984). And at the end, they become responsible of the recent evolutions on drug policy in Latin America.

### *From Illegality to Morality of Medical Cannabis*

Mothers became very good advocates because their voice had a direct impact on public opinion and consequently on policymakers. The figure of the mother or the family is not a common figure of collective mobilization, but it has a particular force. Whether in the *Madres de Plaza de Mayo* movement (Bosco 2001) or the movement against pedophilia (Boussaguet 2008), mothers have been lay advocates, that is to say non-expert actors in either the field of their claims or the political arena. However, mothers have been able to take the floor, and have succeeded to be listened at because they defended their families and their communities with demands growing “from perceptions about concrete reality rather than from abstract rights” (Kaplan 1990, p. 259). This turns mothers into privileged claim-makers because their expertise is based on firsthand evidence and their emotional narratives are usually real and credible.

According to the Felstiner, Abel and Sarat’s model (1980), mothers were able to construct a public problem *naming* cannabis prohibition as a restraint for the access to health, *blaming* the state for the inefficacy of its policy and *claiming* for a change of the law. By doing so, mothers became, as a drug policy reform activist in Chile declared, the “armed wing” of the drug policy reform movement. They renewed the face of cannabis legalization promoters by fulfilling a number of characteristics that traditional advocates failed to attain. On the one hand, cannabis legalizers who spoke at the public mobilizations were usually young people, often of masculine identity, users of the plant for psychoactive purposes and adopting an “alternative” look that could easily be spotted on the street (Hernández Tinarejo et al. 2013; Quesada et al. 2008). On the other hand, the emergence of the advocacy movement in favor of the drug policy reform since the last years of the 2000s brought into the scene young professionals in

law and humanities who helped to renew the narratives, arguing the failure of the war on drugs and the human rights abuses, but failing to invoke feelings and emotions in their audience. Their media impact was therefore much less important.

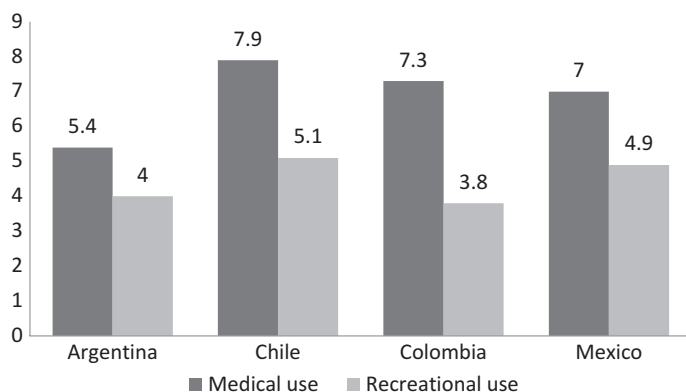
The narratives used by mothers, on the contrary, have been based on experience. At first, the mothers appear desperate and having nothing to lose. Moreover, they presented themselves as converts, having discovered the potential positive effects of the substance by surprise. This allowed them to argue that even if cannabis could be considered a psychoactive *drug*, this does not invalidate its positive effects as *medicine*, in some circumstances. Using a narrative of the last resort, precaution, and discovery, parents touched the sensitivity of those listening to their cause by referring to the possibility that such a condition may happen to everyone. However, it should not be forgotten that the interest of the media also provided a protective role to mothers, because the unscrupulously publicity of their cases was lived by the mothers as a way to minimize their risk of incrimination, covering behind the incredible support that their cause rose. Even when the media treated their cases reluctantly, mothers benefited from a particular interest, which contributed to make their claim visible.

In parallel, following Boussaguet's study (2008) on the mobilization of families and women against pedophilia, we can argue that it is the lay identity of mothers that helped them win a special space among experts. With the help of more traditional advocates, mothers took advantage of their status to claim their demands loudly and trustingly, founding their arguments on their experience and highlighting the urgency of a state action. They participated in seminars, conferences, media platforms, and went to concerts and stadiums to give lectures to large audiences. For example, the first cannabis fair in Colombia (*ExpoMedeWeed*) and in Mexico (*ExpoWeed*) were held in 2016 around the medical use of cannabis, and in Chile an autonomous international conference on the issue was launched since 2015 (the *International Medicinal Cannabis Seminar of Santiago*). Equally, in Chile and Argentina, mothers came to lead the Global Marijuana March since 2016, and became important spokespersons for cannabis policy reform claims.

Thanks to their mobilization, the issue of cannabis became a national debate in Argentina, Chile, Colombia, and Mexico. These national debates were very important because they helped to inform a broader population about the cons and pros of the discussions, and thanks to the empathy their stories provoked, the number of supporters of a policy reform grew.

As Mendiburo-Seguel et al. (2017) show, the majority of people in these countries now think that therapeutic use of cannabis should be legal (Fig. 5.1). Additionally, more than half of the population now believes that cannabis use should be an individual right, even if the majorities usually think that recreational use of cannabis should not be legal. Furthermore, what is surprising is that in these countries, the “average score [of the perception of cannabis as a risk] is lower than for both alcohol and tobacco” (*idem*: 11). It is difficult to establish a cause-and-effect relationship between the mobilization of mothers, the opening of national debates, and the change of public opinion, but some hypothesis can at least be made in this sense, since this perception is not shared throughout the region. In Peru, El Salvador, and Bolivia, where similar debates did not gained the same importance during the same period, perceptions of cannabis continued to be predominantly negative (*idem*).

With this change in the moral perception of cannabis, mothers succeed in putting the issue of cannabis regulation into the political agenda. By changing the narrative of their claims, the mothers started “talking like the state” (Gootenberg 2005). They have contacted the public authorities by calling for safe and economical access to the substance and for further scientific research on the subject. And in reality, their demands were very quickly taken into account. In all countries, both the public administration



**Fig. 5.1** Average support (in 10-point scale) for the legality of therapeutic and recreational use of cannabis. (Note:  $N = 8696$  in Argentina, Bolivia, Chile, Colombia, Costa Rica, El Salvador, Mexico, Peru, and Uruguay; Source: Adapted from Mendiburo-Seguel et al. 2017)

and the judiciary took the side of mothers, allowing the importation of CBD-only products, legally available in North American and European markets. In addition, judges in Argentina, Mexico, and Chile immunized mothers against law enforcement, allowing the use of the substance in their children, and in the case of Chile, declaring the non-criminality of home production. In Colombia, it is the government that decided to issue an executive order regulating medicinal cannabis, making use of the competence given to it by the 1986 law.

Despite this reactivity, the solutions given to the mothers were not satisfactory in the first place. Indeed, the price of products authorized to import remained very high for Latin American families, especially when compared to the prices proposed by local growers. Moreover, the variety of products was very limited, thus restraining the access to the different ratios of the active ingredients and to the diverse ways of administration that the plant allows, being an essential factor for a good result of the substance. Also, and most importantly, real legal access continued to be rare, as permits for import and use were subject to a rather heavy bureaucracy and paperwork. Only in Chile local production was allowed, but this legal access was reserved for adults enrolled in clinical trials.

This is why mothers soon turned themselves to the political arena. Realizing that real transformation was only possible through the change of existing legislation, mothers decided to mobilize themselves in parliaments. In all countries, access to this institution was easy because congressman and congresswoman, in favor of a drug policy reform, were already in power. Besides, the broader legalization movement already had allies to translate demands into political inputs—such as policy briefs, explanatory notes, hearings, and even legislative bill drafts. But despite this access, majorities to pass laws were not assured because of a reluctance of conservative political groups.

The strategy of mothers to bypass this opposition can be characterized as having a common—transnational—strategy of advocacy but being constrained by the domestic realities. The main argument used in all the countries, of course, was the one calling for an easy and safe access to medicines as a human right. But mothers' advocacy has also been about raising the economic benefits that a more effective treatment for their children could have in the healthcare system, because of the savings in intensive care hospitalizations that were very common for their children. In this sense, mothers called for the development of medical research on cannabis, and a national production that could integrate all the actors already



present in the production chain, especially local growers and producers. The reality of the debate was, nevertheless, framed by the national legal situation and the political context of each country.

In Mexico and Argentina, national production was seen with great reluctance and the debate centered on the issue of access to medicines. Despite the declarations of unconstitutionality of the prohibition of the consumption of cannabis for recreational purposes by the Supreme Courts in Argentina in 2009 and in Mexico in 2015, the laws finally approved (in Argentina in November 2016 and in Mexico in March 2017) accepted only imports and scientific research that if fruitful could lead to a possible domestic production. In order to convince the most fierce opponents, the mothers of the two countries needed to use the support given to medicinal cannabis by priests very close to Pope Francis I in the Argentinian Episcopal Conference, who claimed for an “access to [cannabis-based] medicine, provided free of charge by the State” (*Conferencia Episcopal Argentina* 2016).

In Colombia, both the government and the parliament agreed on the necessity of regulating the production and use of medical cannabis as a possibility to develop an industry capable of becoming a sector for economic growth (Rivera Vélez 2017). Thus, special protection was put into the law of May 2016 to the small and medium-sized Colombian producers, defended by the mothers as being those truly supplying the medicine to their children. Similarly, in Chile the law has not yet been approved, but because of the very strong pressure exercised by mothers, it seems difficult that a law without permitting a home production of cannabis could ultimately be accepted.

Despite the differences in policy outcomes, political support for these regulations has been unprecedented. On the one hand, the presidents of all these countries gave their support to the regulation and within the parliaments the approval had (almost) been unanimous.<sup>4</sup> This is how mothers gradually become “policy entrepreneurs”: while in Latin America the issue of drugs has been traditionally framed as a security problem, because of the relationship between drugs and violence (Hopenhayn 2002), mothers managed to change the narratives around the debate on

<sup>4</sup> As an example, in the Mexican Senate the vote of December 2016 had 98 yeas versus 7 nays (1 abstention). In Argentina, the last vote of the law at the Chamber counted 220 yeas versus 0 nays (1 abstention) in November 2016. In Colombia, the last vote of the law at the Chamber had 84 yeas versus 4 nays in May 2016.

drug policy and impose the debate in terms of personal and public health, invoking a defense of human rights and socio-economic alternatives. Besides, the change of narrative was a strategy that moved them away from the traditional claims of the cannabis legalization movement, which tried to impose the idea of drug use as a personal freedom and criticized the effects of the war on drugs in society (Uprimny et al. 2012; Global Commission on Drug Policy 2011). While these debates did not succeed in imposing a consensual alternative vision for the complete drug policy reform, the narrative of mothers proposed a pragmatic solution away from prohibition: the regulation of the therapeutic use of cannabis.

By changing the perception of cannabis, the immorality attached to the substance dispersed in favor of an increasingly acceptance. In short, it became politically incorrect to oppose the healing of a child, even through cannabis, and therefore the opposition to the therapeutic use of the substance lost its adepts and their arguments. In this sense, the change in the moral perception of the substance permitted a change in public policy: there is a passage from prohibition to regulation, which includes import of cannabis-based products (Mexico or Argentina), and local production, in the hands of pharmaceutical laboratories (Colombia) or—possibly—in terms of production for personal use (Chile). However, the relationship between the cannabis movement and the demands of mothers deteriorated with policy change. While mothers became protected by some legal rules, policy change did not address all the claims of the cannabis policy reformers and, on the contrary, it turned against the cannabis cultural movement, because negative perception against non-medicinal consumers and growers remained real. So despite changes in perception and numerous debates, the regulation of the recreational and/or industrial uses of cannabis remained outside the political agenda.

### CONCLUSION: THE IMPACT OF MOTHER'S MOBILIZATION IN MEDICINAL GOVERNANCE

Through their mobilization, mothers conceived a new approach to medical governance. Their apprenticeship in the illegality and their political construction of the problem of the prohibition of cannabis has inevitably led to an identity and institutional reconstruction, which is not legitimate in the traditional medical milieu because it calls into question the structure

of production and validation of medical knowledge. In some, illegality allowed for the discovery of a new medicinal treatment.

Traditional medical governance is centered today on the capacity to medical and pharmaceutical research to address the needs of the society, with a simple validation of public administrations (Tournay 2007). In other words, it is the health professionals who, through clinical trials within a peer-reviewed medical research community, are able to produce and validate the utility of a new molecule and/or therapy. And in this process, the state plays a controlling rather than a decision-making role, as it only carries out the certification that gives individuals and institutions the right to engage in standard practices and legitimate methods for the production of new knowledge. Public action in this sector is only responsible for the regulation of those who produce knowledge.

However, the mobilization of mothers in favor of the medical use of cannabis has challenged this role of the state, and more broadly of the governance system currently in place. By highlighting the possible beneficial effects of an illegal substance (cannabis), by pointing out the problems of internal legitimacy in the medical world (not legal, so not to be studied), by criticizing the access to health (prices of medicines too high), mothers put on the agenda an innovative medical governance that came from illegality. Yet, what recognition is of mothers as legitimate—but lay—partners in the production of knowledge, in a sector monopolized by “experts”? What authority is shared between those who take risks—even in illegality—and those who have the power today?

As Dominique Vinck and George Weisz (2007) point out, the idea of legal governance presupposes that the stakes of the parties involved are identifiable and commensurable. As a Mexican mother recalls, “the medicinal cannabis boom in Latin America is the result of a collapse of medical institutions and health services” (personal interview, 20/06/2017). So, to include the participation of the so-called lay actors, such as patients or mothers, does not only accept to give them a place in the knowledge-production process that could better adjust to their claims on solving a problem. On the contrary, it is a matter of redefining even why the problem existed in the first place. Thus the new governance should not only improve the participation of these lay actors, but reconsider the importance and legitimacy of the devices that enabled to reconstruct the problem, to evolve, and to develop new forms of action. Basically, the mobilization of mothers calls for questioning the illegality in which they are forced if willing to take care for their children, not only by accepting

the use of a new substance (cannabis) but also by demystifying some practices morally condemned to illegally.

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# Negotiated Prohibition: The Social Organisation of Illegal Gambling in Ukraine

*Anna Markovska and Yuliya Zabyelina*

## INTRODUCTION

In the 1970s, Jürgen Habermas critically addressed the concept of the *legitimation crisis* defined in terms of an identity crisis of institutions or organisations which thereby lose the capability to effectively function. Max Weber's assertion that the social order characterised by shared values, norms, and beliefs cannot be maintained without public recognition of that order has been most widely applied to situations where a state has not conformed to accepted principles, rules, and standards of statehood thus failing to hold sufficient power to exercise its legislative authority effectively. In other words, citizens start viewing state institutions, officials, or particular social or legal orders as being illegitimate. They evidence low confidence in political leadership and witness illegal, antisocial, and sometimes repressive state policies as being normal (Friedrichs 1980). The state

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consequently loses public support and becomes no longer capable of effectively enforcing its laws.

The public may, in some cases, resist the state by means of an uprising or through various other forms of civic discontent. In most cases, however, argues Habermas, the public acquiesce when politicians make unpopular decisions adopting the role of passive citizens—the situation that Habermas refers to as *civic privatism*. Popular involvement in public life in favour of *civic privatism* is characterised by political abstinence, an abdication of popular involvement in public life in favour of powerful institutions and groups (e.g., interest groups and individuals who control economic assets, information, etc.), and “expectation of suitable rewards within the system (money, leisure time, and security)” (Habermas 1975, p. 37). Such an expectation of suitable rewards can lead to the general acceptance of corruption, informal agreements, exchanges of services, and illicit market deals. In this way, the legitimisation crisis creates an environment, in which the public are reoriented towards and even encouraged to search for economic and personal fulfilment via private interests.

Beetham (2013, p. 15) criticises Habermas for failing “to give an account of the underlying structure and logic of legitimisation in general, which must form the necessary basis for an exploration of what is historically variable and specific” and questions Habermas’ claims for *legitimation crises*. Arguing that “a legitimacy crisis could occur when there is a serious threat or challenge to the rules of power, or a substantial erosion in the beliefs which provide justification,” he holds that the authority of a particular government may indeed be undermined by means of competing social and economic objectives, but this does not necessarily mean that support for that government’s rules is eroding (p. 168).

Beetham (1991) claims that the interactive and multi-dimensional character of the concept of legitimacy is very important, attempting to define the legitimacy of state power within the following framework: (1) The power of rules: power should conform to “established rules” (p. 16). (2) “Justifiability”: “the rules can be justified by reference to beliefs shared by power holders and public” (p. 16). (3) Actions: “evidence of consent by the public to the particular power relations” (p. 17). Lord (2016) argues that the concept of legitimacy will in effect be applied differently in different countries. In this chapter we suggest that “justifiability” (Beetham 1991) and “normative validity” (Lord 2016, p. 380) are crucial concepts in the understanding of legitimacy across different cultures.



In criminological studies, Tankebe (2013, p. 103) proposed the notion of a *legitimacy turn* based on the ground-breaking work of Tyler (1990), who argued for the importance of the issues of procedural fairness in establishing legitimacy. For Tyler (2003) “to be effective, ... laws need generally to be widely obeyed by members of the public in their everyday lives...In particular, people’s reactions to legal authorities are based to a striking degree on their assessments of the fairness of the processes by which legal authorities make decisions and treat members of the public” (p. 284). Bottoms and Tankebe (2012) further develop this idea to support what they refer to as “the dual and interactive character of legitimacy, which necessarily involves both power holders and audiences” (p. 119).

In this chapter we intend to mostly concern ourselves with legal order and its enforcement, aiming to examine the issue of the legitimacy of the state, and investigating the paradoxical co-existence of state laws with morality and crime—those social practices of living “in spite of” and “beyond” the state as described by Morris and Polese (2015). Living “in spite of” a state is understood by them as practices that do not generally comply with the instructions of the state whereas “beyond the state” are practices that attempt to regulate those spheres either avoided or not sufficiently regulated by the state (*ibid.*). Understanding such informal practices in the specific socio-cultural context of Ukraine will constitute the central theme of this chapter, contributing to the literature on enforcement and state legitimacy in those countries with a high level of corruption amongst officials.

We intend to develop the concept of *negotiated prohibition* and will situate our discussion of this social phenomenon within the context of Western understanding of legitimacy, morality, and the authoritarian state. We suggest that negotiated prohibition is an artificially imposed *de jure* prescription of accepted conduct that takes place despite a lack of common understanding between power holders and citizenry concerning why such accepted conduct is necessary or whether it can be effectively enforced. As a result, we maintain that there exists an informal shared understanding between power holders, banned service providers, and citizens as to how to avoid sanctions for engaging in prohibited conduct. In other words, a flexible form of prohibition exists where plasticity (or even culpability) is determined by the demand for illegal services and the willingness of different parties to negotiate their positions of interest outside the law.

Building on a 2016 ethnographic study that included a series of interviews conducted over a year with representatives of the gambling industry and the police, our study investigated the phenomenon of illegal gambling

in post-Soviet Ukraine. Our discussion of the different types of gambling establishments in Ukraine is accompanied by a historical and socio-legal analysis of gambling since the early Soviet period based on a review of relevant laws, secondary literature, and the news media. We extend our discussion of negotiated prohibition by considering the situation in which the state constitutes both “power holder” and “power offender.” We argue that negotiated prohibition, when considered in the specific political and socio-cultural context of Ukraine, encourages discretionary enforcement and thereby promotes *contrived legitimacy*, where power holders and offenders collaborate in mutually beneficial financial arrangements.

### LEGITIMATION CRISES AND INFORMALITY UNDER THE SOVIET REGIME

Discussing legitimacy issues arising in Communist systems, Beetham (2013) identifies two specific features. First, concerning the authority derived from two sources: (a) people, specifically the working classes; and (b) the doctrine of Marxism-Leninism that claimed to have an “exclusive knowledge of the conditions of evolution towards a communist future” (p. 181). Second, concerning the economy and the basic principle of public ownership related to centralised planning. Though some relative industrial progress was achieved through a planned economy, it suppressed “initiative and self-determination at the level of the enterprise,” leading to the development of a parallel economy (*tenevaya ekonomika*) (p. 182).

In the early 1950s, when the then Soviet Union was still recovering from the destruction of World War II, life was often difficult for the non-elite. To make ends meet, families were often prepared to engage in surreptitious economic activities. While the authoritarian state prohibited private enterprise and thoroughly regulated trade, the Soviet social reality provided many commercial opportunities for enterprising individuals. In an interview, one participant of the gambling industry recalled the way in which his family survived during the Soviet era in the late 1950s. In his family women were involved in the production of heavy-duty winter jackets for sale in the black market, this occurred even under the constant threat of police raids and possibility of criminal justice sanctions. To reduce the risk of discovery, his family placed sewing machines in the room furthest from the entrance to the house, and their children were instructed to sit on top of fabrics stored in the bedroom if police officers arrived to search the premises. Without this clandestine activity, he stated,

the household would have starved as their cumulative official income would barely cover their most basic living expenses.

Under the Soviet regime, the Communist Party heavily regulated all forms of ownership and criminalised private enterprise. Simis (1982) notes, however, that the ban on private property was not always enforced and was often challenged by Soviet citizens. “[T]he simplest way to become a millionaire in the Soviet Union,” Simis suggests, was “to become the owner of a factory or workshop which produces easily saleable merchandise: for example, ladies’ underwear, meat *pirozinki*, fashionably tailored artificial leather jackets” (p. 110). In point of fact, many illicit private enterprises operated alongside state factories. In order to succeed in doing so, they needed “money and connections in the underground business world” (ibid., p. 110) as well as “friends” in the party elite (police, courts, senior-level state officials). As one scholar suggested, “the soviet system probably could not have survived for as long as it did without illicit activities” which were “an essential lubricant for the rigidities of the planned economy” (Smith 1984, p. 86). An informal economy was in effect integral to the planned economy—“sometimes complementing it, sometimes hindering it directly, sometimes competing with it” (Sampson 1987, p. 122).

### GAMBLING IN THE SOVIET AND POST-SOVIET PERIODS

Conforming to the communist ideological agenda, the Soviet authorities attempted to control the social life and leisure activities of Soviet citizens. From as early as 1917, gambling and any form of gaming for that matter were condemned as *bourgeois* activities and thus were in contravention of the Soviet law. In November 1917, a decree of the Revolutionary Committee ordered representatives of the Red Army, revolutionary navy, and militia to enforce the gambling ban in the city of Petrograd (former name for Saint Petersburg) (Kovtun 2012). By spring of 1918, however, a proposal to legalise gambling was well received by officials concerned with raising money for the reconstruction of the city. In a report to the local workers’ commune, Kalinin wrote that the tendency of human beings towards gambling was impossible to change by means of repression (ibid.). Between 1921 and 1923, gambling was legalised. During this period, the authorities in Petrograd studied the life and leisure of workers. Their observations revealed that contrary to their intended outcome to promote singing, dancing, and intellectual games (i.e., chess) in casinos, gambling, mainly card gaming, flourished. By the end of the 1923 the Soviet Union

established a Commission to Supervise the Suppression of the Production of Counterfeit Alcohol, the Use of Illicit Drugs and Gambling. In 1928, Article 110 of the Criminal Code of the USSR banned all gambling (Kovtun 2012). The only exception was the state-run lottery, Sportloto, established on 20 October, 1970. The ideologically acceptable character of the lottery made it very popular due to its charitable orientation. For example, it was recorded in the official history of Sportloto that it was one of the major sponsors of the construction of sports facilities intended for the 1980 Moscow Olympic Games (*ibid.*).

By the late 1980s, the Soviet policy on private ownership had changed, paving the way to an economic liberalisation that became known as *perestroika*. With regard to gambling, in 1988, the party under Gorbachev allowed the temporary legalisation of slot machines in an attempt to attract foreign tourists and generate funds for the state. Although the ban on slot machines was permanently lifted in 1989, it is known that they had been present in the USSR since the 1970s (Kovtun 2012); even being offered as entertainment on Soviet cruise ships travelling abroad and in domestic summer resorts popular amongst the party elite. After 1985, slot machines were also installed in “Inturist” hotels which organised the majority of foreigners’ accommodation, movement, and activities in the Soviet Union. This policy meant that gambling—though formally banned—was tolerated as far as foreign tourists were concerned.

In addition to slot machines, the most common type of gambling during the late 1980s and early 1990s was street-style gaming of “cups and balls” or “thimble.” Organisers of these games targeted potential players at railway stations, airports, open markets, and other crowded locations. During this period, participants of all sorts, ranging from disorganised petty criminals to organised illegal gambling operations and professional criminal communities, such as “thieves-in-law,” used to participate. Many criminal groups of the early 1990s accumulated significant capital by engaging in *thimble rigging* (e.g., the Savlohov criminal group as discussed in Markovska and Serdyuk (2011) and Finckenauer (2007)). In post-Soviet countries, thimble rigging, similar shell games, and other confidence tricks are known in slang as *lokhotron* (the Russian word *lokh* is best translated in English as “the victim of cheaters” or “a person who is disadvantaged by a particular situation or course of action”). The essence of these confidence tricks can be described as follows: an organised group of professional tricksters entices a gullible person to make a bet. The intended victim is initially given an opportunity to win. When the victim begins to

lose, a member of the criminal group, while pretending to be a bystander in the crowd, encourages the victim to continue gambling. After making multiple bets the victim eventually loses their entire stake to the scammers. Tsytarev and Gilinsky (2009) note that “[d]espite the widespread casinos and other legal gambling establishments, the *lokhotrions* have contributed a great deal to problem gambling in Russia” (p. 245). Their activities further changed the general perception of gambling to that of an affair with a substantial criminal component.

By the end of the 1990s, attempts were made to organise poker tournaments, for a game which had acquired considerable popularity by the mid-1990s. The first poker school in Russia, named after Dmitry Lesnoy, a professional poker player and expert in gambling and intellectual games, was opened in Moscow in 2001. This school currently offers video lessons, theoretical publications, and lame strategy scenarios (Lesnoy’s School of Poker 2017). A few years later, in 2006, Lesnoy headed Russia’s Federation of Sports Poker, which was supposed to promote the game to the masses and regulate play in poker clubs. By 2007, the efforts of the Federation had led to the recognition of poker as a sport in Russia. A similar development can be observed in Ukraine. The first normative document in the history of poker in independent Ukraine was the order of the State Committee for Youth Policy, Sports and Tourism of Ukraine (No. 261) of February 2001, which recognised poker as a non-Olympic sport.

During the early to mid-2000s, the gambling industry matured in ex-Soviet states. Modern gambling machines and devices were imported from various countries and even produced domestically. All gambling establishments were now required by law to obtain licences and pay tax on takings. Importantly, the taxation of winnings in casinos (except for state-run lotteries) also required the winner to pay 30% of the winning to the state.<sup>1</sup> In light of heavy taxation and strict health and employment requirements, gambling in post-Soviet states was often organised informally or was only partially following the law—thus operating in-between illegality and lawfulness. After the ban, the once legal gambling industry moved into the underground and informal sectors. In fact, their experience of negotiating informal deals proved helpful in setting up new businesses illegally.

<sup>1</sup> State Tax Administration Office of Ukraine (Since 2014 State Fiscal Service of Ukraine). Response No. 19140/7/17–3117. Available online at: [http://www.uazakon.com/documents/date\\_42/pg\\_ikccxv.htm](http://www.uazakon.com/documents/date_42/pg_ikccxv.htm)

Before the 2009 ban, representatives of the gambling industry operated both formally and informally to collect illicit revenue. Our interviews in February 2017 with a retired accountant Olga<sup>2</sup> who was employed legally between 2002 and 2010 by an entertainment and gambling establishment in the city of Kharkiv revealed a series of informal arrangements. Concerning informal salary payments, she told us:

The management and the owners of the club wanted to conduct business legally, but it was simply an impossible task. There were two types of salary payments: the official minimum that was paid to bank accounts and the unofficial pay distributed in envelopes. The official salary was about 1/3 of the total monthly payment.

Although Olga was not able to provide any specific account of the amount of informal salary at her organisation, but she suggested that the unrecorded remuneration, the so-called double accounting, provided the owners of gambling businesses with a degree of flexibility in that they could change the rate of pay offered to employees without having to revise the regulatory wage system that they had adopted. This strategy helped them to reduce their tax obligation significantly. Olga elaborated on her organisation's relationship with the tax administration:

Our business relationship with the tax inspectors was very complex. Because we operated in different districts of the city, we had to deal with different tax inspectors. Some were friendly and approachable, others were not. The annoying part was their constant charity contribution requests. For example, when the tax inspection office was under reconstruction, we were regularly asked to help with the cost of the refurbishing. They used to say that they themselves had no budget for refurbishing the offices, and were forced to seek "sponsors." On a number of occasions when I came to submit our tax reports, I was routinely asked by the chief tax inspector to cover one of the refurbishing invoices as an "act of good will." I had no other choice but to pay these invoices as instructed by my senior manager. We were dependent on the goodwill of the chief tax inspector as he was deciding on our tax file payments. The instruction I received from my boss was always to pay the invoices as requested but no more than one a month. We played the game of "cat and mouse": both sides had no trust for each other but needed each other to do business.

<sup>2</sup>We changed the names of our interviewees to protect their confidentiality. The interviews were transcribed and translated from Russian into English by the authors.

Olga's comments reveal the very complex process of managing a gambling business in Ukraine, which requires masterful navigation between formality and informality when dealing with officials. Recent studies estimate that between 30% and 50% of Ukrainian workers receive unofficial "envelope salary" (ACF 2016). For employers this is an easy method to avoid tax. Informal social relationships with managers and inspectors are also conducive to a climate of tax versus profit negotiation. Such negotiations often occur through a set of illegal informal routines that facilitate the interests of both parties.

In this way, even before the gambling ban which we will discuss in detail in our next section, legally registered gambling operators would bribe authorities in order to obtain licences or increase business efficiency and profitability through tax evasion. According to some estimates, prior to the 2009 gambling ban in Ukraine, around 60% of gambling establishments in Ukraine operated illegally (Pogrebnyak 2008).

### POST-SOVIET GAMBLING BANS AND THEIR CONSEQUENCES

While the governments of the Russian Federation and Ukraine initially favoured liberalisation of the gambling market in the immediate aftermath of the disintegration of the Soviet Union, their attitude towards gambling changed drastically in the mid-2000s. In Russia, the Federal Law of the Russian Federation (No. 244FZ) of 29 December 2006, "On State Regulation of Organization and Management of Gambling and Changes to Related Legislation of the Russian Federation" prohibited all gambling activities within any settlements (cities, towns, villages, etc.) and ordered that gambling activities be moved to predetermined gambling zones located in Siberia (Altai Krai), the Far East (Primorsky Krai), and two zones in the European part of the Russian Federation (Azov-City/Krasnodar Krai and Kaliningrad oblast) (Article 3 (2–3)). Additionally, all gambling activities online were banned.

Three years later, in April 2009, a fire in a "Metro Jackpot" gambling hall in one of Ukraine's major cities, Dnepropetrovsk, killed 9 people and injured 11 (Bilousova 2014). The establishment operated legally but had inadequate fire safety procedures. The official position at the time was that such a tragedy suggested the need for a total ban on gambling. On May 7 of the same year, the Cabinet issued an order to suspend all gambling for one month (UCIPR 2009). On May 14, a bill to introduce a gambling ban was included in the agenda of the Verkhovna Rada (the Ukrainian

Parliament) and, on May 15, the bill was passed “following the simplified procedure bypassing preliminary public discussion mechanisms.” The Law of Ukraine (No. 1334-17) “On the Prohibition of Gambling” criminalises all kinds of gambling defined as “any activity that involves a player making bets that enable them to receive a prize depending on chance either partially or completely” (Article 1 (1)). The ban, however, excluded lotteries, creative competitions, sporting events, pool, bowling, and free draws for purposes of advertising, charity, and so on (Article 1 (2)). In January 2010, as the government realised the common abuse of the legal loop-hole, online/virtual gambling (regardless of the location of the server) was added to the list of economic activities which could not be licensed in accordance with Article 4 (2) of the gambling law.

Similarly to the Russian legislation, Ukraine’s gambling law allowed the creation of legal gaming zones (Article 4 (1)). Initially, the territory of the Autonomous Republic of Crimea and its resort towns were incorporated into a special gambling zone. This was maintained until Crimea’s annexation by the Russian Federation and President Vladimir Putin’s signing the bill that allowed the creation of a gambling zone in Russia’s newly added federal unit, the Crimean Federal District, into law on 22 July 2014.<sup>3</sup> Because the gambling industry provides opportunities for high-volume anonymous financial transactions, and because gambling is banned in both Ukraine and Russia (excluding the gambling zones), the establishment of such a free gambling zone on the Crimean peninsula is seen by the Russian leadership as an easy way to attract economic investment in the region. This policy has, however, been the target of sharp criticism in connection with the contested legality of Russia’s annexation of Crimea and indeed the very feasibility of the project in the light of the economic sanctions against Russian businesses or foreign investment within the Russian Federation (Hille 2014).

Article 4 (2) of Ukraine’s gambling ban states that “from the date of its enactment [the prohibition law] onwards, licensing of all activities related to gambling in Ukraine shall be cancelled and licenses issued to economic entities before the date of enactment of this law shall be annulled.” Further, after the ban, the Ukrainian government “didn’t guarantee

<sup>3</sup> Federal Law of the Russian Federation (No. 278-FZ) as of 22 July 2014 “On Changes to the Federal Law ‘On State Regulation of Organization and Management of Gambling and Changes to Related Legislation of the Russian Federation.’”



owners the retention of property rights nor did they offer judicial protection or recovery of investment” (UCIPR 2009, p. 19). The state was prepared to enforce the ban without any universal compensation for licences purchased by gambling businesses across the country. This policy led to much resentment. Although the Ukrainian government did in the event reimburse some gambling licence holders, many entrepreneurs had to endure a legal process lasting half a decade in order to receive compensation. For example, LLM Company “Extreme-Service” appealed to the court in Vinnytsia Oblast against the State Committee of Ukraine for Regulatory Policy and Entrepreneurship in December 2009. The plaintiff accused the State Committee of Ukraine for Regulatory Policy and Entrepreneurship of unlawful action against “Extreme-Service” seeking reimbursement of its revoked licence. In support of its claim, the plaintiff noted that on 22 May 2006, “Express-Service” received a licence (AB No. 082904) for the organisation of gambling activities covering the period from 26 April 2006 to 25 April 2011. According to the payment order dated 15 May 2006, No. 516, the plaintiff paid for this licence to the amount of UAH 978,235 (~USD 40,000). After the gambling ban entered in force on 25 June 2009, the licence became void. On 4 February 2014, the court ruled in favour of “Express-Service,” sanctioning a refund of 353,133 (~USD 15,000) (Supreme Court 2014).

The sociological group “Rating” (2017) surveyed current public opinion on gambling in Ukraine. The results suggest that of the 87% of Ukrainians are aware of the ban on gambling, 71% believe that the ban is inefficient. In fact 79% of those interviewed believe that the ban only encouraged gambling business underground. As a result, 57% of those questioned believe that the negative financial consequences of the ban, such as the loss of tax revenue, damage the economy. More than half of respondents believed that the ban did not discourage gambling, but a third supported the creation of gambling zones as an alternative to the ban. The inadequate enforcement of the ban was identified by many respondents as being the key challenge to its successful implementation. The lack of enforcement, as we will demonstrate in the analysis that follows, is not necessarily the result of state incapacity to act that is characteristic of many transition states but the outcome of a lack of political will to enforce laws, resulting in the collusion of the political and business elites.

Regarding political will, the gambling support lobby in the government has at times gained significant support and has on occasions been commended by the post-Euromaidan administration. The International Monetary Fund

(IMF), Ukraine's main creditor after the 2014 Euromaidan revolution, supported by a group of local gambling industry stakeholders, and the Ukrainian Gaming Industry Association, recommended that gambling, were it legalised, could yield up to USD 370 million in tax revenue. Under pressure to satisfy the IMF requirements, the Ukrainian Ministry of Finance drafted a bill to legalise land-based casinos, sports betting, and online gambling in 2015. The bill also foresees the creation of a new national lottery. On May 2016, the Draft Law of Ukraine of 13 May 2016 # 4663 "On the Re-legalizing of the Gambling Market and the Provision of Budget Revenues in Order to Fulfill Social Obligations" was officially submitted to Parliament by Ukraine's Prime Minister Volodymyr Groysman. In addition to making all forms of gambling legal, the draft law proposes the establishment of a National Gambling Operator that would monitor gambling activities in Ukraine. It would also be responsible for issuing licences to all private gambling operators allowed to operate in specially designated gaming zones, such as hotels rated at least four stars or above and with 100 rooms or more. Also included as gaming zones are Ukraine registered ships with a casino of more than 500 m<sup>2</sup>. This initiative towards the de-criminalisation of gambling is reminiscent of those of 100 years ago and indicative of the pattern that in crisis situations governments are prepared to raise funds by all available means.

### IN SEARCH OF A MORAL COMPASS

The strategies adopted by the gambling industry after the 2009 ban can inform our understanding of certain practices of living "in spite of state." During 2016 we conducted a number of interviews with three organisers of illegal poker clubs in order to understand how they adapt to and even flourish as a result of prohibition. We have accordingly identified three strategies employed by those operating gambling halls since the 2009 ban, specifically in the city of Odesa: (a) "independent underground," (b) "attached underground," and (c) "above the ground" (Markovska and Zabyelina 2016). Each of these strategies presents an example of living "in spite of state," where informal relations advance negotiations between public office holders and entrepreneurs.

The first strategy, "independent underground," relates to small underground clubs that exist without police or organised crime protection. This form of operation has been predominantly adopted by small-scale gambling

entrepreneurs who are forced to work in secrecy, such as in rented apartments or basements in residential areas. Such enterprises survive only if they are hidden from the police and “public eye.” For instance, an underground gambling hall discovered by the police in 2015 was located in a bomb shelter in Kyiv’s Darnytsa district. Here, law enforcers seized 50 slot machines and discovered sign-up sheets of players for various gambling games (NPU 2015). Gambling operators of this type tend to have a small client base. As a rule, the clientele are carefully selected and new members only admitted on the recommendation of existing members.

The organisers of such small underground poker clubs complain that illegally paying money to the police for protection is ineffective. According to them, police protection is short-lived and often unreliable. In an interview conducted in January 2017, gambling entrepreneur Dima shared his opinion about the police:

The police are bad. Instead of trying to catch real criminals, they are trying to catch people like me and they expect bribes in return. They have had salary increases and had to go through special training, but nothing has changed. Slot machines [also criminalised by 2009 ban] are to be found in some central locations in Odesa. They operate as Internet cafés, but everyone knows where to find slot machines. It’s madness. ...[W]ith protection money paid everything is possible. What should I do? Do I need to pay, but whom? You can find one police officer to pay for protection, but others will appear as well, and will demand more money. Also, after the *hryvnya* [the Ukrainian national currency] crashed, my earnings reduced dramatically. I don’t want to “subsidise” police officers.

Dima’s sense of injustice is obvious. In such a situation, it is understandable that the organisers of small poker clubs tend to use neutralisation technique to justify their operations:

I don’t want to present myself as a victim, but if anyone is a good person here, it’s me. All I am trying to do is to earn money to survive. I am not a robber, not a killer, I am not even making big money, I am just providing entertainment and a relaxing environment for people to enjoy themselves. ...and I have people carrying guns breaking in with everyone on the floor... as if I am a gangster. Ukrainian state officials are corrupt. Prohibition gave state officials a chance to earn cash illegally, a lot of cash ... we are talking about millions here.

Voicing a similar concern of law enforcement corruption to Dima's words above, Ukrainian MP Boryslav Rozenblat recently reported, "[w]ith my assistant I visited an illegal casino in the city of Zhitomir. Whilst inside the casino premises, I called the head of the police in Zhitomir, and asked him to come to the address provided. Within three minutes the lights and all the equipment were turned off, which suggests a direct connection between the police and the illegal casino" (Reshetnyak 2016). Alexandra Kuzhel, Chairman of the Parliamentary Committee on Entrepreneurship, Regulatory and Antimonopoly Policy also called for effective mechanisms to discourage the police from protecting illegal gambling providers. "Nothing will change," she suggests, expect "lustration and the arrival of new law enforcement cadres" (Bilousova 2014, n.p.).

This view is in sharp contrast to the following rationalisation view of police officer Gennadiy when interviewed in January 2017:

I believe I am a good police officer. I protect the law, and these people are operating illegally, and they know about this very well. Do we target them because of the money? No, money is the secondary issue here. When you go to raid you don't know if you will get some cash out of this or not. It is always a 50/50 chance. If we find money, we will seize it, and follow what we are told by our superiors. Money is rather a bonus here, not the main cause of the raids. Of course the organisers are bad people: they know exactly what they do. Even if the law is bad you are bound to comply with it, and if you don't, you should be prepared to live the consequences. So, I don't understand why they feel upset when we visit!

Although, Gennadiy clearly positions himself as a guardian of the law. The officer indirectly acknowledges the existence of an informal system of governance predicated on informal payments and gifts.

The second strategy for gambling enterprises is to operate within a legitimate pub, café, shop, or other public place. Due to such semi-open locations, this strategy is only successful if supported by illegal protection ("krysha") provided by state officials and/or the police. Such an "attached underground" strategy attracts a wider clientele due to better public visibility. Sometimes such gambling enterprises are marketed as state lotteries or Internet cafes. According to current law, state lotteries do not fall into the category of a gambling business and can therefore be operated legally. Similarly, Internet cafes, which are obviously not prohibited in Ukraine, are used by gambling operators to hide networks of computers

that provide clients with an online gambling service. Before 2011, there existed a loophole in the original gambling legislation, whereby gambling providers could move servers abroad and thereby continue their operations in Ukraine. The law was amended in 2011 to address this specific issue. Local operators are consequently no longer allowed to host gambling sites offshore and can be prosecuted for doing so. As an example, in April 2017, officers of the National Police identified a network of online casinos located on the premises of various cafes and restaurants (NPU 2017). They maintained a 24/7 online clients support and owned property in downtown Kamyanyets-Podilsky where a team of programmers, technicians, and web designers was located (*ibid.*).

The third strategy, that of “above the ground” gambling establishments, differs significantly from those discussed above. This strategy concerns large-scale gambling enterprises, such as casinos and poker clubs. Gambling facilities of this calibre usually require significant financial investment and reliable police protection outside the law (Markovska and Zabyelina 2016). In 2016, we observed the work of “Alabama” casino in the city of Odesa. In April 2015, the casino operated as an open club situated in the city centre. It was equipped with 17 poker tables, a roulette, and slot machines. Professionally managed, the club had its own website with a link to both complaint and employment pages. At that time, according to interviews with representatives of the gambling industry, unofficial payments to the police were estimated to be as high as USD 50,000–100,000 per month.

In one of the interviews with Dima, we learned that part of the deal with the police was that they assigned police officers as security guards to the casino. Dima noted that “these officers were no good at what we asked them to do. We had a list of people banned from visiting, and those at the entrance should be very careful as to whom they let in. The police were rubbish at these tasks, they didn’t care about it.... We had to get rid of them, and hire private security guards.” This “above the ground” gambling establishment had all the features of a regular legitimate business. The protection payments not only ensured the immunity of the enterprise from disruption or arrest but also generated some public legitimacy.

Since 2015, the list of those competing in the market to offer private protection to the gambling industry has been extended to include the Ukrainian radical-right organisations inspired by the nationwide Euromaidan revolution, Crimea’s annexation, and the armed conflict Eastern Ukraine. During the spring of 2015, the activities of the Right Sector, allegedly

acting in the name of Odesa inhabitants, received much media attention. In March 2015, a masked group of people claiming to be the Right Sector activists made two violent raids on “Alabama” (YouTube 2015). These raids put the police in a sensitive situation: on the one hand, they revealed that an illegal gambling club was operated by criminal elements under the protection of the police; on the other hand, a violent vigilante group was claiming to be enforcing the Ukrainian law. Following the controversy, “Alabama” was shut down by the owners.

## CONCLUSION

This chapter has identified and critically evaluated the concept of *negotiated prohibition* in the context of Ukraine. We conclude that in a negotiated prohibition, power holders and banned service providers operate with a flexible and subjective conception of what is legal or illegal. A lack of political will to either enforce or challenge such negotiated prohibition has created a situation where social and economic relations are facilitated according to the old Soviet aphorism “Do what you should, and not what the state tells you.”

The illegal conduct of many state officials is part of the apparatus inherited from the Soviet regime which manifested itself in the concepts of “dirty togetherness” and “flexible legality” (Wedel 2005). In Soviet times, people routinely conducted unsanctioned illegal transactions. They engaged in “under-the-table” deals and payment in order to survive or achieve a better quality of life. What seemed moral but illegal could thereby be possible through unofficial means. Illegal private factories produced goods that constituted an important compensation to those enduring the shortages engendered by a planned economy. Such outlawed activities were considered moral and were commonly practised by the population. Yet, this disjunction between law and social practice facilitated the erosion of state legitimacy.

In the 65 years that separate Soviet Ukraine from the present post-Soviet state in transition, Ukrainians had to learn to live in spite of the state, rather than in accord with it, a situation resulting in widespread public cynicism. Ukrainian state officials, the police, and gambling entrepreneurs all benefit from the citizens’ alienation from participation in public life. Illegal gambling activities, such as those operating under negotiated prohibition, have moral consequences that go far beyond their economic

significance, questioning the foundations of the Ukrainian state and its ability to uphold the rule of law and guarantee law and order.

### NOTE ON TRANSLITERATION AND TRANSLATION

All translations from Russian and Ukrainian are our own except where indicated otherwise.

The American Library Association/Library of Congress (ALA-LC) transliteration system (<http://www.loc.gov/catdir/cpso/roman.html>) is used throughout the text. Authors whose names are written in Latin appear the same as in the original.

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## Coping Mechanisms of Ukrainian Patients: Bribes, Gifts, Donations, and Connections

*Olena Levenets, Tetiana Stepurko, Milena Pavlova,  
and Wim Groot*

### INTRODUCTION

The way how health needs are recognized and managed as well as the system of health care service provision is far from perfect in Eastern European countries (Björnberg 2015; Rechel 2011). The health care

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triangle (citizen—provider—purchaser/state) summarizes the resource exchange between the health care users and providers of health care services, and the purchaser who collects the financial resources from the users and transfers them to providers (Mossialos and Dixon 2002). It is not only the exchange of financial resources but also the stewardship, communication, and other building blocks (De Savigny and Adam 2009) that bring diversity into the health care system, their benefits, and challenges. The structures and institutions are there to secure good quality health care, but not always. In order for health care services to be responsive to population needs, the health care triangle should be based on balanced and cooperative relations, with well-defined responsibilities and rights. Otherwise, when reinforcing arrangements of a weak state (Marcouiller and Young 1995), such as inadequate public services, individuals with health problems need to employ coping strategies to secure the best possible care. In the context of a weak state and an inadequate allocation of resources to service provision, coping strategies are also applied by health care providers in order to generate an income that is an adequate compensation for their efforts than the reimbursement received from the purchaser.

Deficiencies of the health care system predispose patients and providers to take actions that facilitate dealing with difficult situations, for example, obtaining or providing adequate medical care in the absence of sufficient service funding and a proper allocation of financial resources. Informal payments are well studied because these payments are rather measurable. In contrast, social relationships, that is, “pulling the strings” (Cohen 2015) while attempting to access services with good attributes has been almost neglected by researchers. Also, the combination of self-help strategies and circumstances where these strategies are applied are not well described in the literature.

In this chapter, we focus on health care users in the Ukraine and we explore the strategies they apply to ensure access to health care services, satisfaction with the use of these services, and individual health improvements. A particular interest of this exploratory descriptive analysis is to have a closer look at the coping strategies from the angle of health care users. The chapter includes empirical illustrations of the complexity of strategies like paying informally, giving gifts, and using social relationships within the Ukrainian health care system. Since 1991, socio-political changes in Ukraine have created an environment conducive to informal practices.

The health care system of Ukraine is one of the least transformed systems in the region. Only marginal reforms have been implemented in the attempt to improve the efficiency of service provision as well as access to and quality of health care. The current health care system is inherited from the Soviet time with free-of-charge entitlement to health care guaranteed by the Ukrainian constitution. Health outcomes remain poor (WHO Global Health Observatory Data Repository 2013). Chronic underfunding, excessive but outdated infrastructure, a minor role of primary health care providers with a greater role of specialists and inpatient departments require more funds than generated by the government via taxation. Private out-of-pocket spending, both for health care goods and services, mostly informal by nature, accounts for about 40% of total health expenditures (Lekhan et al. 2015). Ukrainians are dissatisfied with their health care system. In a survey among the Ukrainian population in 2010, 82.6% of the respondents reported dissatisfaction in contrast to 68.4% in Moldova, and 48% in Belarus (Footman et al. 2013).

To describe the coping strategies that Ukrainian health care users and providers apply to deal with the failing health care sector, this chapter employs data obtained through individual and focus-group discussions in two studies. First, within a qualitative study on out-of-pocket patient payments carried out in 2009 for an international research project, we have conducted seven interviews with health policymakers and ten focus-group discussions with health care consumers and health care providers.<sup>1</sup> Second, a research project on gender assessment of the health care domain in 2013 included two focus-group discussions with a group of men and women in Kyiv. Although the studies were focused on rather different aspects of health care services and policies, participants shared their personal experience related to health care service use. Thus, we combine data from the two studies to outline the health care users' experience with obtaining health care under the imperfect system of health care provision in Ukraine. The chapter is organized as follows: the background of understanding

<sup>1</sup>The following group composition is designed and implemented in the focus discussions: (CO1) pensioners living in a city (Kyiv), (CO2) working individuals living in a city (Kyiv), (CO3) students living in Kyiv, (CO4) disabled and chronically sick living in a city (Kyiv), (CO5) adult members of families with children living in a city (Kiev) and (CO6) individuals living in a rural area as well as (PR1) general practitioners practicing in Kiev, (PR2) outpatient specialists (including dentists) practicing in a Kiev, (PR3) physicians in general hospitals in Kiev, (PR4) nurses in general hospitals in Kiev.

informal practices as coping strategies is presented in the next sub-section, followed by our qualitative results on coping strategies of Ukrainian health care users and providers, as well as the context of these strategies. Discussion and concluding remarks close the chapter.

## INFORMAL PATIENT PAYMENTS AND OTHER INFORMAL PRACTICES AS COPING STRATEGIES

Coping strategies/mechanisms is a label used in cases where there is a problem with the organization and consumption of health care services. For example, Van Lerberghe et al. (2002) mentions “coping strategies” while describing behavior of medical doctors in low-paid settings: “[H]ealth sector workers respond to inadequate salaries and working conditions by developing various individual coping strategies – some, but not all, of which are of a predatory nature” (p. 581). However, the concept is hardly defined in the literature on health care service provision.

In contrast, in psychology, “coping strategy/mechanism” describes the adaptation to stress which can be either a conscious or an unconscious choice that bonds certain patterns of behavior and gives psychological comfort (Zeidner and Endler 1996; Snyder 1999). Coping strategies (which are also characterized by different levels of effectiveness) are typically divided into active coping, transformational problem-focused coping, withdrawal, and denial (Florian et al. 1995) as well as problem- and emotion-focused coping, that is, seeking instrumental social support, behavioral or mental disengagement, praying, and so on. (Carver et al. 1989).

One of the central categories in understanding coping strategies in the medical area is “hardiness”, which is described as “*an inner resource that may moderate the effects of stress*” (Florian et al. 1995).

In social sciences, Davies (2015) argues that coping mechanisms include “*economies of favors*” (Kuehnast and Dudwick 2004; Pavlovskaya 2004; Polese 2008), “*informal/undeclared work*” (Stenning 2005; Williams and Round 2007, 2010), “*social acknowledgement*” (Morris 2011), “*gift exchange*” (Mauss 2002), “*social capital*” (Moran 2001; Round 2006), “*blat*” (Onoshchenko and Williams 2013), “*social networks*” (Grabher and Stark 1997; Lonkila 1997, 1999; Walker 2010) and “*memory*” (Buyandelgeriyn 2008). Other authors disclose coping mechanisms employed by underpaid health care providers as “charging informal

fees and diverting drugs, equipment, and patients to their private practices” (Hardeman et al. 2004).

Perhaps, the most studied coping strategies in health care are informal cash payments, bribes, and gift exchange. They are tangible and measurable coping strategies although their sensitive nature might require well-tested research instruments for their analysis. These coping strategies are a well-known phenomenon in Central and Eastern European countries (Belli et al. 2004; Gaal and McKee 2005) as well as in Africa, Asia, and Latin America (Lewis 2007). Bribes and gifts given to health care providers by patients and patient’s relatives are believed to facilitate access and improve the quality of the services used by the patient (Stepurko et al. 2015). At the same time, the possibility to obtain informal payments provides a financial incentive to medical personnel to provide care in underfunded settings and remain in the medical profession (Kornai 2000; Belli et al. 2004). Studies offer ample evidence on a wide range of informal payment types, subjects, purposes and motives (Balabanova and McKee 2002; Stepurko et al. 2017). Obtaining better service through informal payments is more often applied in a context where clear financial arrangements are lacking as well as uncertainty about the quality of care received exists.

Furthermore, under conditions of uncertainty, individuals usually have a “*safety net*” and “*survival kit*” which is employed at an individual level (Ledeneva 2004) for ensuring the individual’s welfare (Wanner 2005). Thus, when “*it is less costly, more effective, and more easily accessible than any other alternative*” (Ledeneva 2004), family, acquaintances, professional, and other networks are used. The issue of connections and acquaintances (*svyazi i znakomstva*), or “*blat*”, favor exchange, social capital, and social networks (Onoshchenko and Williams 2013) have been studied in Eastern Europe but without relating it to the health care domain. In particular, “*blat*” has been a ruling approach in social life and relations in this region (Ledeneva 1998; Patico 2002; Rivkin-Fish 2005; Onoshchenko and Williams 2013) and is part (with its context- and time-specificity) of a wider phenomenon of social networks.

In the past, connections and barter were more important than cash payments because some goods were in short supply. After the Soviet Union collapsed, personal connections continue to serve as a mechanism to overcome the system’s defects. However, maintaining a social network produces obligations and implicit contracts (Ledeneva 2004).

In the post-communist environment, when the deficit of goods disappeared, cash payments have become a more reliable and more important means to achieve access to services or for assuring that good quality services are obtained. Thus, nowadays, bribes, gifts, and barter supported by reliable connections dominate in health care provision (Ledeneva 2006) as well as in other areas, for example, education, police, court, and customs offices. The interwoven practices of connections and cash payments have been flourishing because of state tolerance, the collapse of the restraints, and the absence of strong punishment system. The selection of tools for self-help or coping strategies can be based upon available resources, financial and social status, as well as the typical practice of patients and family networks (McCrae 1982; McCrae and Costa 1986; Wills 1987). Ledeneva (2004) captures an important distinguishing feature of the social network in Western European settings and in so-called transition economies. In the latter context, network capital—exchange of goods and services—is exploited as a means for survival and as a compensation for governance inefficiencies. It may vary “*from networks that serve large-scale corruption to the use of networks as survival strategy*” (p. 2). Meanwhile, social welfare states in Western Europe treat networks as a means for sociability and the studies on social networks reflects this approach quite well. Still, Cohen (2015) mentions that “*British term ‘pulling strings’ is an idiomatic phrase that refers to a method of obtaining favors particularly through links with influential persons*” (p. 3), however, the evidence on the phenomenon are not studied and its extent is not measured.

The distinguishing feature of coping strategies is that multiple tools, such as cash payments, gifts, and social relationships, can be applied simultaneously to cope with the difficulties in the service provision. As illustrated by Polese (2014), one of the informants has “*befriended her doctor thanks to the fact that the first two or three times she had paid extra money*”. Thus, good relations and extra money can lead to having a reliable and respectful health care provider in the personal “*safety net*”.

Overall, widespread informal practices as coping strategies exist in a context where the state is lacking public trust and where public services are not the consumer- (in this case patient) oriented and driven (Cohen 2012). Despite the negative system effects of such coping strategies, they are often seen as a way for surviving in difficult circumstances. Some countries in Eastern Europe have managed to limit or eliminate informal cash payments, while others still provide a conducive environment for such payments (Stepurko et al. 2013). This former group of countries, for

example, Estonia and Poland, have fostered the social welfare state development and diminished the need for self-help strategies at an individual level (Lai 2012; Golinowska 2010).

## COPING STRATEGIES IN THE UKRAINIAN HEALTH CARE SECTOR

In order to illustrate and contextualize coping strategies employed by Ukrainian health care users and their families, as well as by health care providers, we analyze qualitative data obtained during focus-group discussions conducted in 2009 and 2013 for two international projects (see the [Introduction](#) section). We find many similarities between the data from the two studies, which indicates the convergent validity of the results.

### *Coping Strategies in Case of Sickness*

Participants in the focus group with health care users share a variety of self-help approaches in case of sickness. In particular, the following practices are often mentioned: self-treatment, suggestions found on the internet, advertisement on TV, pharmacist's advice, or consultation of medical specialists outside institutionalized practices (either a private or a public one).

Self-treatment is sometimes combined with consultations with people whom the person trusts, for example, relatives, acquaintances who have experienced similar symptoms, "grandmothers" (alternative medicine). For example, one man shares his typical practice of self-treatment: "*If something disturbs me, I consult with my wife first. I ask her to buy me pills*" (male group, gender study).

Self-help is, of course, a practice conducted everywhere. However, in the context of a failing health care system, it sometimes plays a more important role, one that substitutes for the failings of the formal health care sector. Among the reasons for resorting to self-treatment, respondents mention the lack of "art" of care (e.g. poor communication skills of medical doctors, their disrespectful attitude toward patients), the inadequate health care facilities, as well as the need to save resources (time and money). As one respondent explains: "*At state hospitals, there are always waiting lines, offensive, and complaining senior women, etc. Besides discomfort of communication, the physician can always say that his working hours*



are over, he is leaving and he does not care how many people are waiting in the waiting line to see him” (male group, gender study). Participants in the focus-group discussions report postponing their visits to health care facilities due to their unwillingness to “play” the patient role and in order to avoid the stressful environment of the health care facility.

Self-treatment is employed by patients when the symptoms are well known or the condition is chronic, for example, cold, headache, heart-ache, digestion disorders, quinsy, and light bruises. At the same time, we notice a gender pattern in health care service consumption: foregoing physician visits are more often reported by male participants: *“It seems that I know all my symptoms, all my chronic illnesses so I know what pills to take and when. Only when symptoms get severe, I visit either therapist or some other specialist”* (male group, gender study). Women often report using health care services after the first symptoms are noticed.

Self-treatment is practiced not only before obtaining medical assistance. Participants also report self-treatment after the visit to a physician, especially when no positive effect is achieved: *“Physician recommended me some medicine. It did not help me, so I bought the one that was advertised on the TV commercial”* (male group, gender study). Medical doctors seem to be fully dissatisfied with the self-treatment behavior of health care users and refer to the higher burden of such behavior for the system when the health condition requires more advanced care at a later stage: *“Very often patients do not follow physician’s prescription, do not follow all the recommendations, and as a result they return for another round of hospitalization or consultations”* (provider, patient payments study).

### *Coping Strategies While Entering Health Care Facilities*

Physicians in the focus groups observe that patients are inclined to consume more costly services and they often fail to take responsibility for their own health, they lack basic knowledge about the type of services needed: in particular, health care providers are especially ironic in their comments on the misuse of the ambulance team: *“Patient once said: I have measured blood pressure but please come and do it again, because I was not sure that I did it right”* (provider, patient payments study).

Consumers mention that they are willing to *“solve the problems informally”* (Cohen 2015), or to search for an alternative way in order to assure access to affordable and adequate care. Hence, one of the coping strategies among citizens is to negotiate with “competent” physicians (as

perceived by patients) about better service. Health care users seek the services of a well-known knowledgeable physician but if this physician offers patient-oriented services, that is, outside of public health care facility (home visits) or in the facility but avoiding the waiting line and using different means of communication (cell phone, Skype). In our studies, this practice is reported by both parents of infants and toddlers, and by patients with chronic conditions. The patient-physician agreements can be based either on monthly payments or fee-per-visit payments that assure accessible care in any real-life situation as well as referrals to other “reliable” specialist:

*Over the time, we have developed our own schemes of how to refer to physicians for the treatment. Usually, we try to cope on our own, avoiding the state system; sometimes with the use of private hospitals and acquaintances from the state hospitals.* (female group, gender study)

As is seen from the quote, patients give the label “schemes” to such informal practices and coping mechanisms and “coping” is also present in the wording of the situation described. Interestingly, users do not describe resistance of physicians to such “*schemes*” indicating that providers are open for collaboration.

In the case of serious illness and the need for treatment or hospitalization (e.g. surgery), patients-respondents mention that once the diagnosis is obtained, they visit several more physicians in order to make sure that the diagnosis is correct, that is, obtaining second and third opinions: “*Not each physician is a good specialist. I visited one gynecologist by chance, and she gave me a very scary diagnosis. I was so shocked that I hardly made it to the evening ultrasound diagnostic, where I was told that there was nothing wrong or bad with me*” (female group, gender study).

Thus, people are developing coping strategies to deal with “incompetent physicians” as “*not every specialist is a specialist really*” (female group, gender study). The specialists are found via internet forums and suggestions of colleagues and friends. The strategies of searching for more “competent” physicians include resorting to networks and personal connections.

### ***Informal Patient Payments as a Coping Strategy***

The most mentioned coping strategy of Ukrainian patients and providers refers to bribes, cash payments, and non-monetary gifts like sweets, spirits,

and favor exchange. When it comes to informal payments in health care, both providers and consumers mention the very low salaries of medical personnel which is an indicator for both poor service quality and widespread under-the-table payments. In addition to informal payments, health care users pay so-called charitable contributions, or quasi-informal payments introduced by the health care facilities. However, these payments have nothing to do with the charity as they are not always voluntary: “*Now we have to ask patients to make charitable donations into hospital’s account because we have to pay for example for disposing of trash*” (nurse, patient payments study).

Still, “*unfortunately, not all physicians are surgeons and gynecologists*”—this typical saying describes the unequal distribution of informal payments between the health care providers. Nurses especially suffer from a low income because informal payments are rarely given to them: “*People usually give money to physicians, not nurses. Some physicians share it with them, others do not. Look at the dentistry department: every physician has a car, but none of the nurses do, while official salary is almost the same*” (provider, patient payments study). The selected quotations presented in Table 7.1 illustrate the multifaceted nature of informal patient payments in Ukraine.

The issue of low salaries as well as the absence of financial instruments to motivate physicians to improve their performance or to sanction misbehavior bring more ambiguity in the role of the medical doctors in the Ukrainian health care sector. Physicians’ informal income—constituted by multiple sources (including pharmaceutical companies)—is certainly a coping mechanism used by low-paid medical personnel but such a practice has a macro-level impact: it impedes the health care reforms as well as the patients’ trust in both medical professionals and the state. Overall, from the system perspective, informal patient payments are not welcome: “*Basically, physicians exploit the state resources like buildings, facilities, equipment for personal enrichment*” (health policymaker, patient payments study).

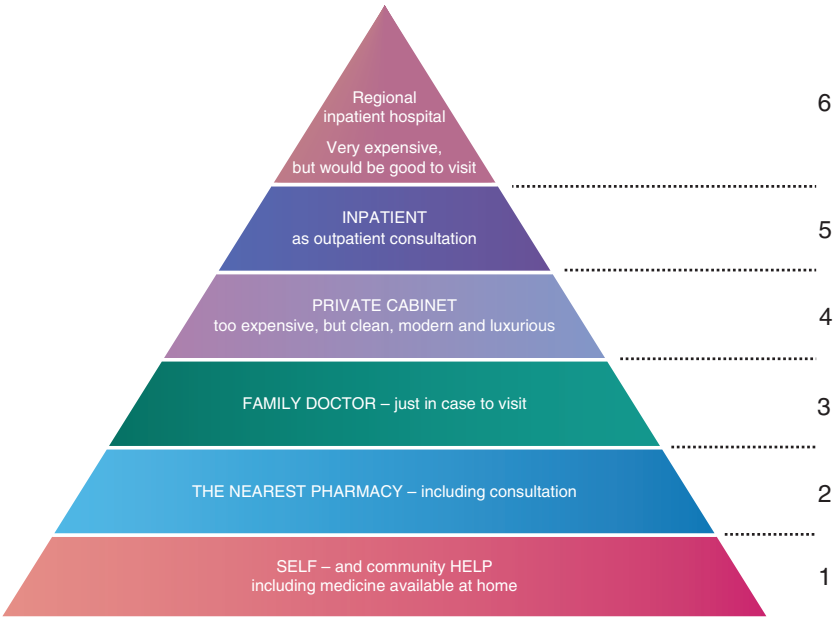
### *Copying Strategies at the Different Levels of Health Care Provision*

One of the health care providers who participated in the patient payment study suggested an unusual approach to classify the levels of health care provision in Ukraine as well as the related coping strategies (Fig. 7.1). The approach summarizes well the results of the focus-group discussions.

**Table 7.1** Perceptions of informal patient payments reported by the respondents

<i>Providers</i>	<i>Patients</i>
<p><i>When patients are truly grateful to physicians, it is fine to receive money from them. It is like going to the concert and giving flowers to your favorite singer</i></p> <p><i>People usually give money to physicians, not nurses. Some physicians share it with them, some do not. Look at the dentistry department. Every physician has a car. But none of the nurses do. But official salary is almost the same</i></p> <p><i>It is very frustrating. See having a low salary, physicians expect that patients will "thank" them. But it is uncomfortable for both patient and physician</i></p> <p><i>Physicians work for an official salary of 1100 UAH and only 5–7% of physicians earn good money. Those are mostly surgeons or hospital administration, members of tender committees. Also, such medical specialists as gynecologists, dentists, endocrinologists were always receiving good payments from patients</i></p>	<p><i>Charitable donations have to be based on free-will, not like it is now—you will be treated only after making a donation</i></p> <p><i>I was taken to the hospital with appendix. Surgeons said: "150 USD". Sure, I did not have that amount with me, so they told me: "only after you payment is received, we will do a surgery". So I had to wait while my family brought the money, and only after that, the surgery was performed</i></p> <p><i>At one maternity home, in Kyiv, women from other cities have to pay 1200 UAH. Then they have to pay 700 UAH if they want a separate room. And plus US\$500 after the childbirth to the physician</i></p>

The first level of health care is self and community help that includes resorting to coping strategies such as alternative medicine and pharmaceuticals available at the patients' home. At the second level, a relative of the sick person refers to the pharmacy where health care goods are bought. The assortment of the goods is assessed either by a web-search or by previous experience of coping with the symptoms or by the consultation provided by the pharmacy employees, relatives, and so on. Third and fourth levels apply when the symptoms are still present and the "sick one" visits the family doctor or district therapist in public and/or private health care facility. At the fifth level, inpatient facility specialist (in city or rayon) is visited by the patient and at the sixth level, *oblast* (region) level hospital specialists are reached for getting an advice on the treatment.



**Fig. 7.1** Six-level system of health care in Ukraine. (From patient's and physician's perspective)

Although the typical three levels of the system of health care service provision (primary, secondary, and tertiary<sup>2</sup>) are embedded in this de facto system, the equality and efficiency of the observed self-constructed system are doubtful.

<sup>2</sup>Traditional three-level system of health care service provision is the following: a primary care provider is the first point of contact in the health system and it can be usually a physician, dentist, nurse, or a pharmacist and depending on the patient's health condition, there could be a referral to secondary or tertiary care. Secondary health care services are provided—not necessarily in inpatient hospital—by medical professionals who do not have the first contact with patients and may include a short-term treatment of a serious injury or period of illness. Tertiary health care is a highly specialized care (complex medical procedures or surgery) provided for inpatients on a referral basis from a primary or secondary health professional.

## DISCUSSION AND CONCLUDING REMARKS

Our anecdotal and qualitative results illustrate a variety of coping strategies applied by health care users and providers as a response to the poorly governed and underfunded health care system in Ukraine during the last 25 years. The coping strategies appear in the areas where the system fails. Potential health care users meet many barriers to enter primary health care (geographical and financial ones) and they also lack information about the service (Balabanova et al. 2004; Belli et al. 2004; Shahriari et al. 2001). This is combined with negative previous experiences with health care use. Hence, alternative options to receive non-institutionalized health care consultations are developed: consultation of medical doctors from the personal or professional network (face-to-face or through phone or other means of communication); consumption of pharmaceuticals recommended by someone online, by a pharmacist, or by the last visited physician. The lack of an effective referral system and the absence of clear “care pathways” contribute to the widespread “do-it-yourself” approaches considered to be expensive and with doubtful health outcomes.

The anecdotal findings presented in this chapter do correspond with the survey results obtained in nationally representative research conducted in 2016 (Health index Ukraine 2016): low rates of outpatient service consumption, widespread practice of self-treatment and avoidance of health care service providers, a high share of women reporting the use of outpatient services within the preceding year and the financial burden linked to health care service consumption. However, this quantitative study shows substantial differences across the regions of Ukraine that requires further exploration of the factors which may explain the variation in the health care users’ experiences.

Still, it is not always “do-it-yourself” attempts and coping strategies: health care seeking behavior is also determined by the habits and practices which exist in the network of the sick person. Networks can convey social influence by defining norms about health-related behaviors (O’Malley and Onnela 2014). As Easley and Kleinberg (2010) emphasize “*because of an underlying human tendency to conform: we have a fundamental inclination to behave as we see others behaving*”. Additionally, a habit of delaying or postponing a visit to a health care provider can be more common in the networks of those who are financially or informationally deprived. As noticed by Belli et al. (2004), social and financial capital restraints prevent patients from health care consumption in Georgia: “[H]ouseholds find it

*difficult to pay for health services, and often forgo, or delay or interrupt treatment because of financial reasons and unless a patient has good connections with somebody in the government (local administration) or directly with physicians, s/he had to pay to get treated*" (p. 113). In addition, Kornai (2000) indicates that payments given to the provider can result in establishing reliable relations between patients and physicians: "[M]any people see the connection with a physician they have built by paying him gratitude money as an important investment, since it makes it possible for them to continue to rely on him" (p. 19). Still, quantitative evidence on the share of those who employ connections on different stages of obtaining care is lacking, not only in Ukraine.

While studying informal payments in Eastern European countries, it is important to consider that they are only a part of the coping strategies applied, and there are other layers linked to the strong personal connections and networks. The latter is maintained for searching adequate attributes of public services or when borrowing funds for treatment (Gatti et al. 2003; Knack and Keefer 1997; Leive and Xu 2008). The presence of medical specialists in the patient's social network is usually considered as an asset and as a means to attain either valid medical information, or access to the quick entrance to the facility, or "reliable" provider, or better quality of care (Balabanova et al. 2004; Ensor and Witter 2001; Patico 2002).

A complex approach in studying coping strategies is necessary for a more comprehensive mapping of the bottlenecks of the system. Informal payments and other informal practices in health care are mostly studied cross-sectionally, at one point of the time and as one action. However, the behavior of all actors seems to be dependent on other actors' actions. There is a certain degree of inter-dependency in the behavior. For example, when one offers an informal payment, the other one accepts and redistributes the funds, making health care provision under chronic underfunding possible. However, in the case of refusal to give or accept informal payments, the whole health care system can further deteriorate and even collapse if there are no further government actions.

A mixture of practices conducted under the extensive use of networks (Ledeneva 1998) is intertwined in the day-to-day life of Ukrainians and the health care sector is not an exception. Coping strategies are so deeply rooted in the health care system that they have almost become a basis for its functioning or can even entirely replace some system elements. However, coping strategies in Ukrainian health care provision are not attributed to the poor population groups only, even wealthy households

may be in trouble when their members are sick and a competent health care provider is needed. Hence, active development of personal—social network gives a “*safety kit*”, which provides numerous benefits but also can require certain inputs from actors (to assure reciprocity of the relationship).

Perhaps, policy recommendations are not relevant in situations where a weak state repels citizens from public service consumption, and then patients construct the alternative solutions to their unmet needs. Self-help strategies are flourishing in a weak state, they become widespread and deeply rooted without adequate policy interventions, whereas such interventions are most probably not taken because the state is weak. It seems that breaking this vicious circle is possible either through a change of the political elite or through a strong and mature civil society, its audits, or with externally placed frameworks. Thus, persistent resorting to the coping mechanism is not purely a matter of health care governance but also the issue of distrust in the state and skepticism toward public institutions. At the moment, Ukraine shows some progress in the improving social trust with policy reforms and health care sector seems to be very close to the new era of health care financing and organization. This might be the case of joint solid work of government, civil society, and international assistance aimed at health and well-being of the population.

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# Collateral Damage of Global Governance on the Local Level: An Analysis of Fragmented International Regimes in the Brazilian Amazon

*Regine Schönenberg*

The questions that will be discussed by reconstructing various processes of criminalization are the following: which ingredients are necessary to trigger a criminogenic dynamic of social transformation? When is the course set for an almost irreversible process of criminalization, a kind of tipping point? Is it possible to find turning points and to reverse the process? What is the significance of these results for the understanding of the advancing social, economic, cultural, ecological and political disintegration of many regions in the world? Which global policy approaches could reverse the process?

*Prologue: Ataláia do Norte, Amazonas, Brazil*

*Monday morning, 7 a.m. At the outskirts of Ataláia do Norte in Amazonas State there is a long queue of local non-Indigenous residents lining up in*

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*front of the Indigenous representation CIVAJA, a joint association of five ethnic groups of the Indigenous reserve Vale do Javari. Why are they here? What do they want? Some young people hope to access the internet but the majority work for the city council and want to make photocopies. CIVAJA happens to have the only working photocopying machine and the only rapid internet access in the little town and they rent their facilities out. How did this come about and with what consequences?*

*Here comes Pedro Garcia Marúba, Chief of the 5000-person Marúba tribe and President of CIVAJA, on his motorbike. Pedro moves slowly; he is suffering from jetlag, having just returned from Nairobi, where the UNEP-CBD-8j working group was drafting their final report for last year. He is longing to get to his village but instead has to check his emails, have lunch with a KFW-representative and negotiate with the Médecins Sans Frontières contracted by CIVAJA to take care of the reserve since the Brazilian government privatized Indigenous health care.*

*On his way to the office, Pedro passed Mayor Bisouro (Beetle), who did not even return his 'good morning'. Pedro knows why, and knows how worrying this will be in the long run for his people. Last month CIVAJA agreed to cooperate with Operation Cobra of the Federal Police, the Brazilian answer to America's 'Plan Colombia', and revealed clandestine airstrips within the reserve to the police – airstrips the cocaine traffickers from Columbia and Brazil use to exchange cocaine for arms or money. CIVAJA is internationally embedded and financed and had no choice in the matter. Since the press conference which followed the destruction of three airstrips, and the departure of the federal police and the 'observing' DEA agent, CIVAJA has been suffering severe pressure from the local timber mafia.*

*The mayor, himself a timber trader, had organized an anti-Indigenous march and had even managed to gain support of the local fishers association, which lost access to their fishing grounds when the Indigenous reserve was created. In a way Pedro could understand Bisouro: over the last 10–15 years the local oligarchs had lost their omnipotence over 'their' remote territories, far from state control, to a confusing number of state and non-state agents who now controlled access to local natural resources. Currently, Ataláia do Norte and the neighbouring municipality Benjamin Constant are encircled by natural and Indigenous reserves; to work the remaining forest it is obligatory to apply for a timber licence, which is only granted if handed in jointly with a reforestation strategy. Mahogany, the major local cash crop, was prohibited altogether as the result of a Greenpeace campaign.*

*A costly business to bribe all those involved...and worse: sometimes they did not even know whom to bribe! Pedro had tried to explain the complexity of the place to the national and international agents who always flew in with tight schedules and would hardly listen to anything which did not directly affect their missions.*

*Pedro's view wanders from his never-ending emails to the window where the photocopying line is swelling. He knows that the fact that these people have to wait here does not increase their respect for Indigenous people – on the contrary: they see all the support that CIVAJA is receiving as unjust. His standing would not be better in his village, though. The elders criticize him constantly for travelling too much, for using strange words and losing his humility. The old forms of authority in the village and within the tribe have become all muddled up due to the increasing importance of international affairs, which the elders can no longer follow. Pedro is involved in a discussion process on this representation problem within COIAB, the all-Amazon Indigenous representation in Manaus. He dreads the thought of getting into the plane again next week to attend the next meeting on this matter in Manaus.*

## INTRODUCTION

This short account from the perspective of an Indigenous leader at a remote locality in the Amazon shows the complexity and volatility of fragmented global governance and selective participation of local populations. The different interests of the inhabitants of Ataláia do Norte and nearby localities have become interlinked with numerous global norms, such as the protection of Indigenous people (ILO §169), the forests (Forest Convention, in negotiation since 1992), biodiversity (CBD) and the climate (Paris-Protocol); the fight against organized crime and terrorism (PALERMO-Convention); the search for secure borders; and the demand for precious timber. Meanwhile, the needs of local populations are overlooked and become part of the different discourses in place. Communication on daily matters becomes hampered by strange concepts such as protection standards, logging licences, fishery quotas, ISO norms, superfoods and climate-change mitigation. Increasingly, the respective local reference points for decision-making link up with political and economic networks that locals can neither overlook nor influence. This situation is paradigmatic for many regions of the world that have lost their social cohesion and

entered a spiral of short-lived informal survival strategies, making them vulnerable to the criminalization of their socio-economic reproduction.

In this chapter the effects of globalization are assessed from the bottom-up perspective on the basis of case studies at the Amazonian periphery of Brazil. In the case studies different processes of criminalization are reconstructed and analysed by addressing the following questions:

Which ingredients are necessary to trigger a criminogenic dynamic of social transformation? When is the course set for an almost irreversible process of criminalization? Is it possible to find turning points and to reverse the process? What is the significance for the understanding of the advancing social, economic, cultural, ecological and political disintegration of many regions in the world? What global policies could reverse the process?

The current global system is based on historical structures whose legacy is not taken into account: colonial genocide, mostly inadequate Western law and the respective power asymmetries, for example, the power to define what is legal and what is illegal (Webb et al. 2009). Consequently, the current world order does not provide for global citizens equally (Pogge 1997, 2001; De Soto 2000); de facto, a growing part of the world's population cannot be reached by state-based activities: according to estimates of the ILO, about 4 billion people are embedded in the so-called informal sector,<sup>1</sup> and are insufficiently supplied with public goods, such as water, health and education. At the same time, approximately 1.5 trillion<sup>2</sup> US dollars are involved in illegal economic activities such as drug trafficking, human trafficking, illegal arms trade, illegal disposal of toxic waste, smuggling of all kinds, subsidy fraud, and active and passive corruption—reaching a total of approximately 20 per cent of global GDP<sup>3</sup> (Pieterse 2002). Part of the problem is that citing such abstract data hides the true nature of the problem, namely, huge knowledge gaps on the nature of informal economies (Weng 2015; Richards 1997; Agrawal and Gibson 1999).

After a rapidly growing global network of conventions and global policies in the 1990s, concerns about the effectiveness of the respective international regimes have been debated for almost two decades (Sassen 1999; Keohane and Nye 2000; Murphy 2000). There are fundamental weak-

<sup>1</sup> Kurtenbach and Lock 2004: 49.

<sup>2</sup> Kurtenbach and Lock 2004: 50.

<sup>3</sup> Glenny 2008: 6.



nesses in the existing system, such as treaty congestion, missing horizontal linkages between different policy fields and a growing lack of transparency in negotiations and alliances between governmental and non-governmental actors (Leary and Pisupati 2010; Weiss and Thakur 2010). Global governance has not attained regulatory force, especially if seen from the local perspective, where a variety of global policies impact and often, due to false presumptions, expel affected social actors from their local environments. It is no surprise that global politics and policies appear increasingly unattractive, especially to actors who are engaged in sustainable transformative politics: expensive inefficiency and problems of legitimacy due to a widely perceived lack of representativity is one common view of global governance in the Global South (Heine and Thakur 2011). At least two key deficits and ‘gaps’ need to be analysed more closely (Adger and Jordan 2009; Walk and Schröder 2011). The first key deficit is the institutional or implementation gap: the rise of diffuse governance initiatives has led to unclear responsibilities. A lot of good project ideas exist but they must be put into practice at all policy levels, where the necessary institutions and further framework conditions often do not exist. The second deficit is the participation gap, which refers to the fact that in governance processes civil society groups are still on the fringes of policy-making (Schönenberg 2015). That means that we still know little about the influence of different bottom-up initiatives on many governance processes and their possibility to claim a right to participate (Segebart 2007; De Soto 2000). Discussing global governance from a bottom-up perspective might lead right into the centre of current turbulences in the field: the risk that global governance may fail, if it fails to integrate a bottom-up approach and horizontal linkages (Goldin 2013; Ghani and Lockhart 2008).

Regulative gaps (McIlwain 1999) within and between nations need to be bridged by new forms of public management, multinational treaties, rules and norms—which takes time. Meanwhile, the rapid and flexible transnational organized crime and global crime entrepreneurs gain leeway (Naim 2005; Glenny 2008). Within this global framework, sites of illegal activity and the corresponding trafficking routes change frequently (Nordstrom 2007) and illegal transactions take place amidst legal business structures and compliant politicians (Bezerra 1995). Due to new communication technologies, ease of travel and the globalization of financial transactions, illegal operations increasingly assume a flexible network character. Depending on the receptivity of the local political and business culture, such networks may plug into and out of the social fabric and sometimes permeate it permanently.

As described in the episode from Ataláia do Norte detailed above, limited access to natural resources has fostered alliances between the local business sector, which traditionally holds local political power, and representatives of transnational organized crime, in this case, drug trafficking. Consequently, conflicts regarding access to resources have grown, as has the complexity and incoherence of the legal framework regulating such conflicts. Whereas globally triggered interventions, for example, of the environmental sector, function in a merely sectoral logic, with little interest in issues of organized crime or the economic livelihood of local populations, local actors tend to think and to act horizontally. They are used to an absent state and to being self-reliant for their economic and social survival. Accordingly, they try to manage with the options they can find locally and to work together with local groups to reach their goals. Having been ignored when new norms and laws for their region were drafted, local actors are not really concerned with compliance. The naturally fine line between legality and illegality is blurred and morals are bound to local necessities and family obligations. From the point of view of locally accepted socio-cultural exchange practices (Cartier-Bresson 1997), the local *patrão* who integrates cocaine into his trade portfolio represents no problem as long as he redistributes part of his profits and continues to engage in the moderation of local interests.

In remote regions, this state of affairs has been going on for centuries; however, as soon as organized crime becomes a noticeable phenomenon and option, a kind of struggle between relatively legal and openly criminal structures arises. All actors take up positions and form new alliances in order to defend their region in one way or another. The specificities concerning the role of the state at such crossroads are a puzzle which only becomes explainable by reconstructing local history and by examining the evolution of mechanisms of social inclusion or exclusion (Stichweh 2005). Criminal activities reflect quite neatly the state of the art of social cohesion at a given spot and the (in-) adequacy of regulative measures to guarantee inclusion or to cause exclusion. There do exist concrete reasons for the criminalization of whole regions that suffer impacts from rapid social transformation processes, which answer the question: why this region or country and not another? Deep understanding of the interdependence between the perceived or imagined regular society and the underlying dynamics of processes of criminalization is crucial to preventing network criminality from taking over in many regions of the world. As Hernando de Soto puts it: 'The challenge today in most non-Western countries is not

to put all the nation's land and buildings into the same map (...) but to integrate the formal legal conventions inside the bell jar with the extra-legal ones outside it' (2000: 157).

### CASE STUDIES: TRANSFORMATIVE PROCESSES IN THE BRAZILIAN AMAZON

World summits have indeed had an enormous impact on the Brazilian Amazon, since almost all locally implemented policies and budgets of the last 30 years originated from international memberships, conventions or important global meetings. Although the region is frequently pointed to as a biodiversity hotspot and the lungs of the world, hardly any policy considers the historical and cultural specifics of the region (Cleary 2001; Schöenberg 2013). On the contrary, stereotypes such as an *abundant, green and empty* space still dominate the national and global imagination. Conceptionally, projections of sustainable development concepts and sustainable Indigenous populations who will serve as global foresters to save our climate are not so far from the myth of the imaginary Greek Amazons who gave the name to the region, nor from the search for El Dorado by Spanish and Portuguese adventurers in the sixteenth century (Carvajal 1542/1942; Oliveira 1983).

Debating the questions about the necessary ingredients to trigger a criminogenic dynamic of social transformation, the irreversibility of criminalization processes, and possible turning points which might reverse the process, one has to consider the fact that all possible types of organized crime are embedded in extensive and non-transparent social and political networks, where new laws and regulations become instantly incorporated into the local power balance, as well as the fact that—due to understaffed and often corrupt local law institutions—impunity remains the norm.

### ACCESS TO LAND AND NATURAL RESOURCES

As access to land and natural resources remains the primary basis for social, cultural and economic reproduction, land conflicts tend to be the primary indicator of the general rise in violence and illegal practices<sup>4</sup> (Feitosa Souza

<sup>4</sup> CPT, land conflicts in 2016: [www.cptnacional.org.br/index.php/component/jdownloads/send/4-areas-em-conflito/14039-areas-em-conflito-2016](http://www.cptnacional.org.br/index.php/component/jdownloads/send/4-areas-em-conflito/14039-areas-em-conflito-2016)

et al. 2015). In Brazil, land concentration is exceptionally high and in the Amazon the concentration of cultivable lands is still constantly increasing, while the patronage system remains in place (Castilho 2012; Schönenberg 2013; Clapham 1982). In the last national agrarian census in 2006 by the Instituto Brasileiro de Geografia e Estatística (IBGE),<sup>5</sup> the GINI-Index of the Brazilian agrarian structure was discovered to have increased: 0.857 in 1985, 0.856 in 1995 and 0.872 in 2006. This means that smallholders with less than 10 ha occupy 2.7 per cent of arable lands, whereas owners of estates larger than 1000 ha own 43 per cent.<sup>6</sup> Current data talks of 3 per cent of estates occupying 57 per cent of arable lands whereas 4.8 million smallholders are landless and waiting for the implementation of agrarian reform.<sup>7</sup> In a formally powerless situation for a great majority of peasants without land or without land title, informal institutions like a local gatekeeper gain importance. Pressure on land and natural resources are manifold (Fig. 8.1):

The national, regional and international export agenda raises the demand for arable land and implies the application of regulations (e.g. ISO norms; Murphy 2000) as part of membership in WTO, Mercosul, EU-partnership and further trade agreements. The major actors are well organized in their agro-industrial associations (FAMATO, APROSOJA-MT, etc.) and well represented in Congress in the so-called *bancada ruralista* or in official terms, the *Frente Parlamentar da Agropecuária* (FPA), which unites more than 200 votes out of 513 (Castilho 2012). Closely interlinked with this lobby group and the mining sector are governmental investments in infrastructure, namely hydroelectric dams to provide electricity, and new highways to transport soy, meat, cotton, corn for fodder or agro-fuels in Brazil and abroad, mainly to India, China and Europe.

A further governmental agenda is compliance with international conventions on topics such as climate and biodiversity. Climate goals are allegedly being met by the reformulation of the energy matrix towards hydropower and agro-fuels and by curbing deforestation (Schönenberg 2015), mainly through conservation policies<sup>8</sup> and command and control

<sup>5</sup> IBGE announced the next census in April 2017: <http://mundogeo.com/blog/2017/04/03/ibge-anuncia-o-censo-agropecuario-2017/>

<sup>6</sup> [www.estadao.com.br/noticias/economia,concentracao-de-terras-aumenta-no-brasil-aponta-ibge,443398,0.html](http://www.estadao.com.br/noticias/economia,concentracao-de-terras-aumenta-no-brasil-aponta-ibge,443398,0.html)

<sup>7</sup> [www.sasp.org.br/index.php/notas/75-concentracao-de-terras-na-mao-de-poucos-custa-carro-ao-brasil.html](http://www.sasp.org.br/index.php/notas/75-concentracao-de-terras-na-mao-de-poucos-custa-carro-ao-brasil.html)

<sup>8</sup> About 40 per cent of the Amazon is under special regimes.

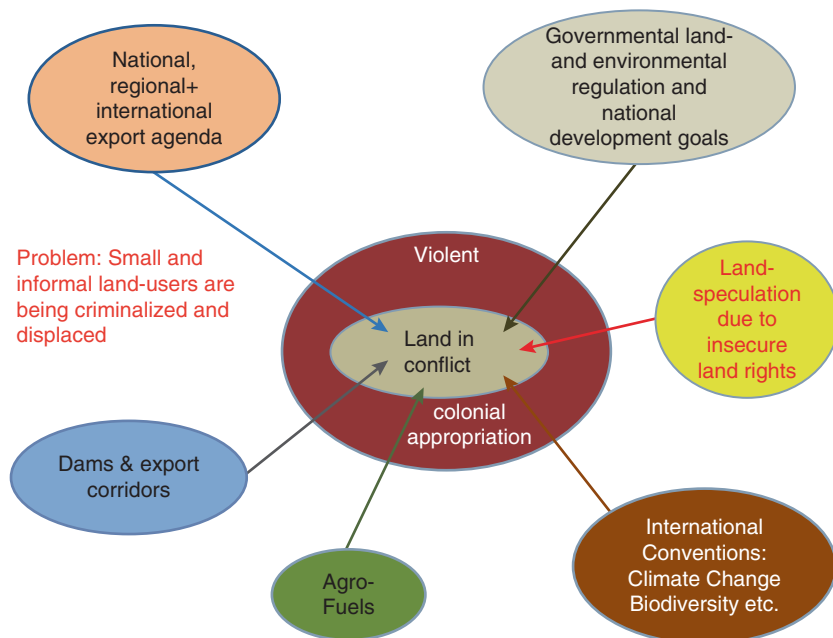


Fig. 8.1 Transformation pressures

measures.<sup>9</sup> Within this political setting and almost without institutions<sup>10</sup> to mediate upcoming conflicts regarding legal access to land, the majority of state and federal lands in the Amazon are not formally regulated, which fosters land-grabbing and massive displacement of smallholders or of land traditionally occupied without formal claims.

There are many examples of how these circumstances lead to the criminalization of whole regions, economic activities and leaders (Geffray 1996, 1997, 1998; Schöenberg 2002; UNESCO/MOST 2002; Wagner Berno de Almeida 2013); here I concentrate on four examples:

<sup>9</sup> PCCDAM: [www.amazonfund.gov.br/FundoAmazonia/export/sites/default/site\\_pt/Galerias/Arquivos/Publicacoes/PPCDAm\\_3.pdf](http://www.amazonfund.gov.br/FundoAmazonia/export/sites/default/site_pt/Galerias/Arquivos/Publicacoes/PPCDAm_3.pdf)

<sup>10</sup> There is only one institution informal land users can approach besides their trade unions (STRs): the Ministério Público (MPE), an independent and often proactive state attorneyship, present in almost all municipalities.

*Mahogany Boycott* One vivid example is the criminogenic effects of the widely celebrated ban on the mahogany trade from the Amazon, which was successfully initiated on the basis of the CBD by the global NGO Greenpeace and led in the beginning of the century directly to the criminalization of the archaic timber-trade sector, since no viable economic alternatives were provided. Being deprived of the cash crop mahogany and without access to technical advice or credits for amplifying the value chains, locals used the timber containers to transport cocaine and cocaine paste from Peru to Rotterdam (Schönenberg 2002).

*CAR—Rural Environmental Cadastre* As an enforcement tool for the new Brazilian Forest Code, a new instrument, the so-called CAR was designed. The CAR previews a kind of individual land-use planning for each property, including the definition of protected zones (80 per cent in the Amazon). In the absence of legally protected property rights, the instrument CAR rapidly became abused to generate a first official document for further land-claims on lands occupied by informal small holders or traditional populations. During a Summer School on Land Governance at the ICJ, the Institute of Juridical Science at the Federal University of Pará (UFPA) in June 2016, CAR was commonly discussed as the latest land-grabbing tool. The example is typical for many environmental regulation instruments: as long as the agrarian reform has not been implemented, environmental instruments are being distorted and neatly integrated into local power-games.

*Land-Grabbing for Oil Palms* As part of the Brazilian climate strategy (agro-fuels), oil palms spread in the Amazon, mainly on so-called degraded lands (Backhouse 2016). The definition of ‘degraded lands’ is an entire topic of its own but the labelling as ‘degraded’ frequently opened up the path to land-grabbing on traditionally occupied land that thus far, due to landscape characteristics, had remained untouched; oil palms do not necessarily need flat lands, are extremely robust and use deep roots to access ground water during dry periods. The involved firms, Biopalma and Agropalma, are part of the global mining company Vale do Rio Doce, the largest mining firm in the world, with excellent local and national political networks. During my own field research in June/July 2016 in the State of

Pará, I interviewed the parties involved in a conflict involving Quilombolas<sup>11</sup> that had lost about one-third of their traditional land to the illegal land occupation of a Biopalma branch; powerful Biopalma Ltd. had allegedly 'bought' two old, poorly geo-referenced land titles from pre-Geographic Information System (GIS) times and deforested the area rapidly. When the Quilombo Association claimed their land it was discovered that the purchased land titles belonged to the neighbouring municipality. Nevertheless, the conflict was never settled; the formal land-regulation process of the Quilombo came to a standstill because the claimed land belonged to two different, hardly cooperating land titling institutions: half at the federal level, INCRA, and half at the state level, ITERPA. Meanwhile, young men of the Quilombo armed themselves and began patrolling at night to prevent further encroachments. Asked about other possibilities of representing their interests they explained that Biopalma had long ago bribed anyone who could mediate, even within their own association and, consequently there was no other possibility than taking up arms.

### ISO NORMS ON HYGIENE AND ILO LAWS ON CHILD LABOUR

Land occupation of the Amazon has always corresponded with specific local or regional economic activities (Oliveira 1983; Santos 1980). Knowledge of local nature and the respective locality provided local populations, mainly in family units, with a solid basis for survival and the possibility to commercialize excess production to obtain some money. Many little towns in the region stand for a certain product such as manioc, açaí (Brondízio 2008), Brazil nuts, sugar cane liquor (Schönenberg 2002), honey, cookies, special fish and fruits, and so on. Accordingly, there exists a whole network of traditional feasts celebrating those products, guaranteeing communication and the economic and cultural reproduction of local populations. The gradual introduction of ISO norms in the hinterlands of the Amazon had three effects: firstly, many local prod-

<sup>11</sup> Quilombo is the term for villages of descendants of African slaves; legally, they dispose of special collective land rights, but practically, it is very difficult to claim those rights.

ucts, producers and commercialization structures were wiped out, due to the impossibility of small, rural family enterprises being able to comply with the new hygiene norms and the respective registration procedures. Supermarkets opened up and the living standard of local populations became more precarious. Secondly, black markets were established and new and old gatekeepers started to 'organize' access to the new commercialization structures, offering licences, registry numbers and stamps for money and for loyalty; both elements—illegal actions plus owing favours—are important bricks in construct illegal environments. Thirdly, new players entered the business of traditional products, knowing nothing about the location but everything about the necessary steps needed even to enter the global markets, and these ultimately kept the local knowledge-holders out of the business (Anderson 1991). Laws on child labour had a similar effect, since almost all traditional enterprises relied on family work, including children before and/or after school. The ILO norms were often introduced together with the ISO norms on hygiene in the 1980s, taking effect by the mid-1990s. The impoverishment of the respective segments of society led to children selling bubble gum and polishing shoes, and, of course, giving a share to the local gatekeeper who bribes the local police.

To sum up: each licence and each exception from the rule requires overcoming an array of bureaucratic hurdles that can often be tackled only informally—meaning: by paying a bribe or by owing someone a favour. 'Owing someone a favour' is the humus of a criminal environment and often the gateway for one's own criminal involvement, since it makes it very difficult to say 'no'. Here, we are talking about money laundering by means of public bidding procedures, ghost investments and the transport of cocaine within the legal transport structures of timber, fish or agricultural products, or using the thousands of non-registered airstrips on Amazonian farms. The fact that abundant drug-money is available for bribery impacts negatively on the local democratic culture and reinforces the already widespread impunity throughout the entire region.

In all four cases, norms, laws and policies lead to the creation of new, informal institutions of mediation between abstract legal sets of rules and those that are local and informal. In the best case, such mediation happens through negotiation processes between local associations and state representatives; in the worst case, informal networks are transformed into illegal networks by corruptive gatekeepers who manage to control state inspectors



(De Soto 1989, 2000; Escobar 1995). In more general terms, one can correlate the proliferation of organized crime in the Brazilian Amazon with the illegalization of local economic activities—the latter being a collateral effect of ill-defined state regulation.

## DISCUSSION

When speaking of social transformation we usually think of significant transformation processes and rarely of logging licences, hygiene regulations, ISO norms, work-security provisions and bureaucratic application procedures. However, the connectivity of the latter determines whether livelihoods will be included or excluded in a transforming society. In the vast majority of rural or urban communities on this planet, social and economic relations still take place on an informal, customary basis. Any formal regulation, procedure or even law coming in from outside, normally from the state capital, will be fed into the local social system and, if possible, be absorbed without leaving major changes or ruptures. Already during this process the local power equilibrium might be affected: some gain access to the new rules whereas others, whose access is limited, for example, by new environmental obligations, will lose power and find themselves confronted with demands for bribes to continue their usual economic activities. In the event that the formalization process encompasses numerous novelties at the same time and links up with strong economic interests from outside regarding land (rural/urban) or natural resources, local social structures will soon be overwhelmed. Then, what was previously common practice becomes illegal, those who formerly possessed legitimate authority become obsolete, and the new social and economic actors who master the formal rules usurp local resources and the local marketplace.

So far, global governance theories have not accumulated much knowledge on the adverse local effects of globalization and fragmented global governance in many regions of the world (Jojarth 2009). Consequently, there are few innovative proposals for overcoming this situation and working on more inclusive designs to jointly solve global problems. Even in key thematic areas of global governance like climate change and biodiversity, the tendencies to externalize costs cannot be controlled by global governance structures (Cardinale et al. 2013). The sheer number and non-transparency of memberships and regulations results in exclusive

mechanisms for many states: instead of global harmonization, the objective should be managing diversity (Nishii and Özbilgin 2007).

The reality of world conferences—especially UNEP, Rio '92 and the format of the Agenda 21—has introduced and included civil society actors on the global stage, which has strengthened the expectation of a participatory model of global governance. Mayntz (2002) reminds us that strategies and interactions within transnational space are power-based and not directed towards problem-solving but towards the establishment of dominance and exploitation. Regarding the very slow path of decision-making, global institutional structures have embodied legitimacy problems, power blockades and imbalances; pathways to overcoming the current deadlock could be reform towards leaner bureaucratic structures, the invention of some new form of diversity management and the establishment of innovative alliances. The mere integration of NGOs in governmental delegations and the organization of parallel forums do not overcome the lack of integration of local knowledge and the lack of consideration of diverging forms of societal organization that do not correspond with the propositions of current global governance instruments.

The overall lack of representativity implies a lack of legitimacy and local sensitivity which definitely limits chances of future implementation of sustainable transformation policies. The impact of resolutions, regimes and treaties which are drafted and voted for in exclusive and limited global assemblies is sometimes dramatic and can only be described as collateral damage. Even relatively harmless processes of participation, for example, sending some bullet points and local representatives to be included in national participation processes, might have effects of re-organization in local political arenas. The necessity to paraphrase local problems and processes to meet global linguistic and conceptual demands often has negative impacts on local policy formulation, since local populations may become alienated from their own lifeworlds (Münch 1998, 2001).

With regard to new (institutionalized) forms of representation which include diverse perspectives and reverse learning processes (bottom-up instead of top-down) in the architecture of global policy formulation and implementation, little space for critical civil society organizations and policy innovations or paradigm changes can be identified at the moment. Already over-complex, the present structures allow neither for the necessary decision-making processes nor for conceptual changes. If one simply considers the style of conferences and the possibilities for intervening, the

far-reaching advantages for globalized citizens of the metropolis become evident.

## CONCLUSION

Mainly due to the above-described problems of representation and participation, as well as the generalized lack of horizontal links between numerous global agendas (Newman et al. 2006), the original intentions of a given international regime often get lost during implementation. In the case studies, I have highlighted some examples of collateral damage caused by fragmented and shortsighted implementation of international regimes and concomitant national policies. In extreme cases where adverse effects multiply, whole regions can become criminalized so that governance of any kind has to consider the parallel systems in place.

With regard to the ingredients which trigger a criminogenic dynamic of social transformation, it is important to consider the mix necessary for livelihood security at a given locality and then analyse which elements are getting lost in the process of social transformation. The described adverse effects of top-down global governance usually link up with further transformation factors and the availability of criminal options—such as cocaine routes, in the case of the Amazon, or a profitable war economy in many other regions of the world. At the moment when the state is being widely encroached upon and local populations lose the collective memory of a functioning society, it becomes very difficult to reverse the development and re-establish a kind of legal social order. Only a new economic activity with new legal actors might offer alternatives—unfortunately, often with high environmental costs.

The significance of the results from the Brazilian Amazon for the understanding of the advancing social, economic, cultural, ecological and political disintegration of many regions in the world can be found in the long-term effects of the destruction of local forms of governance through dissociation of traditional, local actors from land and natural resources and the concomitant loss of local knowledge of nature and biodiversity (Viveiros de Castro 1996, 2012; Cardinale et al. 2013; Wagner Berno de Almeida 2013), resulting in the gradual handover of entire regions to corrupt middlemen.

The overall questions persist: which global policies could reverse that process? What kind of participation is conceivable in global governance processes and within global institutions? How could bottom-up perspec-

tives towards a sustainable future be considered in global governance processes?

With regard to new sources of legitimacy for governments under pressure from above (global) and below (local), the proposals of Abromeit (2003) should be taken into account: a deliberative democracy which opens up the possibility of special voting rights according to expertise. Also interesting from a multi-level perspective are the ideas of Schmitter (2007), who defends a voucher system in three to five policy fields in addition to the regular vote. Instead of top-down universalism, bottom-up multiversalism with high efficiency and hence new sources of legitimacy should be considered. To reach such a goal the course of policy formulation and implementation would have to be reversed: those who have access to transnational discourses and possess diversity awareness will have to take over the responsibility for compliance of new norms by guaranteeing the integration of multiverse world views into the process of policy and norm design. This reversal from top-down to bottom-up could compensate for the lack of access to transnational discourses and allow for the desired cultural validation of the new global norms. Global meetings should take place in rotation at those localities that bear the characteristics of future implementation of the respective policy, thereby guaranteeing the participation of paradigmatic stakeholders and enabling an on-site and multi-level dialogue (Latour 2004). The assumption that diversity awareness and good management of global diversity could become important attributes for sustainable transformation policy could inspire the future discussion on state power and governance under global conditions and local conflict.

For the Amazon, currently, very little positive outlook exists. Susanna Hecht (2011) elaborates on *'Amazonia's role in the structuring of the contemporary Brazilian state through resistance to conventional modernist authoritarian development planning, and the creation of current places and politics through the assertion of new forms of citizenship, identity, governance and the rise of socio-environmentalisms as part of a new "statecraft" from below.'*<sup>12</sup> Even though I cannot subscribe to such optimism wholeheartedly, it is the best scenario available.

<sup>12</sup> Hecht 2011: abstract.

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PART II

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Opposition of “Us” Against “Them”



## CHAPTER 9

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# Informality and the Revolutionary State in Russia

*Joseph Nicholson*

### INTRODUCTION

One of the first and most influential concepts of informality was that put forward by Keith Hart in 1973. Hart proposed a binary between a state-regulated or ‘formal’ sector of the economy, and an ‘informal’ sector hidden from the government. A subsequent generation of scholars questioned this approach, as they found that in many societies, the formal and informal are interdependent, and often indivisible (Castells and Portes 1989). Since then scholars have suggested new ways of approaching informality, for example suggesting that informal activity is not necessarily inimical to the formal sector, but often bolsters it or is embedded in it (Routh 2011; Morris and Polese 2014; Steenberg 2016). The very concept of ‘informality’ remains problematic as it still posits the existence of divisible formal and informal sectors or behaviours. It is based on assumptions that all

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societies are governed by states which are clearly identifiable and unified entities, which have undisputable authority over a given territory, and which are interested in regulating economic activity in that territory according to a standardised and universally applicable system of laws and regulations (Christensen 2006; Guha-Khasnabis et al. 2006; Gupta 1995; Steenberg 2016). However, in many societies this is far from the case, as several contributions to the present volume suggest. This chapter further problematises the concept through looking at the ‘revolutionary state’. This is not a state in a Weberian or Westphalian sense, rather it aims to free society from such types of government, generally considered repressive by revolutionary movements, and enable people to live in harmony (Armstrong 1993). We take a historical perspective, looking at Russia in a period of upheaval, in 1917–1920, considering how revolutionaries conceptualised a new kind of state and law, and looking at some economic practices that came about in Russia following the revolution, highlighting how concepts like state/private, and legal/illegal, become redundant for studying these phenomena.

### THE REVOLUTIONARY STATE AND THE LAW

The period 1917–1920 in Russia was a scene of a turmoil rarely witnessed throughout modern history. Being one of the major belligerents in the First World War for three years had already economically weakened the country and escalated internal political and social crises. These factors led to the collapse of the Russian government, the tsarist empire, a process culminating in 1917. The following three years saw the country plunge into a brutal civil war as rival governments backed by foreign powers fought each other, as well as external enemies. The eventual victors were the Bolshevik party, who would go on to preside over the building of the soviet state out of the ruins.

The Bolsheviks had arrived on the Russian political scene with visions of a future in which the working classes, or proletariat, would seize power. Then, under the direction of the Bolshevik party itself, which saw itself as the vanguard of the proletariat, the conditions would be set to bring about communism. The party’s main theorists, Vladimir Lenin and Nikolai Bukharin, developed their ideas on what form this power would take in 1917, in their respective works (Lenin 1964; Bukharin 1996). Based on Marx and Engels’ teachings that the state is inherently an instrument for some people to exert oppression over others, they envisaged that initially

the working classes under party guidance would form a temporary Proletarian Dictatorship. Such a government would impose total equality and fairness on society, under which conditions all people would gradually learn to live together in harmony, and as this came about the state would wither away, until finally a stateless communist society emerged. What the Bolsheviks were proposing in some ways bears relation to Weber's concept of the bureaucratic state in that it was to be a wholly rational device able to effectively implement the will of the rulers. However—whereas—according to Weber, bureaucracies have an inherent urge to consolidate and expand their remit, the revolutionary state would bring about the conditions for its own dissolution (Weber 1964, pp. 329–340). Thus it was to be an entirely novel type of state, as Lenin was aware:

We need the state. But we need none of those types of state varying from a constitutional monarchy to the most democratic republic the bourgeoisie has established anywhere. (Lenin 1917)

Central to the administration of this transition state would be an original concept of law. Russian revolutionaries had long considered the liberal legal norms that had developed in the west to be over-formal and inherently unjust (Szamuely 1974, pp. 172–174). The Bolsheviks fused this tradition with Marxist logic, arguing that law was a bourgeois construct designed to maintain a fiction of equality between the masses and the ruling class, while by its very nature reinforcing the wealth and power of the latter (Berman 1963, p. 26; Burbank 1995, p. 43). Lenin argued that while in the eventual communist society there would be no need for law at all, the transitional proletarian dictatorship would still have need of it to ensure fairness in production and distribution until people learned to live in harmony. However, it would use law as a fluid and informal instrument to help progress the cause, the Bolsheviks did not pretend to the impartiality or universality of law as, in their view, was done in western states or under the former regime. As Lenin said:

We are not bureaucrats and do not wish to apply everything everywhere literally, as it was in the old chancelleries. (Burbank 1995, p. 37)

The Bolsheviks believed that the bourgeoisie, as the ousted ruling class, would embark on a desperate battle to return its power, and a universal or standardised legal system would only aid their struggle, as it fostered

bourgeois values like individualism and materialism. Instead the working class should be able to use law subjectively to repress representatives of this enemy class, where they were exhibiting behaviour harmful to the socialist project, while not being limited by it themselves in their work of building communism (Juviler 1976, p. 17). On coming to power, the party attempted to instil their vision of law by abolishing the former legal system and replacing it with a patchwork of popular courts where untrained workers administered justice based on their sense of 'revolutionary consciousness' rather than formal legal codes (Carr 1950, p. 216; Juviler 1976, p. 16; Solomon 1996, pp. 20, 22).

In many ways, the revolutionary state that emerged in Russia under the Bolsheviks failed to live up to expectations. Some of the visions had implied an advanced capitalist society as a foundation, far removed from the actual conditions in mainly agricultural Russia at the time, especially embroiled as it was in war and economic collapse. The conditions that the Bolsheviks had relied upon, namely the spreading of the revolution throughout Russia and overseas, did not come to pass. Instead they found themselves at war both with forces inside the country, and a host of foreign powers. Preserving power became their priority, which facilitated the emergence of a militarised and centralised dictatorship of the party elite. This in turn would sow the seeds for the development of the expansive bureaucratic and repressive regime of the Soviet Union, hardly the stateless utopia theorists had envisaged before 1917. Nevertheless, in the first years of the soviet experiment we can still find attempts to implement anti-bureaucratic and anti-law ideals. One arena where this stands out is in trade and distribution. The Bolsheviks' policy in this sphere reflects their rejection of the Westphalian state system, their determination to break up the old regime and to popularise administration, and their contempt for formal legal proceedings. Together with a multitude of other factors, like war, political and economic crisis, the disintegration of communication and distribution networks, and widespread shortages, such attitudes would bring about a world in which it is impossible for us to divide phenomena into categories of formal/informal or legal/illegal.

### DOMESTIC TRADE

The Bolsheviks as a whole were committed to ending private trade and the market, which they saw as incompatible with socialism and communism. In their view, engaging in trade made a person selfish, greedy, and corrupt,

characteristics which were supposed to become extinct under socialism (Clark 1995, p. 19; Kelly and Volkov 1998, p. 291). On a broader level many Russian revolutionaries despised the market as they saw it as inherently disorganised, anarchical, and unfair. They dreamed of a rational, scientific, and just system of distribution (Stites 1989, pp. 47–48). Lenin saw the consumer co-operatives as a blueprint for the latter. Since the 1860s the co-operative movement in Russia had expanded from individual social experiments and philanthropic projects of the intelligentsia into several huge unions bringing together thousands of co-operatives spanning the whole of Russia and beyond (Kayden and Antsiferov 1929; Hessler 2004, p. 54; Lih 1990, p. 75). Lenin proposed that these, placed under the regulation of revolutionary workers, would over time merge into one enormous unified organ which would provide and distribute goods to the entire population. This, he argued, would constitute socialist distribution (Lenin 1964, pp. 352, 470, 1972, pp. 109–110, 1974, pp. 215–217).

On coming to power the Bolsheviks set about changing the existing commercial status quo. The leaders in the capital declared a long-term commitment to ending private trade, handing the details of how this was to be realised, including the timescale, to their comrades in the regions (Malle 1985, pp. 248–249; Hessler 2004, pp. 26–27). Conversely, lacking an effective replacement mechanism, they simultaneously promoted a policy of ‘state capitalism’: temporarily utilising existing structures, co-operatives where possible, but also former private enterprises, under the regulation of the new state, thus depriving them of their bourgeois and capitalist nature (Hessler 2004, p. 25). Besides this, the Bolsheviks had inherited a situation marked by widespread chronic food shortages, due largely to the need to feed the Russian army in the First World War. They tried to establish effective distribution by asserting state monopolies on foodstuffs and other basic consumer goods, while at the same time launching a fight against those who abused the situation to speculate and profiteer (Lih 1990).

All this led to the emergence of a murky and chaotic world of distribution where the question of what constitutes informality or illegality essentially becomes meaningless. One issue is related to a lack of consistency and agreement as to who, the party elites in the capital or the regional council (soviet), constituted the legitimate authority in a given locality. There was disagreement about this even between the leaders in the centre. Some, like Bukharin, believed the local soviets should be independent political and economic entities, whereas others, including Lenin, quickly

came round to the view that they should be subjected to central control, but lacked the power to effectively assert this (Cohen 1980, pp. 74–75; Smith 2017, p. 221). A dualism emerged in central trade policy. It gave localities a free hand in matters of goods distribution, but also arbitrarily issued obligatory proclamations, for example as to what types of agents should be used, what goods were off-limits to independent traders, and punishments for those who broke the rules (Hessler 2004, pp. 25–27). Meanwhile the provincial soviets often recognised these central decrees only if they perceived them to meet local needs (Lih 1990, p. 170). Some went to one extreme, fully outlawing private enterprises and actively expropriating their property, while others took to the other, energetically promoting private trade in their territory. In the city of Tver, the local soviet closed down 1000 shops in the course of 1918 alone (Davidov 2002, p. 72). Meanwhile the Kazan region became notorious for its advocacy of free trade, fully defying instructions from the centre. The Kazan officials actively promoted commercial relations with neighbouring Viatka, even sending troops to ensure traders were not hindered after Viatka set up a border patrol (Lih 1990, p. 169; Retish 2008, pp. 169–170).

In addition, the vaguely defined state-capitalist policy of authorising organisations and companies to trade in monopolised goods led to a situation where the question of whose authorisation was required to make a trader a formal agent of the state as opposed to a criminal becomes largely subjective. National-level co-operatives decreed by the Kremlin to run goods distribution can in theory be seen as the formal sector, but so can workers permitted by their factory committee to travel to the countryside to trade their produce with villagers for food (Lih 1990, pp. 221–222). Furthermore the monopoly status of goods was constantly being shifted between three vaguely defined categories, and local authorities would sometimes keep the status vague to justify expropriations. Thus in many cases even the traders did not know whether their goods were legal or illegal (Lih 1990, p. 186; Patterson 1991, p. 54).

A further problem is related to the collapse of the pre-1914 Russian commercial world, a process which had already begun during the First World War, but which now reached a new low as shop owners, wholesale merchants, and various other representatives of the imperial trading milieu disappeared. Many were closed down by local soviets, others saw little incentive to co-operate with the regime on its terms and disappeared abroad, into the soviet service, or went underground (Hessler 2004, p. 28; Banerji 1997, pp. 22, 30). The distribution infrastructure with

which the Bolsheviks tried to fill the growing gap proved disastrously ineffective. As a result, most people on soviet territory were forced to devote the civil war period to trading in monopolised, and therefore contraband, goods, themselves, just to survive. The most common forms of this activity was black market bartering in bazaars or on the street, or engaging in what was known as ‘bagmanism’, whereby urban residents travelled to the countryside to exchange consumer or industrial goods with villagers for food (or peasants doing the reverse) (Hessler 2004, pp. 29–31; Lih 1990, p. 219; Davidov 2002). Highly represented among the contrabandists were the Bolsheviks’ working-class constituency, who were supposed to become the administrators of the revolutionary state, as Alexei Rykov, head of the soviet economic apparatus, observed by 1921, “there are very few workers who do not buy goods on the free market” (Carr 1966, p. 242). Even more remarkably, many party members and state workers also resorted to such methods, as one contemporary commented after observing the infamous Sukharevka market in Moscow: “[L]ife is stronger than any regulation, and everyone, from party communists to burzhui (representatives of the bourgeoisie) bought there” (Solomon 1930, p. 205).

Amidst all this, revolutionary authorities were hunting down speculators, who they saw as the cause of the food shortages. Immediately on coming to power Bolsheviks in the capitals, Moscow and Petrograd (now Saint Petersburg), called for them to be arrested and imprisoned (Banerji 1997, p. 17). In the following month leaders set up the infamous soviet secret police, the Cheka, and a system of Revolutionary Tribunals, one of the main purposes of both of which was to combat and punish speculation. The ‘Socialist Fatherland Is in Danger’ decree of a month later called for speculators to be executed at the scene of the crime. Despite all this, the Bolsheviks made little attempt to formally articulate what they actually meant by the term ‘speculator’, instead relying on popular stereotypes of rich merchants hoarding crucial supplies, as a criterion for punishment. This reflects their informal approach to law and its utilisation as a dynamic tool for revolution, effectively giving the state a free hand to fight those perceived as the enemy without getting bogged down in legal restrictions. It resulted in arbitrary repression of individuals on a large scale. Cheka boss Martin Latsis, for example, advised his agents to use the suspect’s class origin, rather than any legal considerations, as the criteria for determining guilt, as can be seen in these chilling instructions:



Do not seek in your accusations proof of whether the prisoner has rebelled against the soviets with guns or by word. You must ask him, first, what class he belongs to, what his social origin is, what his education was, and his profession. The answers must determine the fate of the accused. (Juviler 1976, p. 24)

## FOREIGN TRADE

In commercial relations with overseas during this period we likewise find many actors and activities that elude the categories formal and informal, or legal and illegal. Before coming to power the Bolsheviks had never anticipated that the revolutionary state would need to engage in international commerce. They did not conceive it as a Westphalian nation state with fixed borders, instead they anticipated the spread of the revolution from Russia into Europe and beyond, which would lead to a new type of borderless political space (Baron 2007, pp. 23–24; Armstrong 1993). As Lenin commented, “[T]he important thing for us is not where the state border runs, but whether or not the people of all nations remain allied in the struggle against the bourgeoisie, irrespective of nationality” (Baron 2007, p. 24).

In the first years after the revolution the borders of the soviet territory were indeed unfixed: they were constantly shifting due to wars with external powers including Germany, Poland, and the Baltic states, and internal civil war in Russia against counter-revolutionary Russian forces. A huge smuggling problem on the edges of soviet-held territory forced the Bolsheviks to change tack and take a serious interest in the issue of borders and overseas goods exchange. Trying to fight a war on many fronts with extremely limited resources, due to Russian economic collapse and a trade embargo on soviet territory by Entente forces, they were concerned that crucial assets were being smuggled out of their territory for private gain. However, they could not spare the manpower to establish effective border control. The solution of the soviet foreign trade department (Narodnii Komissariat Torgovli i Promishlennosti, henceforth NKTiP), was to try to harness the smuggling activity and use it in the interests of the revolution.

The NKTiP relied on a system of authorisation to control smuggling, not dissimilar to the methods used in internal trade. The acting head of the organ for much of 1919, Georgii Solomon, describes in his memoirs

how he would grant permission and resources to individuals and organisations who were willing to venture abroad to buy crucial goods for the soviet state (mainly medical equipment and saws for cutting firewood) (Solomon 1930, pp. 247–255). They would be then left to use their contacts with the smuggling networks to navigate the front lines and find their way into enemy territory, and ties abroad to do the deals and bribe customs and police there to get the goods back. This trade was dangerous to the individual agent, as they ran the risk of being shot as spies abroad, and risky to the NKTiP, as many agents simply disappeared with government money. Nevertheless it was still the most effective way of procuring supplies at the time, and the activity rapidly expanded from several tens of pounds of goods per trader to whole wagonloads. It became increasingly popular among soviet state organs to send one's representatives loaded up with money, jewels, and precious metal to go and make purchases abroad (Solomon 1930, p. 249; Liberman 1945, p. 63). To cope with the growing demand, the NKTiP established its own special apparatus for the contraband, with offices on the various fronts, reporting back to a central mission in Moscow, which quickly became one of the main departments of the organ. One official jokingly referred to Solomon as the “minister for contraband” (Liberman 1945, pp. 63–64; Solomon 1930, p. 248).

If we try to apply criteria of formality or legality to this system, we are confronted with various problems. As with internal trade, the question of whose authorisation a trader needs to go from being a contrabandist and a criminal to being a state-sanctioned distributor is unclear and ultimately subjective, both for contemporaries and for present-day scholars. Within the short period between November 1917 and January 1918, the authority to license traders passed hands several times: from the initial HQ of the revolution, the Petrograd Revolutionary Military Committee, to a special soviet set up to manage the economy, Vesenkha, and then again to the NKTiP (Solov'ev and Chugunov 1973, pp. 5, 8, 17; Chugunov 1980, p. 13). A central decree of April 1918 gave the NKTiP the exclusive right to authorise foreign trade activity, yet in reality other organs freely took these matters into their own hands, particularly the department responsible for foreign affairs (Narodnyi Komissariat Inostrannikh Del', henceforth NKID), which autonomously issued permission to individuals to travel abroad for commercial purposes.

The archives of the NKTiP reveal the frustration of its chief, Leonid Krasin, with what he perceived as the unauthorised commercial activity of

other soviet organs, especially the NKID. In August 1920 he wrote from London to his deputy in Moscow:

I have received a letter from a mining engineer, Tsibur, he is calling himself a representative of Gorsovet [unspecified city council]. He has been hanging around [boltaetsia] since the beginning of May, doing nothing, and requesting, of course, money. Please announce a categorical protest against the anarchical actions of Gorsovet, which sends, with the connivance of NKID... its representatives abroad, gives them mandates, breaking the decree on foreign trade. Who gave him permission? What is the point of his trip? How much money was given to him? – you need to investigate these questions. (Kamenev 1920)

Two months earlier Krasin had complained to the head of the NKID, Georgii Chicherin, that the latter had sent one of his own staff, Stepan Bratman, to conduct commerce in Germany, defying the authority of the NKTiP, who had established its own employee, Victor Kopp, there, as the exclusive soviet trade authority:

I'm very surprised about the trip of Bratman to Berlin, where we already have Kopp, who is running all trade. I ask you to stop NKID's anarchical interference in trade affairs. (Krasin 1920)

As the unstable and mutable soviet bureaucracies competed for power, views of what constituted legal or sanctioned trading activity must have varied from one soviet office to the next.

A further problem arises in that even the leaders who directly employed traders often themselves did not see them as possessing a legitimate or legal status. Solomon, while acknowledging the government nature of their work, still referred to his agents as contrabandists:

[It] should be obvious that to conduct, especially on a government level, contraband import trade, I needed the help of contrabandists. (Solomon 1930, p. 269)

Semen Liberman, a trade expert working under Krasin, described the agents as “shady characters”, “sharpers and double-dealers”, and “dexterous fellows”, but also admitted: “And yet it was necessary to use their services at certain crucial times” (1945, pp. 61, 63). A similarly condemning characterisation was given by the deputy of the foreign trade

department, Andrei Lezhava, who described the traders as “a whole army of speculators”, among whom were “hardened crooks”, yet he also conceded that these individuals had their useful side: “they had experience and connections, they could get their hands on anything at fabulously low prices” (Smol’nikov 1990, p. 59).

This is of course both a symbol and a consequence of the Bolsheviks’ flexible approach to legal norms. They did not establish a systematic definition of illegal commercial activity, and instead relied on a shared moral code among revolutionary justice authorities as to what behaviour and character traits merited punishment. This allowed the new state to endorse activities, which might in another context be considered harmful or unacceptable, and may even have led to execution, where they were considered to be serving the revolutionary cause. Krasin’s view is characteristic of this approach. According to one of his closest advisors he confided that Soviet Russia benefitted more from attracting the services of the profiteers than it lost from their occasional “unclean gain” (Lieberman 1945, p. 166).

## CONCLUSION

Informality is generally taken to mean that which is hidden from state registers and regulation. This relies on us making certain assumptions about what the state is and what it is for. It assumes it to be a unified and monolithic nation state that is interested in regulating economic activity according to a standardised set of rules or laws. In such a society we may indeed identify an informal sector in that which evades the law and its enforcement. However, as several contributions to this volume show, there are many societies which are not governed by such a state. This raises the question of how widely applicable the concept of informality is, and ultimately, how useful it is as a tool for studying economic phenomena. This chapter raises these questions through considering their applicability to the concept of the revolutionary state. When revolutionaries come to power they are generally interested in radical measures freeing society from the existing state. This was the case in the Russian revolution, when the Bolsheviks attempted to replace the tsarist regime with a new kind of government. The state they had in mind was not definable by borders, it was not subject to law, and was not concerned with the long-term consolidation of power. It was conceived as a temporary instrument run by the working people that would bring about a new harmonious set of social relations on earth, and wither away in the process. Our study of trade

shows how, on coming to power, the party set about implementing radical measures inspired by their ideology, and how this, combined with conditions of economic, social and political crisis, brought about an anarchical world of trade and distribution, in which notions of ‘informality’ or ‘legality’ hinder rather than aid the scholar.

At the same time, many Bolsheviks were quickly discovering that the political and economic situation in Russia which they had inherited demanded a more conservative approach to rulership, if the revolutionary state was to survive at all. By 1921 they had won the civil war, but with an apparatus at odds with their vision, an ultra-centralised and militarised regime. They were subsequently forced to further consolidate power to compensate for popular disaffection at home, and the failure of the revolution to spread abroad. Ironically, the Soviet state that emerged is infamous for its bureaucratism and red tape. In 1936, Leon Trotsky observed from exile in Norway, “[The state] has not only not died away, but not begun to ‘die away’. Worse than that, it has grown into a hitherto unheard of apparatus of compulsion” (1972, p. 60).

On the other hand, the state did continue to treat law as an informal instrument, with Lenin insisting amidst the creation of the first soviet legal codes in 1922 that soviet law should remain flexible and correctible (Burbank 1995, p. 42). However, such an approach is unlikely to have instilled much popular faith in the legal system over time, and perceived popular disrespect for law is likely to have contributed to the increasing bureaucratic regulation of society.

However, in the period 1917–1920 this was all yet to come, and the reality of many people, not only in Russia but worldwide, was that the world was evolving into a new type of society, one without the need for state or law.

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# Informality, Criminality, and Local Autonomy in the Balkans: A Geographic- Based Analysis of State Confines

*Régis Darques*

## INTRODUCTION: INFORMALITY AS A SPATIAL CATEGORY

For many observers (Garde 1999; Lampe 2014; Mazower 2000; Todorova 2009), “Eastern Europe” is a strange *unidentified* region wedded to the reality of chronic wounds. Submitted to a long-lasting decomposition process, the area offers an alternative model to the stable, progressive, and wealth-producing West. Within this Eastern whole, the Balkan Peninsula is even more embedded into the hard materiality of otherness. The intricacy of geography, the many latent or open conflicts between nation-states, the importance of minority issues, and a known chronic underdevelopment expose people and land to a combination of causal factors (cocktail effect) supporting prejudices. The problem is an old chestnut that has come back time and time again.

This mutual distrust persists despite the attempts of Brussels to leveling disparities in regional economic development, widening the arc of integration, and supporting pacification through security enforcement cooperation.

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In many research areas, plurality and fragmentation make up a complex set of parameters to manage, and local variations can soon ruin any attempt to build operating replicable models. Balkan territories and communities stubbornly stand up to scrutiny.

The non-compliance of the Balkan area is so acute that many recent events find little or no explanation. Even the scientific literature is of no assistance in documenting and explaining a number of key issues (Donais 2003). What do we know exactly about Greece and its unprecedented crisis outside the area of economics and finance? Was the 2007 European integration of Romania and Bulgaria as *easy* as it looks afterward? Why is Albania still a relatively isolated European country—together with Kosovo and Bosnia—years after the beginning of democratic transition? The least one can say is that the Balkans carry a bad reputation (Strazzari 2007; Todorova 2009). As a result of a limited understanding, the region is perceived as a haven for illegal traffics, fiscal evasion, shadow or black economy, and smuggling—the whole system being supported by poor governance and endemic corruption. Whether these assumptions are true or false, and to which extent, is a matter we leave to the attention of economic experts—assuming that they can respond appropriately to the challenges of missing information.

One can bear in mind a sequence of traumatic events that may explain why informality and criminality have gained so much momentum in the aftermath of the communist collapse, leading us (falsely?) to believe that transition and resistance against regulation are two faces of the same coin. Besides the destructive effects of repeated wars and military clashes,<sup>1</sup> all Balkan countries have been shaken in their very foundations by an unbroken series of consecutive crises since the 1990s. Let us remember the 1996–1997 hunger riots in Bulgaria, the financial “Pyramid Crisis” sweeping Albania over the same period, which led to a months-long quasi-civil war, and the complete downturn of the Yugoslav economy in the 1990s because of the wars. Although Greece obviously derogates to the “post-communist” or “post-war” transition process, the country currently faces its worse economic downturn since World War II and the Civil War (Karasavoglou and Polychronikou 2014). Finally, Kosovo and Bosnia

<sup>1</sup> Yugoslav Wars (1991–1995), Kosovo War (1998–1999), insurgency in the Preševo Valley (1999–2001), and in the northern part of (FY) Macedonia (2001), not to mention other more or less dormant political-military and territorial disputes.

appear as “universal special cases” because of their still unsettled political status, and their dependency on European and international aid, which doesn’t prevent them from being deeply entangled in poverty.

In other terms, *crisis* has not been limited to episodes falling between stable, prosperous periods. It has become a semi-permanent *system*, with extreme tensions arising at times. These have heavy structural outcomes that are found to be associated: (1) they have nurtured major migration out-flows, drained entire regions from any human presence, and generated an impressive population crunch, while sparing only a few central districts; (2) despite the small size of most Balkan states, local communities are “back” in the Grand Game. They constantly challenge and replace the government bodies whose inability to provide core service functions and act in the exercise of their prerogative of public power has been brought out into the open.

My purpose here is not to assess performance or investigate the relationships between legitimate and underground economy in the Balkan Peninsula (Van Schendel and Abraham 2005), but rather to address informality and criminality in their structural dimension, especially in spatial terms. I posit that “gray zones” and other “shadow areas” (Edelbacher et al. 2016; Knudsen and Frederiksen 2015) expand outside the economic arena far enough to invite us to reflect upon certain fundamental tenets of geography and history. These generic terms too commonly used in a metaphorical sense change meaning when geographers seize them: gray zones are at first districts or places, that is, they exist per se, not only in reference to external territories on which they are expected to depend; they are *gray* or *shadow* as long as research is unable to assess their basic attributes and bring them back within the limits of knowledge.

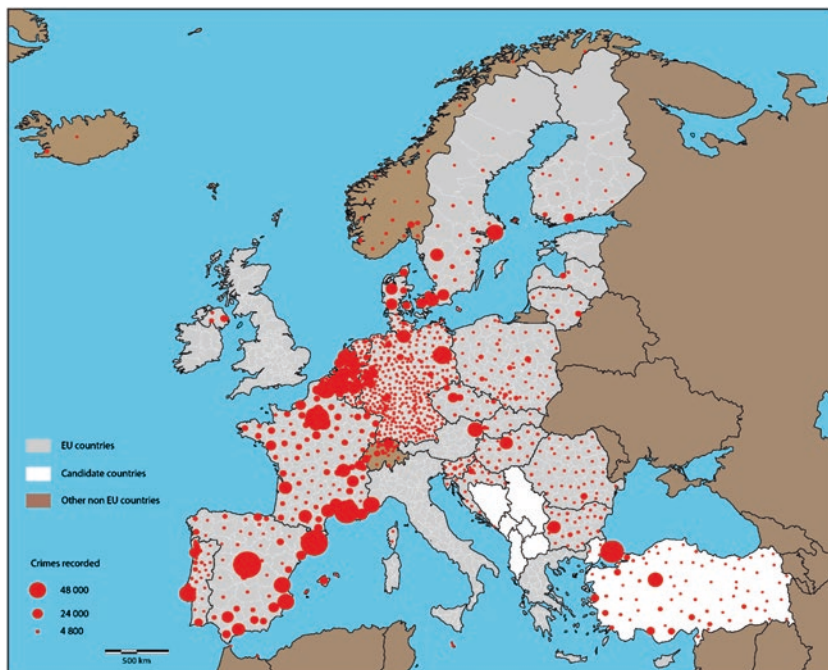
For geographers, informality/criminality and peripherality/marginality are closely related concepts. In theory, government bodies have the ability to regulate their own territory thanks to a network of administrative units on which they extend their influence and authority. Such a grid can be mapped and maps are perfect tools for exerting dominance on land and people (Wood 2010). Through cartography, space is thus a combination of nested districts/jurisdictions where decision makers exercise an *undisputed* formal control guaranteed by law and other legal acts. Territorial systems are scale-dependent, which means that graduated political-administrative institutions manage overlapping districts.

This is what the theory says. Unfortunately (or fortunately?), these control areas are constantly breached and challenged by centrifugal forces

commonly assimilated to *local* or *interstitial* communities—associated today with the idea of *resilience*. The Balkan Peninsula is a prime example for studying the different forms of *resistance* against “smooth-running” regulatory frameworks. The spatial dimension of this “withdrawal” from the official politico-territorial arenas is often underestimated. In a number of areas, deregulation plays a more substantial part in shaping landscapes than governing bodies whose ability to establish and enforce land planning policies is limited. One of the finest examples of such a “successful” application of spatial informality is to be found in the Greek urban development system (Ikonomidou 2012; Tsoulouvis 1998). The whole urban history of modern Greece has been driven by populations who specialized in breaching regulatory frameworks, always playing with rules, with the tacit complicity of the authorities. Despite this, illegality and informality have been the main drivers of urban growth for decades (Tsoumas 2006; Darques 2000).

I pose here as a postulate that marginality/informality are not only derogation phenomena whose implementation would be defined by socio-economic criteria. They are spatial mechanisms that much exceed the so-called geographic particularism (Polese et al. 2016). In other terms, they shall be seen as essential inputs for *geosystems* (Demek 1978; Haigh 1985). Similarly, transnational flows and activities are not the non-spatial phenomena that we commonly imagine. “Thinking the world beyond the State” doesn’t imply getting past the notion of territoriality (Steenberg 2016).

Illustrating the non-compliant position adopted by a number of post-socialist European countries and their structural weakness against the illicit underworld is quite easy. The operation requires to observe how they manage to decline the challenge of quantification. Most Balkan states have a specific relationship with their statistical production system: essential databases often do not exist or remain out of reach, which creates an environment where secrecy can flourish. In an age of unprecedented information development, the inability of statistics suppliers, Geographic Information System (GIS) developers, and political institutions to provide and disseminate key indicators that would likely help understand this European sub-region is really surprising. The lack of data is so prominent in many “basic” informational areas that mapping the European Union (EU) with “missing gaps” has become routine practice. The deficit is fully assumed as a failure of the European land management system (Fig. 10.1).



**Fig. 10.1** Availability of statistical data—crime and criminal justice statistics (NUTS 3 level) in 2010. (Source: Eurostat)

Considered to be the hallmark of Eastern Europe, statistical incommensurability has long been associated with the idea of *Balkanization*—seen as a process, not as a place (Todorova 2002). Spare measurement capacity expresses the existence of deep structural mechanisms able to oppose the power of the State. This brings us back decades ago, when reduced technical and financial means prevented from conducting reliable censuses and surveys.

### BACKWARDNESS, CRIMINALITY, AND WAR

Whatever form they might adopt or whatever degree they might reach, informality and criminality are much more than the hidden/ugly face of whole countries. These concepts have been widely used to qualify underdeveloped countries living upon old mechanisms and considered to be ill

adapted to the changing, modern market conditions. Throughout the Balkans, this process has once been labeled *backwardness* (Chirot 1989; Lampe and Jackson 1982; Lampe 2014; Chirot 1976). This last term has a long resonance in local history.

D. Chirot and J. Lampe invite the researcher to reconsider the way Eastern economies are seen through Western lenses. These authors demonstrate how much modernization theories can be faulty in their disregarding structural causes. Exploring the depths of history in the Balkan area is required to achieve critical thinking. For example, Chirot has no hesitation in raising a ludicrous question: why is Albania not as rich as Switzerland, although these mountain areas obviously share a common natural/economic potential? This prompts us back to the surprising, although frequent, association of both countries in European mapping.

Strangely enough, backwardness makes explicit reference to the Ottoman period. Through the long-standing label of “sick man of Europe”, the idea of Ottoman *failure* has survived to modern times, to such an extent that talking about this historical period in negative terms is still very common today. Relays are to be found in political speeches on the *harmonization* process that most Balkan countries have to undergo before being fully included into the Western “up-to-date”, “utterly efficient”, economic system.

At this point, misplaced analogies and anachronistic parallels flourish. As always, distorted memories and appropriate nationalist propaganda produce misleading pictures. The very late Ottoman period is associated with the idea of *decay*, although the Tanzimat reforms (1840s–1870s) had fostered a dynamic process of modernization within the Empire. The truth is that until it was challenged by rebel nation-states, the Ottoman administration was identified beyond its borders as one of the world’s best examples of effectiveness, including in the fiscal area. It is often ignored that, in many Balkan districts deprived of land registers, the Ottoman records handed down by zealous officials more than one century ago remain the only ones available today. The legal validity of these documents is widely recognized by the courts. With this in mind, and taking the opposite view, one might be tempted to say that backwardness is mostly attributable to the empowerment of nation-states, whose gradually acquired independence has not always led to the establishment of stable, effective institutions—the issue is, of course, discussed at length in academic circles (Anderson 1974; Mazower 2000).

In contrast, historians are unanimous in pointing out that continual border warfare has played a major role in maintaining the Balkans behind other “leading countries”. Open or latent conflicts, rebel insurgencies, chronic military instability: there are many ways to qualify what is commonly considered to be a lifestyle and a key component of local culture. Evidence of this arises from the almost endless list of armed conflicts that took place over the past two centuries. We can roughly identify 200 dated events leading up to a border change from the 1800s (Darques 2017). The position expressed by some authors about the key role of military geography in developing and structuring territories carries here a special significance (Woodward 2004; Woodward 2014). The militarization of space and society is an all-embracing, transnational phenomenon, the climax of which has probably been reached during the Cold War era. Over-militarization (the most advanced expression of land control) and criminality (activities developed in under-controlled areas) are far from unrelated from one another (Nicolic-Ristanovic 1998). Between these seemingly incompatible concepts, the nexus is to be found in organized banditry.

Through Western lenses, criminality is often regarded as an upper level of informality. However, in the *Wild East*, these matters of degree do not apply. We assume that the most advanced forms of crime, the ones able to challenge state institutions, are different in kind. When legal frameworks have no enforcement power and central authorities are so weakened that even the law forfeits its public substance in favor of alternative codes of conduct, criminality loses its transgressing dimension. For this reason, the term *banditry* might be more appropriate.

Throughout the Balkans, bandits and soldiers are closely associated figures before states can establish regular armies. Gunmen belong to village or clan communities and their primary purpose is to control and manage land. Many renowned national heroes, some of which have become heads of states or governments, have built their reputation on such a troubled personal background (Hobsbawm 1969; Hobsbawm 1960; Damianakos 2003).

Banditry is positively perceived by people, whereas criminality has a negative connotation. Across the Balkans, banditry as a way of challenging external dominant powers is not an emergency solution. Outlaws are heroes of independence. They inherit the social prestige that common criminals do not possess. Despite some apparent similarities, they differ from other mobsters and mafiosi that can be found across the

Adriatic. For them, smuggling, fighting in a war, resisting oppression, gaining autonomy, or achieving independence are related activities. Banditry takes advantage of ethnic acquaintanceships (extended families or clans), defines territorial perimeters, and asserts its political authority on the hierarchy of violence (Ralph 2013). To put it simply, it is a culture and a way of life serving as a basis for community building. In geographic terms, this can be said in a straightforward manner: when states operate, they have to deal every day with local *chiefdoms* whose very foundations appear now more starkly.

### LAZARAT: BANDITRY AND LOCAL AUTONOMY IN SOUTHERN ALBANIA

These general considerations allow us to turn to the matter in hand itself, zooming in on a specific contemporary case. The analysis concerns the district of Gjirokastër, a Southern Albanian municipality that is the birthplace of Ismail Kadare. The famous novelist constantly refers to the city in his many books, especially the one entitled *Chronicle in Stone* (1970). Gjirokastër is the *good face* of Southern Albania. The place is a tourist resort whose multistory Ottoman-style buildings with remarkably ornamented facades draw flows of people interested in historical heritage from around the world. This open-air museum has miraculously survived the communist period, although the modernization process imposed by the former regime has caused some damage.

Just south of Gjirokastër, the little village community of Lazarat is virtually unknown. Nothing significant is to be found here. Southern Albania has been submitted to an exceptionally intense depopulation after the communist collapse. Abandoned in their plight by Tirana, hundreds of villages have gradually fallen into disrepair over the years. Thousands of people have seized the opportunity of a regained freedom of movement to leave the country for *promising skies* in Greece, Italy, Switzerland, or Turkey, in search of hard currencies and jobs. From the 24,200 inhabitants reported in 1989, the *bashkia* of Gjirokastër had no more than 19,800 in 2011, according to official census information. Surprisingly, the population of Lazarat has remained stable over the same period at about 3000 people. There is a reversal of fortune when one compares this evolution with the conditions imposed on other rural communities: many places



have been heavily affected, losing up to 80% of their members (Pogon, for example, a few kilometers eastward). What is at stake with Lazarat?

The world discovers the existence of this microscopic community in 2012 when two young Dutch people having a bike trip in Albania decide to lead to this friendly village about which they have heard great things.<sup>2</sup> Once arrived at Lazarat, they bypass the suspicious attitude of local folks and just take some film of themselves enjoying a good time in front of landscapes covered with cannabis plantations. The video is uploaded on YouTube and circles the globe. The two fellows had achieved what police forces had failed to do: enter a place secured from any external intrusion for years. They shall explain to the press that cannabis growing is based on family farming units and that people made them feel very welcome despite the automatic guns negligently left on kitchen tables.

The scandal becomes public and political-diplomatic reactions force the government to take appropriate measures. Cannabis plants are estimated to be 300,000, generating \$6–8 billion per year—roughly half of Albania’s GDP. Openly, Lazarat had gained the label “Europe’s marijuana Mecca” (Shqip 2014; Reilly 2014). The village lived almost exclusively on illegal drug trade, and local people organized surveillance 24 hours a day to protect their citadel against unauthorized access. In 2004, already, helicopters flying over the area had been targeted by a hail of AK-47 bullets.

In June 2014, Tirana decides to put up a front for the international public. The EU membership application of Albania is at stake. The government sends hundreds of policemen backed by special forces in armored vehicles to seize the place. They are greeted by rocket-propelled grenades, mortars, and heavy machine guns. On entering the village later on, they discover that “farmers” have burnt their own drug stocks and plantations, trying to dispose of evidence before putting their weapons down. Despite this, police forces seize considerable quantities of marijuana and ammunition. Official reports point out that the well-structured criminal groups keeping the place under control had been eliminated from their stronghold.

Such momentous events are no coincidence. Many questions necessarily arise. Why Lazarat? Why such an industrial crop activity? How can a few hundred people challenge the authority of the state and resist fearlessly its

<sup>2</sup> Author’s extensive fieldwork experience in Northern Greece and Southern Albania has affected the empirical base of the chapter.

armed forces? Is it simply another historical and geographical oddity? To answer these questions, I shall adopt a multiscale analysis and propose a series of maps to illustrate the relationships between the *local* and the *global* in boundary confines (Mamadouh et al. 2004). I will use two databases whose detailed technical developments will be left aside to avoid unnecessary complexity:

1. The first one is made of vector graphics. It describes the dynamics of border change in the Balkan area since the beginning of the nineteenth century, a period during which the central powers have suffered a severe geographic withdrawal, while small nation-states succeeded in creating sovereign perimeters through ceaseless wars. This GIS database comprises all present and past international boundaries, but it also includes less “official” demarcations such as short-lived Republics, temporary annexations, self-proclaimed states, autonomous provinces, and other special status regions (Darques 2017). Such an extended definition allows us to escape the statist conception of state frontiers that would be the alpha and omega of any geopolitics.
2. The second one is specific to Lazarat and brings together a set of Landsat remote sensing images whose acquisition dates range from the end of the 1980s up to now. These are orthorectified datasets provided by NASA/USGS repositories. The near-infrared visualization enables immediate identification of cultivation areas. Spatial resolution is 30 m. Surface reflectance has been calculated to limit atmospheric interference.

For ease of understanding, I will adopt a staggered approach. Cartographic documents will be commented in turn, each one shedding some new light on a complex issue and on the place of Lazarat. Multiscale integration is an essential part of the analysis once we have agreed that spatial objects change their nature when observed at different scales (Prestemon et al. 2002; Wood and Fels 2008).

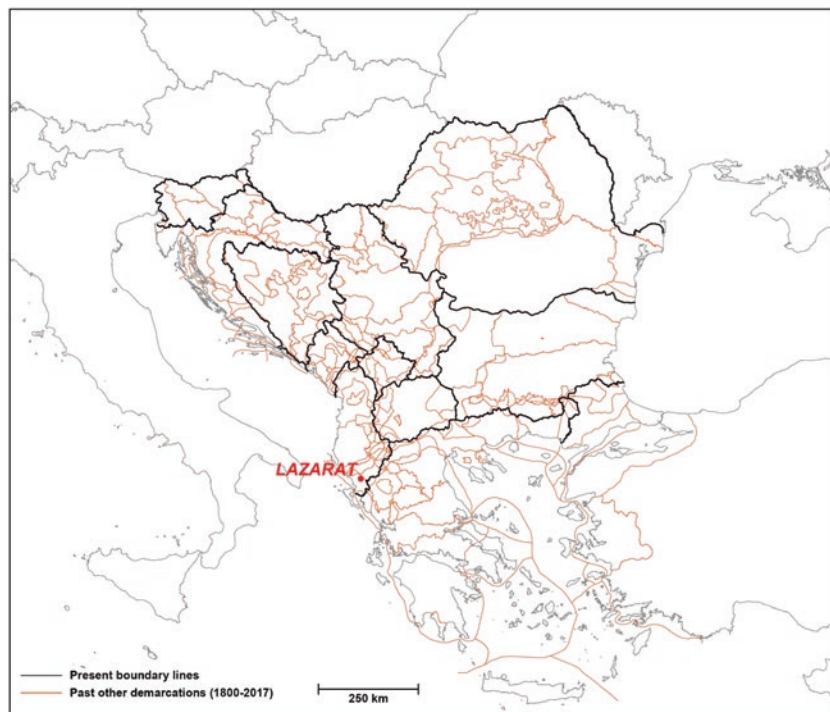
At a macro level, Fig. 10.2 shows how much centrality and peripherality have a specific meaning in the Balkan area. The classical core-periphery pattern usually considered to be a universal model in geography fails to describe the way many countries manage their territoriality. Most Balkan capitals are border cities. This has wide-ranging implications. For microstates, boundaries are not half a world away, they are concrete



**Fig. 10.2** Centrality and peripherality in the Balkan area. Managing state confines. (Source: ESRI)

reality at hand. This is even enhanced when international frontiers become intra-urban. Marginality and centrality collide. Torn between hyper-centralization and extreme land fragmentation, geographic balances can find no middle way.

The precarious situation of any central authority is made clear in Fig. 10.3. This map comes as a result of a massive task consisting in identifying, geocoding and qualifying hundreds of border demarcations across the Balkans since 1800 (Darques 2017). This representation renders the immaterial visible in highlighting the many non-standard *frontiers* that have shaped the area over two centuries. The Balkanization of land is sometimes extreme. It could be said that any Balkan “country” has been reduced at least once in history to a handful of local communities standing



**Fig. 10.3** Land fragmentation and local autonomy. Historical boundaries (1800–2017). (Source: ESRI, author’s geodatabase)

united in their resolve to achieve independence—regardless of whether the prime forms of self-government were acknowledged by the Empires (Habsburg and Ottoman) or simply “latent” in legal terms.

One can easily observe that Lazarat belongs to a complicated region divided by many borders and boundaries, at the interface between Albania and Greece. The local instability of the “Epirus-Southern Albania” subset is obvious and breeds a sense of uncertainty. Sovereignty has been disputed. Without going into too much detail, we know that the early frontiers of Albania as defined by the Protocol of Florence in December 1913, after the first Balkan War, have remained unmapped until the establishment of a mixed boundary commission in the 1920s. Meanwhile, this border area has experienced a dramatic set of events, shifting between

Albania and Greece in line with military occupations and international treaties. This “end of the earth” has witnessed the emergence of an *Autonomous Republic of Northern Epirus*. The Protocol of Corfu in May 1914 intended to establish a complete autonomous existence (*corpus separatum*) while keeping a nominal Albanian sovereignty. Other close territories have taken advantage of self-government arrangements at times in history. Let us mention the famous *pashalik* of Ali of Ioannina, whose claims toward greater autonomy against the Sultan have cost him his life and the almost complete destruction of the city of Ioannina in 1822; the early special status granted to Himarë, a Greek port facing Corfu, by the Ottomans; the *Autonomous Albanian Republic of Korçë* established in 1916 by the French forces engaged against the Central Powers; the *Koinon of the Zagorians*, another form of local self-government with privileges guaranteed by the Porte including police power and tax exemption; the *Souliot Confederacy* and its renowned fighters. Most of these *spontaneous* political entities consist of united village communities at the head of which clan leaders/warlords are placed, be they called *captains*, *bayraktars*, or more simply, *klephtes* (thieves), *armatoloi* (irregular soldiers), *hajduks* (outlaws, freedom fighters).

Another way of evaluating the fragmentation of the area is to get into the substance of the issue of ethnic and confessional geography. The initiative implies changing scale. Southern Albania is peopled by mixed Orthodox and Muslim communities speaking both Greek and Albanian. But this general observation will not get us much further. To understand local life, unearthing old and scarce documents is a necessary step. Accurate statistics are cruelly missing in Albania. One exception is the work of T. Selenica (Selenica 1928) who provides a detailed description of the country between the two world wars. Peopled with 11,800 Muslims and 13,600 Orthodox in 1927, the Nën-Prefektura (sub-prefecture) of Gjirokastër shows its ethnic background and diversity. The author focuses his attention on religion seen as the only official badge of identity, in the true tradition of the Ottoman *millet* system. However, these agglomerate data are misleading.

At a finer scale, one can observe that village communities are absolutely exclusive in ethnic-confessional terms. The area is a patchwork of places gathering a few hundred people revolving around their church steeples and mosque minarets. Only cities (former heads of kazas or sandjaks) are demographically mixed, with a Muslim predominance inherited from the Ottoman period, when the Porte exercised its political authority through

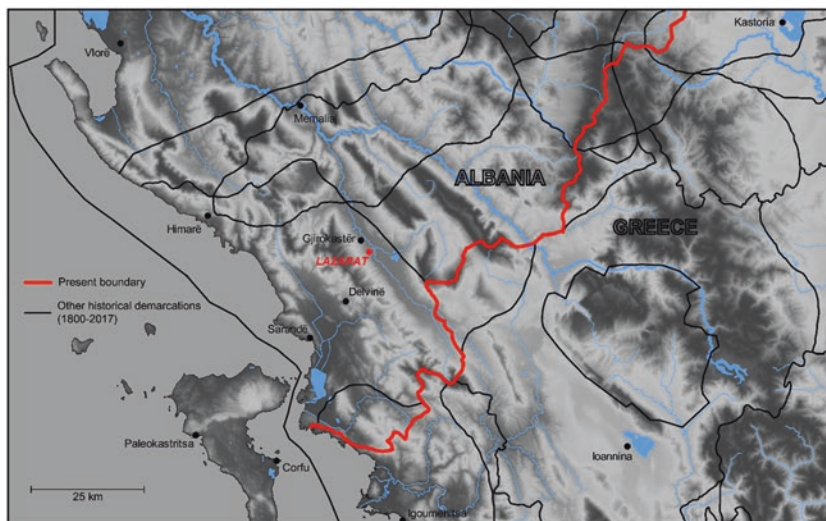
a dense administrative network. In the immediate vicinity of Lazarat, for instance, Gjirokaštër is credited with 8600 Muslims and 1500 Orthodox Christians. In the countryside, segregation is widespread. In Lazarat, T. Selenica identifies 957 Muslims (Bektashi). Just south, Dervişani has a Christian population of 1400. This partition between villages is historically rooted. It goes back as far as the nineteenth century at least (Aravantinos 1856; Greek Army Headquarters 1919). Local variability is extreme, and this will explain further remarkable singularities. This was, of course, before Enver Hoxha decided to eradicate any form of religion, with the destruction of Lazarat's mosque as a result of his policy.

In this Ottoman *Far West*, life has long been a continuous warfare. External powers have only achieved to maintain "order" over short periods of time, that is, limit the extent of insubordinate behaviors (local autonomy or self-government). The post-World War II era and the stranglehold exercised by Enver Hoxha are a clear exception. The price to be paid for this forced "pacification" is a massive militarization of land confines, with a never-before-seen state commitment.

During Hoxha's rule, Albania becomes covered with more than 750,000 bunkers disseminated across the country, with special attention paid to peripheral districts identified as potential corridors to be used by foreign invaders (Fig. 10.4). The upper Drino Valley, called Dropull, of which Lazarat is part, is a prime target. The countryside of Gjirokaštër becomes an entrenched camp, covered with military facilities and peopled by large troop contingents. The area is placed behind a veil of secrecy and submitted to constant surveillance.

So when the communist regime collapses, the downturn has fatal consequences. The early 1990s *freedom years* turn into something of a nightmare—in economic and demographic terms. Just 15 km away from one of the hardest sections of the Iron Curtain, Lazarat is a disaster-stricken place. As soon as border controls stop and mobility rights are restored, an unprecedented population exodus begins. The countryside changes into human desert.

In 1997, the financial Pyramid Crisis that seizes Albania has a special resonance in southern districts. A period of quasi-civil war starts, with armed groups launching raids and spreading fear in even Tirana's streets. Criminal gangs take up arms and seek secession. Just northward, Vlorë, Sarandë, and Tepelen are at the forefront of the revolt. Gjirokaštër falls into the rebels' hands in March. International bus connections with



**Fig. 10.4** Contested Greek-Albanian confines. (Source: ESRI, author's geodatabase, NASA DTM, SRTM Program)

Greece are interrupted because the safety of travelers is no longer guaranteed. Organized crime leaders and former members of the Sigurimi (communist secret police) join in seeking strategies to undermine the government. With the entire South of the country out of control, the rebels deeply engage in looting and destroy a great number of public facilities and buildings. Multiple kidnappings occur. Hundreds of prisoners are released or manage to escape detention. With the rising power of gangs, dozens of murders are reported. Weapon depots are plundered. Huge quantities of army material fall into the hands of civilians: mortars, mines, grenades, cannons, rockets, various rifles and revolvers, enormous ammunition stocks, and even MiG fighter jets (Programme 1998). Organized clans headed by criminals and “backed up” by angry young men meet resistance from the regular army and SHIK special forces who have remained faithful to the government of S. Berisha. In the background, old Albanian ethno-linguistic land divisions resurface. Southern Tosk populations infiltrated by Communist Party members and supported by the Greek minority would have promoted secession against reformist Gheg



northern districts supporting the central authorities and keeping the army under control.

Five years later, tension subsided. The NATO NAMSA agency announces that it has completed the destruction of about 1.7 million anti-personnel mines across the country (Human Rights Watch 2001). However, 650,000 weapons are still missing, to which must be added 3.5 million grenades and 1 million landmines. The 2001 Landmine Monitor Report states that General Karoli himself, Commander of the Albanian Land Forces, has come all the way to recover 5350 antipersonnel mines sealed in tunnels since 1997 “from the former rebel stronghold of Lazarat”.

Informality and criminality carry here a specific dimension. They take place in a particular context, making it difficult for states to operate in optimum conditions. For instance, a little-known fact is that the state of war declared in 1940 between Albania and Greece has never been fully abrogated. Of course, several improvements to the general blockade of bilateral diplomatic relationships have been observed, especially after Andreas Papandreou took power and sent Karolos Papoulias to restore the ties of confidence with Tirana in 1987. But Athens has recently put into the balance of Albania’s EU membership application the non-abrogation of the state of war by the Greek Parliament as an argument for solving a territorial dispute about its maritime boundary north of Corfu, an area where oil and gas reserves have been identified.

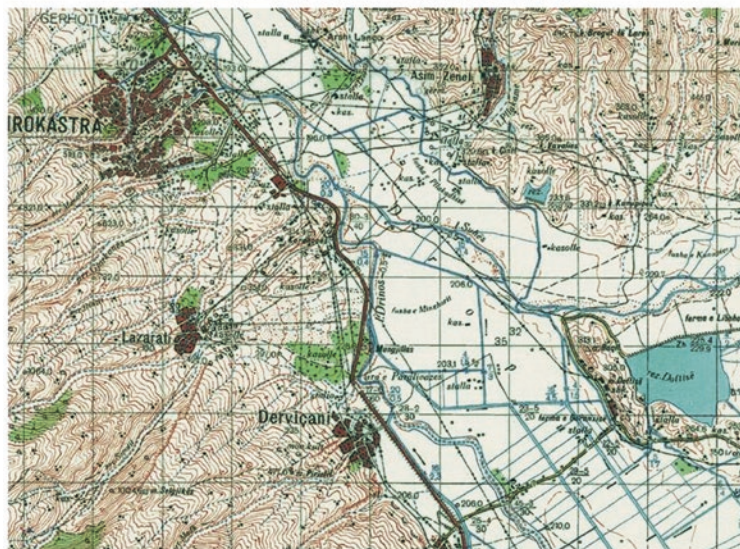
### LAZARAT: RURAL ECONOMY AND CANNABIS FARMING

Remote sensing is a sure way to bring a new focus to the Lazarat case study. Landsat satellite imagery is an irreplaceable tool because it allows continuous and consistent data to be produced. A sequential approach to rural change is thus made possible (Figs. 10.5 and 10.6).

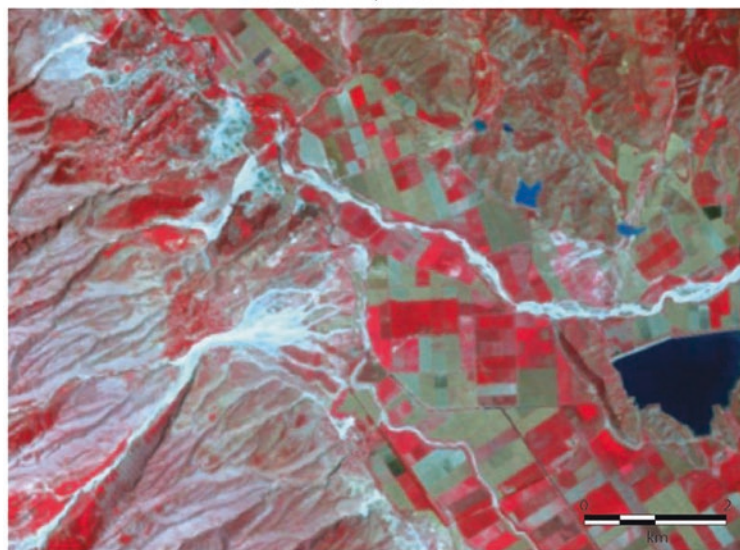
The first two materials picture the area south of Gjirokaštër as it used to be at the end of the communist regime. As can be seen, Lazarat is located only 3 km away from Gjirokaštër, just west of a debris cone caused by the torrential floods of a stream called Sopot flowing down the Gjerë mountain range. Its position is a classical one: in this karstic, semiarid, Mediterranean type region, sources are of the utmost importance and valleys regularly undergo devastating floods, with large volumes of sediments stirred up and displaced. This is the case with the Drino River flowing northward, just down the village.



Albanian topographic map, 1/25,000, 1973



Landsat 5 TM, 1987-07-10



**Fig. 10.5** Lazarat: Rural change and cannabis growing (1). (Source: Instituti i Topografisë Ushtarake, NASA USGS Landsat imagery)

Landsat 7 ETM+, 2000-07-28

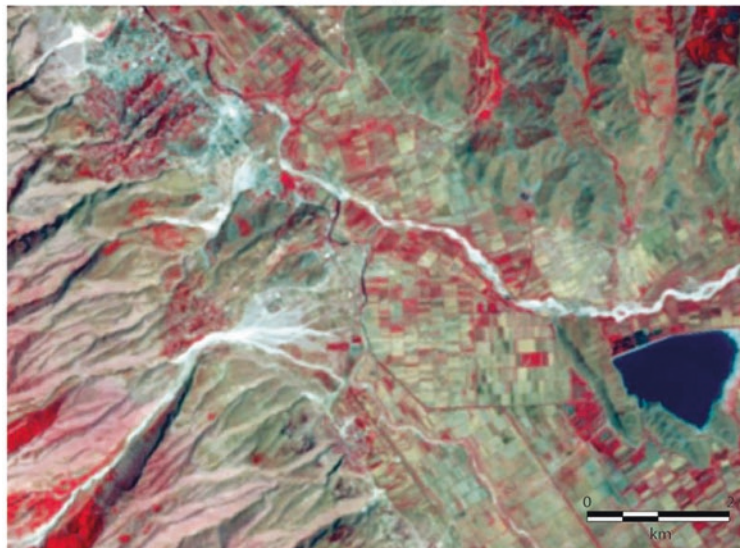
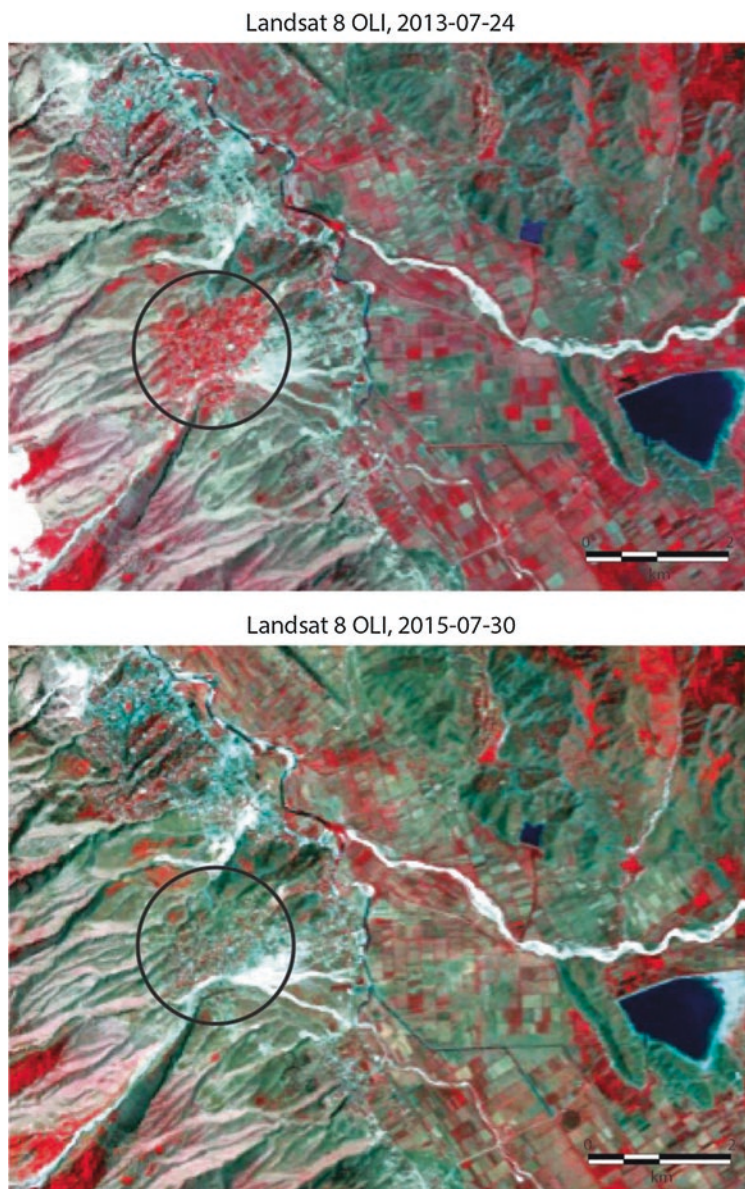


Fig. 10.5 Continued

The communist imprint on landscapes is obvious in 1987. The Dropull Valley is crossed by dozens of drainage and irrigation channels. These define boundaries of large parcels devoted to growing industrial crops. Well-maintained ponds and water reservoirs spread in the countryside, especially north of the Sihës stream, which meets the Drino at the entrance to the city of Gjirokaštër. Low-lying areas used to be repellent (see the toponym *Fusha e Kunupicës*, *kunup-kounoúpi* meaning mosquito) before the Communist Party organized land improvement through collectivization. Agricultural production is in the hands of large collective farms, such as *ferma e Libohovës* or *ferma e Goranxisë*. This typical communist landscape has another face: everywhere bunkers scatter in the middle of fields and in the outskirts of villages. The area fully belongs to the confines of the state (*zonë kufitare*) placed under the surveillance and control of the army, with all the associated inconveniences: restricted freedom of movement, internal passports, checkpoints. It must be remembered that the Greek-Albanian boundary has remained entirely closed for half a century before its opening in 1990. The border regime had sufficient time to shape landscapes.



**Fig. 10.6** Lazarat: Rural change and cannabis growing (2). (Source: NASA USGS Landsat imagery)



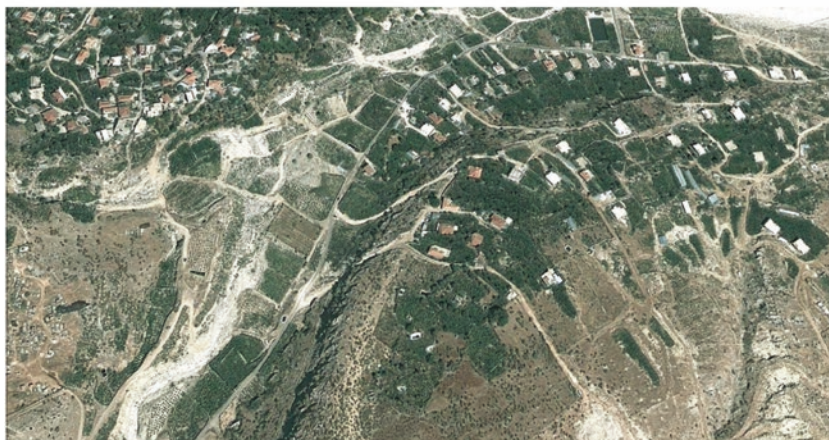
In contrast, the Landsat 7 ETM+ imagery dated 2000 delivers a picture of the countryside validating the idea of a momentous upside-down change achieved in less than a decade. The vast reform initiated in 1991 has adopted the principle of an equal distribution of land to rural households irrespective of pre-World War II ownership rights. As a result, former farm plots have been sliced into narrow bands of only a few acres. The core problem is the conjunction of this reform with the massive migration outflow of the same period. Beyond the relevance of this decision as regards the complicated political context, the on-site result is catastrophic in agro-economic terms. Most distributed lands are abandoned, with only some seniors using their new plots for gardening and supplementing their pension income.

Pillaging and destruction have left most communist facilities in a state of serious disrepair. Water reservoirs have been emptied. Drainage and irrigation systems no longer function, in such a way that large acreages are not suitable for cultivation any more. Forest resources have been used for heating purposes, which can be seen from the more limited areas occupied by woods. Such *devastated* landscapes illustrate the complete collapse of rural economy.

Figures 10.6 and 10.7 are recent snapshots showing how cannabis growing has reached a record high at the beginning of the 2010s. Twenty years after the communist downfall, Lazarat has become the “European capital of cannabis”. The village is entirely covered with plantations that need to expand beyond its boundaries, especially up the Sopot Stream. What is striking is at first the limited space devoted to the single crop farming system. Besides, producing billions of dollars a year leaves absolutely no room for any competing activity, with an obvious sterilization effect on the surrounding environment. Apart from any moral considerations, in strict terms of productivity and financial benefits, Lazarat has found a way toward “getting things moving again” and achieving maximum economic efficiency. Furthermore, this farming system has no equivalent in nearby villages. Analyzing the reasons that lead to such a confined practice falls within the competence of sociologists and criminologists able to tackle the issue of family/clan structures in relation with drug trafficking mafia.

On the other hand, a full territorial reversal has occurred. Before, cultivation was reserved for the open spaces of the Dropull Valley. Now, weed growing is exclusively limited to the lower slopes of Mali i Gjerë. The old distinction between home and place of work has fallen. People live in the middle of their fields for a better application of surveillance. Strangely

Lazarat, 2011-09-02



Lazarat, 2014-07-03

  
250 m

**Fig. 10.7** Destroying cannabis farms. (Source: Google Earth, Quickbird imagery)

enough, the Iron Curtain is no more, but local communities have reinstated a watch system for their own benefit. Events are often whimsical with regard to history. Or is it that old habits die hard? Anyhow, this reversal has been made possible thanks to an overall reallocation of natural

resources, especially through the necessary construction of an operational watering system. From a political point of view, one should add that such a criminal production system could not exist without the robust support—even “informal”—of government bodies, be they located in Gjirokaštër or Tirana.

By way of conclusion, I will focus on the supposed eradication of this geographic oddity by the Albanian government in June 2014. As can be seen in Figs. 10.6 and 10.7, police forces have succeeded in bringing back Lazarat to its former anonymous Balkan position—and restoring poverty. Any trace of cannabis farming has been erased. Is it a striking example of a return-to-normal process, with state authorities proving their capacity to exercise full sovereignty over “uncontrolled” boundary places? Is Lazarat an accident of history? Nothing could be less certain.

In June 2015, new clashes between police forces and local gangsters were still reported as a sign of an incomplete dismantling of criminal networks. Most cultivation areas have been relocated to fairly inaccessible fields lost on the mountain. But very high-resolution satellite imagery gives us a chance to observe these fields quite efficiently—which doesn’t make the task of the police easier. According to the latest news available (Ministry of Internal Affairs), drug trafficking and cannabis cultivation have reached dramatic proportions throughout Albania. There is no precedent for such a momentous development. Out of their village-based economy, traffickers have raised their business to the state of national industry. Albania as a whole has become a *European Columbia*. In early 2016, more than 360 areas of massive drug production have been identified.<sup>3</sup> Any major change such as this makes it difficult to hide the “bridging contacts” between mafia and different ministerial representatives. Improved techniques allowing reducing the growth cycle of plants, drones used for monitoring and surveilling farming plots, diversification of delivery networks are among the new means developed to enhance and “secure” these activities. In short, in attempting to erase the stronghold of Lazarat, the authorities have extended the system to the whole country.

Close to Gjirokaštër, satellite imagery confirms that Tepelen is now covered with cannabis fields. The distribution of cultivation areas follows a new geographic pattern. Scattering and moving away farming units up

<sup>3</sup> See [shekulli.com.al](http://shekulli.com.al) (2016 August 14), quoting a secret report from Albanian police services.

to the most remote spots are the new rules of the game. The production model has adapted to the changing threat and technical environment through upscaling. We might be tempted to say that the local *defeat* of Lazarat has fostered the emergence of a nation-wide *success*.

All this is in line with our initial considerations about boundary confines. With Albania's EU accession prospects receding, Tirana's legitimacy to exercise political control falls back. The country changes into an all-inclusive EU periphery left to cope on its own. When marginality becomes an instituted land planning system, the victory of borderlands is close at hand. Meanwhile, as a wink to history, Albania is an official candidate for accession to the EU membership since June 2014.

## CONCLUSION

Informal spaces are considered to be so as long as the logic driving their fate and leading changes is not understood properly. In state confines where geographic, ethnic, and social fragmentation reaches record highs, local self-governments flourish. Non-conformal territories are the rule rather than the exception. Once perceived as a haven of all traffics, fringe lands derogate to standard planning patterns and policies. Boundary places are "borderline" cases. They are always at odds with remote central powers whose control is evasive.

One could conclude that the *beautiful* and the *ugly* are only a matter of opinion. Beside cannabis growing, smuggling, and all other forms of illegal activities and traffics, state confines can show more joyful faces. Decades of military withdrawal have thoroughly reshaped border landscapes. Formerly repellent places can now welcome visitors from all over the world in search of unspoiled environment. Deep forests, preserved wetlands, and a remarkably varied wildlife make up attractive tourist sites. Natural parks grow and multiply, while providing alternative (under)development perspectives.

Lazarat is a prime example of how EU institutions can be misleading. Brussels has set up border development programs soon after the fall of the Iron Curtain in the Balkans. These have resulted in many projects. The main objective was—and probably still is—reducing the isolation of less-favored regions. Border areas were given a new impetus with the construction of modern access roads and customs posts, the financial support granted to some economic initiatives, and the development of intercultural exchanges. Unfortunately, these actions have bypassed local govern-

ments and communities, left waiting on the side with no prospect other than expatriation or death. Central decision makers repeatedly disregard “locals”, and the abandonment is even enhanced when remoteness constitutes an insurmountable obstacle.

As promoted by Brussels, sovereignty transfer mechanisms lead to a predictable weakening of domestic institutions with harmful effects on small Eastern countries that derogate to the standard European framework. Local self-governments in the Balkans have a long history, especially in border districts. Obviously, this parameter has been underestimated and remains a fundamental sticking point at issue in the debate of development. Lazarat perfectly exemplifies the revenge of *non-places*—non-existent areas and disregarded frontier communities off the radar screens—on central decision-making bodies who are unable to ensure their viability and sustainability.

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# ‘Stealing from the State Is Not Stealing Really, It Is a National Sport’: A Study of Informal Economic Practices and Low-Level Corruption in Hungary

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## INTRODUCTION

In 2016 Hungary ranked 57th in the Transparency International Corruption Perception Index (TI CPI) with a score of 48 (where the least corrupt country, Denmark, scored 90, and neighbouring Austria 75). Countries regarded as highly corrupt such as Ukraine and Uzbekistan had scores of 29 and 21 respectively. While the meaning of these figures can be debated, they clearly indicate a certain degree of corruption in Hungary. A distinction has to be made between political corruption and everyday corruption: this chapter focuses on the latter, which is referred to as low-level corruption. Whether all informal practices should be regarded as low-level corruption is debatable. For example, the Group of States against Corruption’s (GRECO) Evaluation Report from 2002 notes that in Hungary ‘gratitude payments’ for public services (especially in the health care sector) are understood as acceptable practice. Therefore, in this chapter low-level corruption and informal economic practices are considered as

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separate, but also connected, categories that contribute to the domain of informality. In this context informality has to be understood as a wider category including all transactions that happen without state control—often illegal, but not necessarily socially unacceptable (Polese 2008). The importance of taking into account both formal-legal definitions and morally-culturally produced definitions of corruption, is highlighted in anthropological scholarly work (Shore and Haller 2005).

Post-socialist countries show similarities with regard to perceptions of low-level corruption (TI CPI 2016). When state capacity is weak, such as in post-socialist contexts, it is more likely that informal structures provide governance (Schweitzer 2004). Recent research (Morris and Polese 2013; Sík 2012) reveals that informal economic practices developed and even proliferated (Mungiu-Pippidi 2005) after the democratic transition and joining the European Union (EU). Social ties, relations, ‘second economy’, informal economy, trust-networks, the usefulness of having a ‘friend’ (Jancsics 2015) are all part of everyday reality today in these countries with a socialist past (Polese 2008). Hann (2002) argues the need for a more nuanced understanding of economic transition and the formal-informal divide in post-socialist social settings. Going further, Routh (2011) suggests that it is often impossible to separate out the formal from the informal (Routh 2011, p. 217): they are, in the post-socialist context at least, symbiotic—often to the degree that mutualism (in the sense of mutually ‘benefiting’, a concept borrowed from biology) results (Morris and Polese 2013, p. 3). This means that not only do formal and informal practices overlap, but that formal and informal rules, legal plurality, and competing normative orders exist.

The contribution made by this chapter to the scholarly work on the complexity of informality is both empirical and theoretical. On the empirical side, it presents the results of ethnographic research providing data collected amongst different state sectors where citizens and state officials interact. The aim, in this regard, is to shed light on the embeddedness and the complexity of informal transactions when the local and personal moral codes guide the participant: even if sometimes there are no formal rules, informal regulations are still relevant. The theoretical contribution is made by concentrating on the interplay of interactions, actors and institutions, the networks involved and the rules constructed—that is, the so-called living law. The absence of, or deviation from, formal rules does not mean that informal regulations are less recognised by certain members of the society.

In order to make sense of the complexity of informality, this chapter focuses on the narrative framework of ‘us’ (the people) and ‘them’ (the state). This offers a starting point for the exploration when looking into interactions between the people, state officials, and institutions. Two key areas are explored. First, how the perceived legality and justification of informal economic transactions and low-level corruption is drawn from the narratives ‘us’ (the people) and the ‘them’ (the state). Second, how the rule of law as it is lived is constructed when informal practices are manifested in either non-compliance or some kind of activity. For understanding the ‘us versus them’ narrative in different situations three levels of narratives are identified, based on who constitutes the ‘us’. In the first level, ‘us’ are the people and ‘them’ are the state and state officials. The second level is when ‘us’ consists of the people and state officials against ‘them’—the state. Finally, the third level of narrative is when ‘us’ consists of the people, the state officials and the state against ‘them’, international organisations, often the EU.

## CONTEXT

Scholarly interest on informal economic practices in Hungary focuses on areas where it is most prevalent—that is, the police (Krémér 1998), health care (Gaal 2006; Szende and Culyer 2006), and, more generally, the interaction between state officials and citizens on a daily basis (Jancsics 2013, 2015). It is possible to argue that the informal transactions often do not go further than might be expected in the context of a ‘friendship’, and as the collected data suggests, they can sometimes be perceived positively—‘the police officer was a good person – instead of the fine, I had to pay only a bribe’. There is also reciprocity of exchange, which shows the social embeddedness of economic practices within a wider economy of social relations (Lonkila 1997). Thelen (2011, p. 52) notes that the ‘arranging of matters’ (goods, access, information, services) was essential under the shortage economy of late socialism when formal supply channels simply did not work. It was an accepted and everyday practice founded upon the networks of friends and family who made up one’s personal circle (Mandel and Humphrey 2002). Similarly, Humphrey (2002) argues that the use of personal connections to bypass the regulations and obtain benefits was so common that it was integral to state-planned economies, which could affect practices and perceptions in contemporary Hungary. Distinctive forms of non-monetary exchange, the kind of barter based on personal

relationships that Ledeneva (1998) describes as ‘blat’ relations in a Russian context, were widespread in socialist Hungary, although they are not described by a single word as with the Russian context. However, when there is interaction between citizens and authorities (officials), the cost may be the power or property of the state—which has to be regarded as corruption (Jancsics 2015). Corruption concerns particular incidents involving the exchange of money or favours, with the goal of acquiring a personal advantage at the expense of the state (Polese 2008). At the highest level of generalisation, informal economic practices are defined as activities that are not ‘regulated, monitored or controlled directly or indirectly by the state’ (Routh 2011, p. 211). The widespread system of informal economic practices and low-level corruption cannot be regarded only as economic transactions, but as cultural practices which require a great degree of performative competence (Gupta 1995, p. 8). This means that there are several areas where the informal rules and practices are prevalent and dominate everyday life, thereby subverting formal structures.

Unconcealed political corruption contributes to negative experiences and citizens’ disillusionment: therefore, people’s perception of political corruption helps us to understand everyday corruption. Recent government actions regarding the Hungarian National Bank institutionalised the transformation of state money into private money, calling it by the newly coined (and since then widely mocked) expression ‘the money losing its public nature’, which citizens and civil organisations essentially see as a way of covering corruption and stealing money from the state (HVG 2016). However, it can be argued that reducing political corruption has no effect on trust among citizens. Kornai et al. (2004) suggest that there are much stronger social ties and trust among citizens, at least in comparison to ‘under communism’, because they now feel they are standing up against the state. It is possible to see that this notion helps to create the narrative of ‘us’ (the people) against ‘them’ (the state). In Hungary general mistrust of the authorities might have originated during the socialist period. The social production of mistrust is based on specific practices that necessarily stem from past negative experiences, which are reactivated in the present through the group’s collective memory (Hann 2002). When a state repeatedly fails to perform its fundamental duties there is a system of representations and rational strategies that actors follow, which enhance the social production of mistrust (Weber 1968). In post-socialist settings legal norms and institutions typically co-exist with other norms and social

conduct regarded locally as legitimate but that are extra-legal or even illegal.

This means that the state does not have a monopoly on law, because there are normative orderings that are not attached to the state, but that nevertheless are law-like: this is referred to as legal pluralism in legal anthropology scholarship (Merry 1992; Griffiths 1986; von Benda-Beckmann 2002; Anders and Nuijten 2007). Thus the complexity and interconnectedness of formal and informal domains are important when dealing with state officials. From the socio-legal perspective one has to look into rules which are not posited by the state, but instead in ‘the law as it is lived’ (Ehrlich 1962)—which leads to plural normative ordering. Plural normative orders not only co-exist, but also they come into contact and clash. In the following analysis different organisations (e.g. schools and sport organisations) and the plurality of people are discussed. When discussing the ‘us versus them’ as found in people’s narratives, this chapter considers ‘us’ as a social association. In other words, a plurality of human beings who in their relationships with one another recognise certain rules of conduct as binding, and, generally speaking, regulate their actual conduct according to them (Ehrlich 1962). What Ehrlich refers to as the associations’ ‘inner order’ is determined by these rules of conduct (Deflem 2008). In these social associations two or more legal systems co-exist (Merry 1992)—state law, and the lived rules of normative order besides the state regulations—which is compatible with the definition of legal pluralism.

Some 20 in-depth interviews and observations were conducted between April and May 2015 in Budapest. Participants were selected on the basis of their being connected to state sectors that available evidence exposes as most influenced by informal economic practices: police, health care, education, local government. Additionally, officials handling the EU funds as well as local or national public servants who are in a position to handle the public money or property. The observation was conducted in parallel with unstructured interviews. It was not planned as a separate part of the field-work, but some examples of informal economic practices and the appearance of local moral codes unintentionally occurred and therefore were observed. The interviews were conducted in Hungarian. The text was translated in a way which reflects best the original thoughts and words according to the author’s consideration.

## DISCUSSION

The following sections provide evidence that shows the different manifestations of the informal economic transactions and low-level corruption constructed and supported by the narratives ‘us’ and ‘them’. Sub-sections are divided on the basis of who constitutes ‘us’ and ‘them’—in other words, based on who the members of the associations are. When analysing the interviews firstly the focus is on how the ‘us versus them’ narrative contributes to, and reinforces participation in, informal economic practices and low-level corruption, and secondly how the informal ordering is constructed and obeyed—what the rules of law as it is lived are. Data presentation and analysis is organised so that at each level a longer case study example is presented and an additional narrative is shown to support the argument. Participants are presented under pseudonyms.

### PEOPLE (US) AGAINST THE STATE AND STATE OFFICIALS (THEM)

Two interviews are presented. In the former, citizens interact with state officials, while in the second state officials (acting as citizens) abuse state property and money. The former reinforces the conflict between people and the state officials, thereby contributing to the construction of the narrative. The latter comprises practices which are justified by the narrative.

#### *Data Presentation*

The majority of cases when citizens encountered corrupt state officials are connected to bribing police officers in connection with minor incidents, demanding payment for health care services, paying to pass the driving test, or securing some kind of building permission. The following quote from an interviewee showcases the narrative of ‘us versus them’, suggesting an ongoing fight between the police and the citizens, and that police corruption is not a single, individual act. ‘It was the case with the medical kits. They (the traffic police) started to check the expiry dates of the medical kits in the cars. So people (drivers) started to buy medical kits. There is no regulation, no laws about it, but they could still threaten you, just to get some money. I wanted to buy a medical kit too, but then they stopped checking. I guess they came up with something else’.



Stealing from the working place is commonly practised when it is a government organisation such as a ministry, hospital, school, or other organisation supported by state funds. In the following situations, one has to note that state officials act as any other citizens (people), although they have access to state property thanks to their position. Interviewees described practices when people printed personal documents in the office regularly and in large quantities. Other examples include the stealing and selling of papers, pencils, and other office equipment. An interview with a ministry worker revealed that employees can receive travel subsidies if their journey to work takes more than one hour on a daily basis. The interviewee explained that his colleague has an address in the countryside, but that he lives five minutes away from the ministry in reality. He requested the travel subsidy. His narrative was that as the state provided that money, it should therefore be used. These activities are not kept secret from fellow employees. Interviewees described that when they started their jobs, colleagues suggested tricks such as those involving invoices, printing, and travel subsidies. People generally felt that stealing from the state at their workplace was almost their right, because they were badly paid and it was the state's duty to provide for its workforce.

### *Analysis*

The laws and regulations of the state are not the only regulators of political, social, and economic life in Hungary: there are many competing informal normative orders of living law that influence social behaviour and everyday life (in many areas of living) more effectively than the laws of the state. The fact that people purchased medical kits even if no state regulation exists regarding this, instead of protesting against the illegality of the practice, shows that the rules of living law have a greater impact on the situation than the law posited by the state (Ehrlich 1962). When the police are inventing opportunities (e.g. the need for carrying updated medical kits) to initiate corruption we have to emphasise that it is not a single, individual act: rather, it suggests rules that could be said to have evolved spontaneously out of social life, and that there is an inner ordering of the associations (e.g. police) or groups. The actions of the state officials who take bribes can be attributed as a way for them to complement their low salaries. As Polese (2008) suggests for the case of Ukraine, the state cannot guarantee a decent salary and therefore overlooks informal economic transactions. However, in the cases listed by the anti-corruption organisation,

we can clearly see that people are aware of the illegality of the transactions and perceive it as corruption. These bribes have to be differentiated from gift-giving or the showing of gratitude, because they are demanded (Polese 2008), and without the payment it would not be possible to achieve the aim. Initiating informal economic practices and low-level corruption requires performative competence (Gupta 1995) and communication strategies. The case of the corrupt police officer is congruent with Jancsics' (2013) findings where he sees a corrupt act as a transaction between an agent and client, where the client is an ordinary citizen.

In the cases presented regarding stealing from the state, only low value sums (10–50 euros) were involved. By comparison, cheating at a low level and stealing small sums are considered acceptable. This is congruent with what Rummyantseva (2005) reports in Uzbekistan, where some interviewees believed that a little corruption does not hurt anyone. Polese (2008) notes that in a society with an informal economy and kinship networks, where the state fails to secure basic needs for citizens, informal economic transactions often make up for the inability of the state. The interviews showed that the activities were not kept secret and the new employees were encouraged to learn the alternative normative ordering of the social association which differed from the state law and from the regulations of the organisation. It is not clear whether these actions were aimed at involving the new members in the informal acts so that they would not speak up and question the practices or that the alternative norms were so embedded that the members of the group did not even consider the legality and morality any more.

In both interviews the justification for corruption was referred to as part of the heritage of socialism and the narratives arising from that. Kornai (2004) argues that the moral codes inherited from socialism (especially the Kadar-system) are still existent in the form of beliefs and values, such as strong paternalism—the state has to take care of its citizens and provide for them. The narratives of insufficient salaries and subsequent complementing of them by stealing from the state similarly referred to as a hang-over from socialist times. The negative perceptions towards state officials and the necessary payments in official affairs are also based on these past experiences. Under Soviet-style socialism, government institutions had become severely discredited among the population. Hence the recurring emphasis upon the significance of the informal sector or 'second economy' was as much an argument for the integrity of socialist citizens in the face

of a repressive state apparatus as it was a description of some of their daily affairs (Hann 2002).

## PEOPLE AND STATE OFFICIALS AGAINST THE STATE

There are situations when the 'us' not only consists of the people but also includes the state officials against 'them', the state. People and officials share the narrative and have common interests and rules to obey in their social association, when the subject is the state's money or going against the state regulations. The following interview highlights the relationship between the members of the social association: the teachers, parents, and the headteacher, and then similarly in the second example between the members of the sport association, the employees, and the secretary.

### *Data Presentation*

An interview with a schoolteacher, 58-year-old Katalin, highlighted how the state schools (in this case represented by the headmaster) tried to maintain the school's integrity and reputation by juggling and considering the interests of parents, teachers, and the institutions representing the state. Most interestingly the state institute let the school have two primary school classes for 32 children, which was against the regulations. However, Katalin did not ask for an explanation because it secured two more jobs. The parents did not raise any concerns, because they believed it guaranteed a better education for their children. Katalin suggested that the headmaster is not 'clean', but that she regarded him as a good man who just wanted to maintain the school integrity and jobs. However, understanding the headmaster's good intentions does not make the practices legal. Katalin talked about other occasions when she was forced to take part in, or look away, when practices took place. Everybody was involved—even on higher levels—which made it less comfortable to not take part than to 'just get on with it', and also she felt she had to support the school. There were situations which could not be described as serving the interests of the school—occasionally the headmaster hired out the school facilities without receiving rent in an official way; teachers tutored students for money after the school hours using the school facilities, making it more convenient and less expensive for the parents; the deputy headmaster allowed market sellers into the school to sell books, little stones, wooden toys—these people were parents and his friends, and in return the deputy received

some percentage of every sold items, and the headmaster looked away. Katalin suggested that most of the teachers felt justified regarding these practices because of their low salaries, which they felt the need to complement, therefore they felt that stealing from the state was their right. However, some people in the school did not even realise that what they were doing was corrupt, they just simply went with the flow, and when asked they reasoned that everybody was doing it.

The interview with the secretary of a sport organisation revealed similar patterns. In order to improve the functioning of the organisation and serve the members' interests he engaged in practices that abused state money. The organisation even has an employee in the office who on paper does voluntary work, but in reality receives a salary (which is close to the minimum salary). The reason is that to employ him legally would be twice as expensive for the organisation, because they would have to pay the state all the relevant taxes and contributions. With this trick the secretary saves the organisation money. He claims that it is easier to follow the rules, but that the organisation would lose money, and therefore they would be able to provide less for the members. His words: 'There is so much state money floating around, which if you don't claim, somebody else will'.

### *Analysis*

The narrative justifying taking part in informal economic practices and low-level corruption on the grounds of a need to complement low salaries is still a driving force, but it is also complemented by supporting the institutions and their members' interests. Such justification suggests that the state is not able, or willing to, provide on the level that is expected. However, the state should be a provider, or at least present clear rules and regulations. Making up new ways and protecting the people's interest in informal ways—even if sometimes going against the formal rules—is seen as necessary. This produces alternative normative orders inside the social association which differ from the state law and even the regulations of the organisation. The interviewees suggest that the lack of regulations, contradictory regulations, over-regulation or simply laws that do not serve the best interest of the members do not help the functioning of the organisation. This contributes to constructing the narrative 'us versus them'. The primary focus is favouring and ensuring the interest of the members against the state's interest. It is guaranteed by employing alternative normative orders and morality, which contributes to establish a legally plural

environment. It is possible to identify three different actions which are caused by this environment. Firstly, this evidence shows that in some cases norms inside the social organisation are so strong that the teachers and members follow those rules, and do not consider their formal legality, nor if they break the law of the state. Secondly, in other cases the state regulations are considered to be wrong, therefore they deliberately go against them for the good of the students, members, and the organisation. It is possible to regard this as a reinforcement of the ‘us versus them’ narrative. Thirdly, some of the members of the association are conscious of the nature of the transactions that are going against the state law or abusing state money, but because everybody is involved, they find it is easier to go with the flow.

Finally, it has to be noted that the behaviour of the headmaster and the secretary of the sport organisation is a crucial part of the social association’s normative ordering. These individuals in positions of power can regulate the social association and set the norms. They are both aware of other people’s practices, they even provide opportunities for others, or just let them get away with it and treat the ‘gained money’ as a supplementary salary. They choose informal ways over formal to protect the integrity and the reputation of the organisation. It seems that they secure the continuation of the organisation, and allow it to flourish by exploiting informal economic practices, but it does not mean that all the practices are allowed. People in positions of power do not necessarily have to encourage informal practices—it is enough for them to look away, when it is small scale and they feel that the abuse of a certain amount of money is legitimate as a salary supplement.

### PEOPLE, STATE OFFICIALS, AND THE STATE AGAINST INTERNATIONAL ORGANISATIONS (EU—THE ‘NEW STATE’)

Joining the EU meant that Hungarian citizens suddenly had access to funds designed to help westernisation, build infrastructure, and support cultural activities. By suggesting that the westernisation and adoption of the near-impossible and overly complicated regulations of the EU is an obstacle to economic growth (Tölgyessy 2014) The Orban-government’s rhetoric feeds this narrative. Therefore, the following empirical material highlights the existence of a social association where ‘us’ consists of the

people, state officials, and arguably the state, based on the government's rhetoric and actions, and 'them' as the EU and international organisations. The interviews show that the use of any international organisation's money for private gain is commonplace and generally accepted.

### *Data Presentation*

An interview with a 40-year-old academic researcher served as a showcase for this section: at the time of the interview Adam was finishing his PhD at one of the most prestigious universities in Budapest. He had worked for ten years for a private company, and he gave up that job to pursue his academic career. However, he was disappointed with the system, because the institutions had the best reputation and he thought that it would be possible to produce much better scholarly work with the knowledge possessed by the department. Amongst his complaints are that he was not paid for conducting tutorials and writing publications on time (or sometimes ever), because the administration was waiting for some funding to arrive. His biggest complaint was regarding conferences and research funding supported by the EU funds. He suggested that in Hungary the organisation of conferences using EU and other international organisation's funding is completely corrupt with only a few exceptions. He described the presentations at the conferences as often being very poor, and that people often only go for the free food provided. Moreover, he took part in a conference—organised using the EU funds—which was essentially a wellness weekend on the banks of Lake Balaton. There was only one foreign international researcher invited (who gave two speeches), but the conference could have been organised at the university instead of at the wellness hotel. During the interview it became clear that one person was responsible for applying for the funds as well as spending them—filling the post of 'project manager'—the primary purpose of which was essentially to guarantee a salary for him, whilst the implementation of the projects were secondary. Disappointed with the scholarly work and the money, he approached the department leader regarding the funding application issue. The answer he received made it clear that they allowed the project manager to do this as he secured some money for research for the university, as well as for his own private gain. However, the projects using the funding were rarely connected to the department's research area and did not fit with the profile of the department's scholars, but the projects had to be completed in order to satisfy the terms of the funding and to earn the money. He described a system where

even the leader of the department was doing ‘unnecessary’ research, and the PhD students had to earn some money instead of focusing on their own projects and improving themselves. However, Adam stated that he could not blame them, because most of them were not guided by greed—they just wanted to be able to bring home enough money. The person who did all the applications, despite a bad reputation and the feeling that he was guided by greed, also gained money for the whole department and helped the others solve the ‘administrative problems’.

Adam’s colleagues referred to the EU funding as ‘free money’, and implied that there was no harm in claiming it or abusing it, because it was neither the institution’s, nor even the state’s money. Finally Adam concluded his experience:

How EU funding is used is even less important for the government and for the state, because it is the EU’s money. There are many funds, available to anyone who applies, so of course even if people are not able to do a good job or complete the project, it is better for the government that they apply for the funding and used it in some way, because if they don’t apply then the money will be wasted or go back to EU. Therefore it is good for the government to not really control how the projects will be conducted, or how they worked, just that they exist on paper.

The abuse of EU research funds is not a special case, it is just one example of widespread practices. The media in Hungary started to nickname these practices of abusing the EU funding in cunning ways as *mutyi*. During the interview with the primary school teacher she commented that their school also took part in the so-called *labor mutyi*. This was a scandal, when many schools applied for the EU funding to set up laboratories, and they bought all kind of equipment and wrote manuals about teaching in the lab. However, there were not enough qualified teachers who could take lessons in the labs, so all the equipment just stood there without use. The responsible ministry looked away. Ultimately it was the government suppliers and contractors who benefited from the *mutyi*.

### *Analysis*

The interviews show that people’s perception is that joining the EU made legal systems and regulations even more complex. Barber (2006) argues in his study about legal orders of the EU that the legal system is pluralist if it contains inconsistent rules of recognition that cannot be legally resolved

from within the system. Because of the legally plural situation people start to act in an informal way.

From the narrative it is possible to see that the application for the EU funding presents a competition between the people and state for resources from the citizen's perspective, often referred to as 'free money'. Low-level corruption—abusing relatively small amount of money—is possible, because the state looks away. Government cadres are not only interested in initiating their own corrupt practices on a larger scale than the average citizens, but also try to favour their friends and relatives. It is possible to see this in the case of the *labour mutyi*, where entrepreneurs and suppliers close to politicians got the biggest advantage. Lomnitz (1988) showed that informal activities based on personal connections constituted a system of exchange based on interpersonal trust and loyalty that runs underneath and parallel to the formal administrative rules in socialism, therefore this allocation of favours can be seen as the heritage of socialist times. These practices are apparent for the citizens as they are recorded by political blogs and forums. Therefore the citizens want to also take part in this allocation of 'free money', and they see the alternative normative order of the social association, which suggests that these practices are accepted and relatively harmless since the funds come from an international organisation, and the actions do not affect either other citizens or even the state. They use political corruption as a reference point. Ziegert (2009), when developing Ehrlich's idea of social association, saw the associations' internal means of regulation as possessing a degree of reflexivity. He explained that the legal norms provide the individual members with a relational 'reference point' that tells them not only what conduct is expected of them, but that also tells them, in relative terms, what they can expect from others. Citizens also distinguish between their practices and government corruption, which they referred to as 'proper corruption'. They categorise their practices as less harmful, and not real corruption, because they use the resource for something useful—and, even if it results in private gain, it is not often the primary result. This shows how the informal definition of corruption is constructed through how other people perceive the corruption. The informal definition is accepted and obeyed by the members of the group, yet it is not posited by the state (Ehrlich 1962) and it may contradict the state law, constructing a legally plural situation—as Urinboyev and Svensson (2013) observes similarly in post-communist Uzbekistan.



## CONCLUSION

The data and analysis informed by Ehrlich's living law theory (combined with legal pluralism) allow to discern different aspects of the 'us' (the people) versus them' (the state and state officials) narrative on corruption. This chapter considered 'us' as a social association, which is a plurality of people who construct their own norms and regulations to obey, and which rise without the involvement of the state. They can be contradictory vis-à-vis state laws and therefore illegal, or they can regulate different aspects of social and economic life—thus staying outside the state domain—and therefore be considered as informal. There were three levels of narratives, which were separated based on who constitutes 'us'. In the first level, 'us' are the people and 'them' are the state and state officials. This level covered two different phenomena. First, when people interacted with state officials, and bribes were demanded by the officials in order to access services (which should be freely available for the citizens), to avoid smaller criminal penalties (e.g. for speeding) or to gain fair (sometimes exceptional) treatment. Second, when the state money or property was stolen, or the benefit systems were abused. It was possible to see that the lack of a decent salary from the state officials' side constitutes a crucial—claimed or real—factor when initiating informal economic practices and low-level corruption. Also in these situations the 'us' against 'them' narrative could be explained by considering behaviour and experiences from the socialist past. People felt that stealing from the state was their right, therefore they often did not question the legality of the transactions—for them it stayed in the informal domain. The data also showed the importance of communication strategies when performing the practices.

The second level was when 'us' consisted of people and state officials against 'them'—the latter being the state. At this level the narrative of 'not enough salary' is still present, but the dominant factor in taking part in low-level corruption and informal economic practices is supporting the organisation and satisfying its members' interests when the state was not able to provide, or when the regulations were perceived as inadequate. The evidence shows that there are alternative norms constructed inside the social association, which can be so strong that the members do not even consider their legality. Regulations that were considered wrong or contradictory helped to reinforce the narrative of 'us' against 'them'. Often the members were aware of the nature of informal transactions, but they found it easier to just 'go with the flow' when everybody else was

involved, even officials at higher levels. The leader of an organisation can set and control the informal norms inside the social association.

Finally, the third level of narrative was when ‘us’ consisted of the people, the state officials, and the state against ‘them’, international organisations, often the EU. This section shows that political corruption (or at least the perception of it) can contribute to the narrative, and that joining the EU resulted in an even more complicated system of regulations, that the government has no intention of resolving (or perhaps even the capability to do so). There is competition between citizens and the government cadres for the ‘free’ resources, the EU funding. People use political corruption as a reference point, and refer to that as ‘proper corruption’ when compared to their own practices. They consider their practices as acceptable, because they are on a smaller scale and often the primary intention is not to achieve private gain—or at least not to accumulate wealth. Finally, this section shows how the informal definition of corruption is constructed by the people themselves.

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# Cross-Border Smuggling in North Niger: The Morality of the Informal and the Construction of a Hybrid Order

*Luca Raineri*

## INTRODUCING THE FIELD OF INFORMALITY

This chapter explores how practices of cross-border smuggling have contributed to the emergence of a hybrid order in the north of Niger. By adopting a genealogical approach, it argues that these practices have progressively adapted to changing frameworks of legitimacy and legality in a dialectical—albeit non-deterministic—relation with the state(s).

This approach is meant to circumvent two symmetrical stumbling blocks of the social inquiry dealing with state-society relationship, for example, the aprioristic assumption of either a teleological orientation or an a-temporal reification of such a relationship. Since the outset, the issue of non-state political orders or “stateless societies” has been at the core of the political-anthropological investigation, especially in Africa (Fortes and Evans-Pritchard 1940). However, by adopting a teleological approach largely (and explicitly) inspired by Hegel and Weber, political orders featuring a limited resemblance to Western states were seen as defective forms of social organization, inevitably tending toward statehood. The latter, in

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fact, was considered as the inevitable achievement of the former, if only for the drive of systemic causes. The remnants of this thinking are well ingrained in the assumptions of contemporary structural theories in international relations (IR), which, at best, analyze these orders in terms of “areas of limited statehood” (Risse 2011).

On the other hand, more recent scholarship has been keen to emphasize the flip side of the coin, that is, the resistance opposed by some societies to the adoption of the moral and legal frameworks of Weberian statehood. The *hybris* of state-building, in fact, risks to iron out the potential of local agency. Cases abound in which the constitution of the state has been accompanied by the criminalization of alternative forms of administration and social organization, drawing on different sources of legitimacy and morality. Subaltern subjects to (instead of subject of) state-building have often opposed a fierce resistance to these hegemonic projects, which in most cases were driven from the outside. Sometimes, such a resistance has been expressed in a passive, unarticulated, invisible, and informal way—for example, what James Scott labels the “infrapolitics”—in order to leave as little traces as possible and escape detection and control (Scott 1984, 2009). Its manifestations can include “resistance, opposition, civil disobedience, foot dragging, flight, non-compliance, limited cooperation, rhetorical resistance, or other ‘hidden acts of resistance’” (Richmond 2013: 6). The observation that, in the cases mentioned above, “power is exerted at the level of inarticulate knowledge: meanings are imposed in and through practice” (Pouliot 2010: 46) invites one to shift the analytical focus away from formal juridical models or central decision-making to concentrate instead on the “infinitesimal mechanisms” (Foucault 1980) through which both power and resistance to it are exerted in practice.

One should bear in mind, however, the considerable theoretical challenges of attributing such a political significance to the informal, which can be invisible and unexpressed. In the first place, this runs the risk of hypostasizing resistance as a necessary occurrence, without any evidence to document it.<sup>1</sup> Second, and related to that, it could end up reifying the

<sup>1</sup> Chandler (2013) argues that the scholarly community still lacks a serious theory of resistance. He rightly traces this reification of resistance to Foucault’s much-quoted statement on the imbrication of power and resistance. Foucault, however, does very little to justify this view or to provide some rational foundations for it. The priority of resistance is simply assumed. James Scott (1984) has discussed at length this epistemological problem, and his

practices and the categories employed to interpret them, without paying due attention to the specific fields of struggles where they originate. While trying to develop a methodology for practice-oriented research, Bourdieu (1998) recalled that practices and habits are “durable,” “resist being moved,” “instil path-dependency,” but nevertheless change continuously—albeit perhaps imperceptibly—across history. One needs then to trace a genealogy, or a history of practices, focusing on the emergence of a certain field and on the ruptures and continuities within it. In order to avoid a misguided confidence in supposed eternal laws of social science, but also a short-sighted belief in the present’s exceptionalism, I argue that a *longue-durée* perspective can contribute to detecting practices and situating them properly within their specific field.<sup>2</sup>

By combining a micro-level analysis and a *longue-durée* perspective, then, the present research explores the genealogy of the informal practices of cross-border smuggling in North Niger and questions their changing (mis-)adaptation to different registers of morality and legality across time.

### POLITICAL AND MORAL ECONOMY OF THE SAHARAN SPACE

North Niger lies in the middle of the Sahara Desert, a quintessentially inhospitable region featuring unique environmental characteristics. The very poor endowment of natural resources makes this land largely unsuitable for agricultural purposes and obliges local dwellers and pastoralists to resort to a nomadic lifestyle. In the Sahara it is mobility, not the soil’s productivity, which ensures one’s survival. According to the historian of the Sahara James McDougall (2012: 82), “the Sahara was always a borderland, in the sense of a zone constituted by its multiple interactions with neighboring worlds, without which it would be unable to survive.” Since first-century AD, the introduction of the camel made the Sahara a connective space of transnational exchanges (Schörle 2012). Long before the

overall work and methodological approach testifies a pragmatic way to partly overcome the deadlocks arising from it.

<sup>2</sup>This view is also endorsed by the tenants of the Paris School of Critical Security Studies, who emphasize the need to investigate the genealogy of a field of practices (Bigo 2011). This emphasis also helps to clarify the differences of Bourdieusian approaches (including the one in the Paris School of Critical Security Studies) with structuralism, on the one hand, and, on the other hand, with actor-network theory, which underscores instead the simultaneity and ephemerality of assemblages.

colonial conquest of Africa, Arab merchants were able to connect Saharan shores to the north—with the Mediterranean—and to the south—with the Sahel (*sahil* in Arabic meaning precisely shore)—thereby establishing a thick network of trading routes. Salt, slaves, and gold were traded also across Fezzan, a Saharan region today split between the south of Libya and the north of Niger. For centuries, and to date, the transport, trade, and smuggling of people and commodities (and of commodified people, as one could qualify human smuggling) have formed the economic basis of traditional local livelihoods.

The development of a specific morality prevailing in the region mirrors the porous boundaries between trade, smuggling, migration, and religion, upon which the Saharan economy rested. Articulated in both insiders' practices and foreigners' imaginaries, the peculiar logic of Saharan lifestyle tends to oppose the moral frameworks of both religious thinking and state ideologies. According to classical Arab thinkers, the very term "Sahara" is often associated with the notion of *badiyya*, wilderness, a term which also carries a sociological and moral connotation, as it refers to a barbaric place, "abode of salvages" (McDougall and Scheele 2012: 13). In the Saharan *badiyya* the lack of legal boundaries is a source of political disorder and moral confusion: prevailing moral norms fade and allow for dangerous anarchic attitudes to thrive.<sup>3</sup> And indeed, individualism, independence, and a certain taste for anarchy have been traditionally much praised by Saharan tribes living in the north of Niger, including by the Tuaregs and the Tebu. Scheele (2014: 39) reports that, even today, in the Tebu moral imaginary, "two emblematic figures act as stereotypical heroes or exemplars: the successful rebel leader turned state functionary or army commander, who has 'lots of cash', men, and a direct phone line to the president; and the trans-border smuggler, incredibly wealthy, with a fast Toyota V8 car."

Throughout the centuries, Islamist confraternities originating from North Africa sent out missionaries to civilize and moralize these "barbaric"

<sup>3</sup> According to some sources, the very name of the Tuaregs would stem from the Arabic term *t-r-k*, for example, "left, abandoned, forgotten"—implicitly by God in the Desert—because the Tuaregs are seen as speaking an imperfect Arabic and therefore as lacking an appropriate understanding of the Qur'an (Kohl 2014). Similarly, the name of one of the largest Tebu settlements in the Sahara—Kufrah, in southern Libya—would come from the Arabic word *Kuffar*, the illicit, the *haram*, because of the little-orthodox smuggling practices which had been taking place there (Scheele 2014).



societies in the name of the Qur'an. The *Sanussyya* represents a case in point in Fezzan. Generally established in proximity to oases, some missions grew as centers of agricultural production and therefore of trade irradiation. Religious organizations maintained commercial networks which soon spread across the Saharan space and amplified along the existing trading routes. These webs of connections followed less a logic of pure economic calculus, than one of solidarity and recognition of mutual obligations among people linked by religious or social bonds (Scheele 2012, 2014).

Building on such a background, it comes as little surprise that Saharan populations in North Niger have maintained cross-border smuggling in high social esteem, while modern states' attempts to enforce state legality and well-defined borders were perceived as stifling and illegitimate. A former Tuareg combatant from North Niger claimed that

“the history of these regions long predates that of contemporary states. States like Niger have a very shallow impact on people's daily lives, you know them just because they collect taxes. ‘Traffics’ is a pejorative term that state authorities resort to arbitrarily: for us, it only refers to the trade and transport of goods and people in different directions. North and South, legal and illegal, all these are newer notions, they are a function of a state logic.”<sup>4</sup>

Virtually all available reports confirm that in Saharan regions, including in the north of Niger, smuggling and trafficking are seen as a service provision to a willing buyer, if not as a lifestyle, with nothing inherently illegitimate and no specific concern for the legality of the goods traded. The concepts of “fraud” and “trade” are widely seen as synonymous (Scheele 2012; Reitano and Shaw 2014; Tinti and Westcott 2016). Fraudsters benefit from the assistance and protection of local communities, because they provide them with cheap supplies of basic goods otherwise unavailable, but also because of kinship bonds. The logics of belonging familiar to IR thinking hardly apply here: in Saharan borderlands, “people do not view themselves as citizens of a country, but more as members of specific sub- or trans-national social entities (kin, tribe, ethnicity or village). It is these entities that provide the nexus of order, security and basic social services” (Reitano and Shaw 2014: 9).

The state is thus portrayed as the moral antithesis of the “world of fraud” (Scheele 2009; Kohl 2013). Custom officers—and especially the

<sup>4</sup> Interview with Tuareg leader in Niamey, September 2015.

diligent ones—are widely “perceived by the populace as an exploitative, racketeering body” (Tidjani Alou 2012: 144) because they contribute to disrupting socially profitable smuggling, just like “normal” bandits, and are therefore equated to a social evil. Instead, the fact that in some Saharan villages “it is a glory to be sent in prison for smuggling” (Cantens and Raballand 2016: 37) approximates these practices to an unspoken modality of resistance against the state and its legal frameworks. Focus groups conducted with borderlands’ dwellers in Niger and in the broader region also confirmed these views.<sup>5</sup> The prevalence of these practices erodes the impersonal rule of a Weberian “rational” state and substantiates a moral economy that completely overturns the commonsensical (Western?) meaning of criminals and providers of protection.

### THE CONSTITUTION OF CROSS-BORDER FRAUD NETWORKS IN NORTH NIGER

The advent of colonial regimes, and even more so that of independent post-colonial states, had a significant impact on the political economy and lifestyles of local populations in North Niger. The creation and enforcement of new borderlines severely limited the freedom of movement: it has been calculated that in a few decades the range of authorized nomadic circuits decreased from 800–900 km to less than 100 km (Claudot-Hawad 2008). In spite of constraining legal and territorial frameworks, however, informal cross-border practices were reinforced.

“The imposition of national borders, first by colonial regimes and then by independent nation-states [...] has had a powerful effect on Saharan life, less by interrupting regional networks of interdependence than by restructuring them, as the control of smuggling networks and semi-official trade has created new regional power structures that are dependent on borders”

(McDougall and Scheele 2012: 14–15). The newly created borders established the infrastructure for the adoption of diverging economic policies across the region: states laying on the northern shore of the Sahara, such as Algeria and Libya, could exploit their significant mineral wealth to sponsor generous programs of public subsidies targeting goods of wide

<sup>5</sup> Focus groups carried with Nigerien youth, Region of Tahoua, May 2016.

consumption, such as fuel, foodstuffs, and textiles. This nourished a thriving illegal smuggling economy of subsidized goods toward the Sahelian countries, such as Niger and Mali, and namely toward the isolated northern regions, way less well off in terms of economic development and access to basic goods.

From the early 1970s onward, trucks carrying powder milk and fuel from Sebha in Libya and Tamanrasset in Algeria reached out to commercial hubs in the north of Niger, such as Agadez, and came back with Nigerien livestock and camels (Kohl 2013). Nigerian authorities had little to lose from these exchanges and largely tolerated them. North African regimes, who could have been more seriously affected, ended up condoning such practices as part of an informal power-sharing deal: by protecting the trafficking networks, they managed to co-opt peripheral tribes and ensure their loyalty. Gaddafi's Libya represents a case in point here. Patronized by the Qadhadhfa tribe (Wehrey 2017), the Arab clan of the Awlad Souleymane grew richer because of its increasing involvement in the smuggling of fuel bound to the south, and it is now reportedly controlling 80% of oil stations in Sebha (El Kamouni-Janssen 2017). Less ingrained in the circles of power, the Tuaregs often worked as the Arabs' drivers and middlemen. The illicit profits of smuggling were reinvested in goods and status symbols capable of ensuring traffickers' social respectability (while laundering money and shielding from unwanted police attention), typically farming lands and livestock. This sparked off gardening around Sebha, but also in the Air Mountains in Niger (Kohl 2013),<sup>6</sup> in spite of the harsh environmental conditions.

Throughout the same years, another, parallel dynamics contributed to the consolidation of cross-border fraud networks in North Niger. Political persecutions in the 1960s and 1970s, and then environmental disasters and famines in the 1970s and 1980s, triggered major migratory flows from Sahelian countries, including Niger, toward North Africa and Libya in particular. While accurate figures are hardly available, the Tuaregs and Arabs who sought refuge in Libya are estimated in tens of thousands (Klute 2011). In Fezzan, kinship bonds resulted in the Tuaregs heading most notably to the towns of Ghat and Awbari, while ethnic Arabs moved to Sebha in the first place, where they essentially merged with the Awlad

<sup>6</sup>Information confirmed in an interview with a former Nigerian minister in Niamey, September 2015.

Souleymane under the auspices of Gaddafi (Small Arms Survey 2014).<sup>7</sup> The presence of a significant Nigerien diaspora in neighboring countries, and in Libya most notably, obviously favored the empowerment of cross-border fraud networks. Routes and infrastructures, developed for the smuggling of licit goods, progressively overlapped and intermingled with those of migratory flows, both seasonal and long term. Trucks shipping Libyan fuel to Niger increasingly returned to Sebha carrying Nigerian laborers. The latter often found employment opportunities in the gardens of Arab smugglers—that is, the owners of the same trucks.<sup>8</sup> Tuareg drivers, formerly Arabs' middlemen, gained prominence in the migrants smuggling business and established their own “travel agencies” in Arlit and Agadez, featuring fixed prices and full-time employees (Kohl 2013).

Originated in the 1980s, alongside the peak of the environmental crises in the Sahel, tobacco smuggling increasingly represented another crucial commodity in North Niger's informal economy. Data available until the Arab Spring reported that 20% of the cigarettes consumed in Algeria and 70% of those consumed in Libya were smuggled by Saharan cartels, most notably across Niger.<sup>9</sup> Often produced in China, smuggled cigarettes were (and still are) shipped to the seaports of Benin, Togo, Ghana, and Nigeria and from there routed to the rest of North and Northeast Africa. Reportedly, Niger represents a crucial hub of this illegal market. Arguably, its development largely benefitted from the infrastructure established for the smuggling of subsidized goods, in terms of routes, modalities, and networks (Scheele 2011; UNODC 2013). Until 2011, the Qadhadhfa tribe reportedly played a pivotal role in this trade, due to the protection of the regime and the increasing links with the Sahelian Arab tribes such as the Berabish (Wehrey 2017).

<sup>7</sup>Information confirmed in phone interviews with resource persons (an Arab from Timbuktu and a former Tuareg migrant to Libya) from north Mali, February 2017.

<sup>8</sup>The nature of the causal relationship between smuggling networks and diasporas remains unclear. Both Kohl (2013) and Molenaar (2017) tend to agree that cross-border smuggling developed along pre-existing migratory routes built on cross-border family links. From a genealogical perspective, however, the contrary seems more persuasive: existing trading routes have favored the spreading of families and the consolidation of cross-border diasporas which, in turn, have represented a crucial infrastructure to facilitate subsequent migratory flows. Scheele's (2012) observations of analogous dynamics across the Mali-Algeria borderland contribute to corroborating the latter view.

<sup>9</sup>Interview with a researcher from United Nations Organisation on Drug and Crime (UNODC) in Dakar, December 2014.

Although accurate figures are difficult to provide, by the mid-1990s, the overall value of informal trades among Mali, Algeria, and Niger was estimated to be worth about 30 million US dollars per year (Grégoire 1998), and it reportedly grew considerably in the subsequent years (Reitano 2015).

## THE INSTITUTIONALIZATION OF CROSS-BORDER FRAUD NETWORKS IN NORTH NIGER

In the two decades spanning the turn of the century, Niger went through a period of instability, including constitutional crises, insurrections, and civil wars. In the north of the country, perceptions of political and economic marginalization experienced most notably by the Tuareg community fueled two waves of armed insurgencies, in 1991–1997 and 2007–2010. While the dynamics of these crises have been addressed elsewhere (Bourgeot 1995; Boilley 2011), the present chapter discusses how the destabilizations and the ensuing peace deals have contributed to rooting cross-border fraud networks. As a result, the strengthening of Niger's patronage politics eventually resulted in the establishment of a hybrid political order (Boege et al. 2008; Bagayoko et al. 2016) in the north of the country.

At the end of the hostilities, both in 1997 and in 2010, Niamey offered to the former rebel leaders juicy positions within the state administration in exchange for their pacification. This was seen as a pragmatic approach to disarmament, demobilization, and reintegration (DDR), as well as an effective strategy to tackle the root causes of the marginalization suffered by the Tuaregs, for the best, if not, for the worst, as an astute tactic to co-opt turbulent northern elites by “subcontracting” state authority in remote regions to former rebels.<sup>10</sup>

Some former rebels took advantage of their new political protections to foster a deeper involvement in cross-border fraud networks. A few prominent individual cases of these dynamics are worth being recalled. Before becoming one of the leaders of the first Tuareg insurgency in Niger, Rhissa Ag Boula was a running a small tour operator in the north of the country serving both tourists and migrants. At the end of the hostilities, in 1997, he was appointed Minister of Tourism, a position which granted him

<sup>10</sup>Information confirmed in interviews with a European counter-terrorism expert and a Nigerien security officer in Niamey, September and October 2015.

substantial control over all the (in)formal cross-border trades taking place in the north of the country. His then second in command, Aghaly Alambo, followed a similar trajectory: as part of the peace deal, he was appointed Mayor of Arlit, where he subsequently founded his own travel agency (Molenaar 2017). Benefitting from the authorities' protection, these fraud infrastructures were put to the service of larger businesses. In the subsequent years Arlit reportedly became a regional hub of drug trafficking (Kohl 2013). After the end of the second Tuareg insurrection, which both leaders joined, Ag Boula and Alambo were found to be involved in large-scale arms trafficking from Libya. While state authorities in this case intervened and tried to discontinue such activities, both Ag Boula and Alambo were granted substantial impunity and were instead appointed to prominent positions within the state's administration (Raineri 2015). Another notable example is that of Rhissa Mohamed Ali: although less directly involved in the rebellion, this half-Tuareg half-Arab businessman took advantage of the permissive attitudes prevailing in the post-conflict environment to further expand his own illicit activities and entrench them in Niger's networks of patronage politics stretching as far as the inner circles of power in Niamey. In the late 1990s, Rhissa Mohamed Ali was running a small company devoted to cross-border smuggling, called "RIMBO," which increasingly turned to passenger transport. At its inception, the company had only three buses connecting Niamey to Maradi, in the south of Niger. Yet during the second Tuareg insurrection, while widespread insecurity forced other analogous companies out of business, RIMBO boomed: its fleet grew to 45 buses connecting all the neighboring countries, ensuring RIMBO the largest international network in the whole Economic Organisation of West African States (ECOWAS) region. Subsequent revelations, triggered by the release of the so-called "Panama Papers," have provided a trail to explain this otherwise surprising outcome: in 2008, Rhissa Mohamed Ali opened an offshore society at Seychelles, which ensured a significant financial capacity to RIMBO. The source of this wealth has never been clarified, nor investigated by Nigerien authorities, for that matter. Yet, local observers suggest that RIMBO was largely involved not only in the smuggling of West African migrants to North Africa (Molenaar 2017), but also, most notably, in the cross-border

trafficking of cigarettes, counterfeit medicines, and drugs.<sup>11</sup> Benefitting from the constant flow of black funds, local and national authorities preferred to informally condone these activities, hardly perceived as threatening, and instead undertook to extract protection rents on a private basis.

The substantial impunity enjoyed by the former Tuareg rebels integrated in the state paved the way for a significant expansion of trafficking in the region, in terms of scope, routes, commodities traded, and profits. Arguably, one could also see things the other way round: as part of an informal deal, Niamey accepted to turn a blind eye on the illegal activities of some rebels provided that they laid down weapons.<sup>12</sup> According to a Nigerian security officer, “the DDR process which followed the civil wars was ineffective and did not meet international standards. This is also because it was the result of a political compromise, whereby a part of the leadership of the rebellion preferred to surrender to protect its traffics.”<sup>13</sup> The preservation of traffics thus seemed beneficial for the stability of North Niger, at least in the short run. Beyond the co-optation of rebel leaders, the high demand of skilled local drivers in the smuggling industry helped to reabsorb a youth only trained at driving or fighting, whose unemployment could have had a tremendous destabilizing potential.

As a result, the peace processes in Niger contributed to the normalization of fraud networks, if not to its institutionalization in the state gears. In the last decades, the infrastructure previously developed for the informal smuggling of licit goods was increasingly exploited to trade more lucrative commodities. In spite of their illegality, these found a business-friendly environment in Niger. The route of smuggled tobacco connecting Nigeria to Libya via Niger became the drive belt to contraband counterfeit medicines and opioids to North Africa (UNODC 2016). In the meantime, Arab networks scattered along the 10th parallel cocaine highway benefitted from this substantial *laissez-faire* policy and exploited local infrastructures and know-how for the conduit of large quantities of cocaine from West Africa—including Guinea-Bissau, Mauritania, and Mali—to

<sup>11</sup> Information confirmed in several interviews with former rebel leaders, former Minister, current prosecutor carried out in Niamey, in September and October 2015.

<sup>12</sup> Information confirmed in interviews with former rebel leaders conducted in Niamey, September 2015.

<sup>13</sup> Interview with the National Commission for the Collection and Control of Illicit Weapons of Niger, in Niamey, October 2015.

Libya and Egypt, across Niger (Kohl 2013; UNODC 2013).<sup>14</sup> Moreover, the trade of high-value commodities aroused a demand for protection, which in turn fed increasing trafficking of small arms in, to, and across Niger's northern regions. The smuggling of migrants, too, grew considerably: since the early 2000s, conservative estimates suggest that at least 100,000 migrants per year passed through the region of Agadez (Molenaar 2017), with the full knowledge, if not active engagement, of the state's security forces (Brachet 2005).<sup>15</sup>

The expansion and normalization of trafficking in North Niger as a result of opaque peace processes with former separatists corroborate the findings of recent works in African studies. The political power of social networks benefiting from cross-border smuggling makes African borderlines, and pointedly in the Saharan region, less a source of instability than an economic resource to be preserved, and therefore a factor of political inertia.

#### THE CRIMINALIZATION OF CROSS-BORDER MOBILITY AND THE RESILIENCE FRAUD NETWORKS IN NORTH NIGER

The collapse of the Gaddafi regime, in 2011, had a major impact on the dynamics of cross-border smuggling in the whole region. On the one hand, long-standing protection rackets sponsored by Tripoli crumbled, and insecurity in Libya skyrocketed; on the other hand, the regional governments and the international community gave impulse to a series of operations aimed at preventing the spillover of the Libyan crisis, most notably in the fragile Sahelian region: Algeria stepped up its military *dispositif* to seal the borderline with Libya; France launched the military mission Barkhane in five Sahelian countries, three of them bordering Libya,

<sup>14</sup>Information confirmed in several interviews with policymakers, criminal prosecutors, and security experts in Niger, carried out in Niamey in September and October 2015.

<sup>15</sup>This observation challenges the widely held view that it is only after the end of the Gaddafi regime that Libya became the Eldorado of human smuggling. One should point out that from the late 1990s, and following the imposition of the UN sanctions, Gaddafi turned to the African continent and encouraged a policy of open doors vis-à-vis sub-Saharan migrants, who were then granted visa-free access to Libya. This policy stimulated substantial patterns of circular migration and allowed networks of human smugglers to establish fruitful working relationships with law enforcement and border officers in the region (Kohl 2013; El Kamouni-Janssen 2017).



including Niger, to intercept weapons and track terrorists in the region; the EU supported several initiatives of border hardening in the Sahelian countries; and the USA deployed drones and special forces in Niamey.

The combination of these dynamics obviously hampered the opportunities for unconstrained mobility in the region. Virtually all available sources concur to say that the informal smuggling of licit goods, relatively harmless but all the more visible and unorganized, suffered the major impact. Living out of “honest fraud” became increasingly dangerous. Local observers noticed that

“since the 2011 EU Strategy for Security and Development in the Sahel, the externalization of border control promoted by the EU in Niger has been abusively conflating the fight against irregular migration, terrorism and organized crime. Yet all these ‘threats’ are different in nature and involve different actors. Today, the fight against terrorism hinders the smuggling of fuel and foodstuffs in the north. Informal traders are outraged, and desperately looking for alternatives. Drugs and migrants come in handy.”<sup>16</sup>

Both available reports and local sources confirm that the shifting balance between soaring risks and limited profits had made the informal smuggling of licit goods increasingly unpopular. The latter was thus replaced by the trafficking of illegal commodities, whose greater profitability could justify a shipment also for smaller, less detectable amounts. The pre-existing infrastructure developed for the smuggling of tobacco and cigarettes toward Libya, largely controlled by Arab traders from Libya, Niger, and Mali, was thus put to the service of the trafficking of illegal commodities, such as alcohols (Kohl 2013; Shaw and Mangan 2014), drugs (Kohl 2013; UNODC 2013, 2016),<sup>17</sup> weapons (CAR 2016), and increasingly irregular migrant workers (Reitano 2015; Tinti and Westcott 2016; Molenaar 2017), depending on the shifting balance of demand and supply at the regional level.

In other words, one could argue that the deterioration of security (both in terms of security crisis and in terms of securitization of cross-border mobility) has produced a gradual decoupling of the smuggling of licit and illicit goods. Insecurity proved detrimental to the less-profitable traffics, while it provided incentives to the development of the most-profitable trades of illicit goods.

<sup>16</sup> Interview with the Nigerien civil society leader in Niamey, September 2015.

<sup>17</sup> Interview with a Nigerian security expert in Niamey, September 2015.

The access to even more lucrative illegal markets has resulted in a further entrenchment of trafficking networks within Niger's patronage politics, that is, in a further institutionalization of trafficking and extralegal economies. In spite of greater criminalization, the local cartels continued to enjoy substantial impunity, thereby showing a considerable resilience vis-à-vis regional security shocks. A couple of major cases are worth being cited here. While widespread rumors voiced the increasing involvement of RIMBO transports in the smuggling of narcotics and irregular migrants, Rhissa Mohamed became one of the key sponsors of the Nigerien President Issoufou and generously supported his electoral campaigns in 2011 and 2016 (Molenaar 2017). And when, in 2015, Rhissa Mohamed was caught by the custom officers of Niger while trying to bring CFA Franc 10 billion (about 15 million euros) in cash abroad overshadowed, a phone call from Issoufou ensured the prompt release of the tycoon and the reimbursement of "his" belongings (Raineri 2015). Another case in point is that of Chérife Abidine. Owner of another large bus company—the 3STV—Chérife Abidine from Agadez was locally nicknamed "Chérife Cocaine," or "The Boss," due to its alleged involvement in major drug trafficking deals. This reputation, however, did not hamper his political career, quite the contrary: Chérife Abidine was the President of Issoufou's party chapter in Agadez and headed the Agadez list for the 2016 parliamentary elections, until his death in February 2016 (Molenaar 2017).

These cases, rather than being isolated, point to a broader pattern of power hybridization, whereby illicitly earned profits and institutional roles intermingle in the framework of hybrid orders whose strings are pulled by patronage networks. In-depth social surveys have recently demonstrated that, in Niger, politicians and big traders (of both legal and illegal commodities) are linked by a mutually beneficial relationship: the former secure tax exemptions and custom facilitations for the latter, while traders finance the political party that protects them. In many cases, large traders hold the regional directorship of most of the major parties (Tidjani Alou 2012). A wealth of anecdotal evidence is available to confirm these trends. A local observer, well versed in Nigerien politics, contended that "politics needs money, so it is backed up by wealthy traffickers, who in turn ask for protection. Today, an increasing number of MEPs in the north are Arabs, even in Tuareg feuds such as Tchintabaraden and Abalak. These people are

all involved in drugs, and redistribute their income to get elected.”<sup>18</sup> The local chapter of Transparency International confirmed that “in 2012 the Court of Auditors had reported numerous false statements about the source of funding declared by the candidates for the elections of 2011. In particular, the candidates of the PSDN [Parti pour le Socialisme et la Démocratie au Niger, Issoufou’s ruling party] were heavily involved.”<sup>19</sup> The preservation of Issoufou’s presidency, then, is not independent from the protection of the economic interests of the elites enriched by the profits of cross-border smuggling. According to a local migrant smuggler, interviewed by Tinti and Westcott (2016: 18): “I am telling you, the government is an accomplice in this traffic. Better said, it is at its very heart, even if the government tries to make people believe it is trying to stop this business.”

One could therefore conclude that today’s trafficking in Niger takes place in the framework of a state-sponsored protection racket. According to Snyder and Duran-Martinez (2009: 254), “state-sponsored protection rackets are *informal* institutions through which public officials refrain from enforcing the law or, alternatively, enforce it selectively against the rivals of a criminal organization, in exchange for a share of the profits generated by the organization” (emphasis added). This contributes to clarifying why extralegal economies are so difficult to eradicate in Niger, in spite of their criminalization and of the increasing efforts devoted by the international community. Irrespective of the commodities traded, smuggling is not only seen as morally legitimate by local actors, as virtually all surveys confirm (Kohl 2013; Reitano and Shaw 2014), but it is also the architrave of the local hybrid order, at all levels. According to recent reports, the bribes solicited to turn a blind eye on smuggling represent a crucial income flow without which the Nigerien security forces would not be able to operate (Tinti and Westcott 2016). These observations lead to the conclusion that national political elites, local authorities, the private sector, and the security forces are part of a hybrid order tied to the smuggling industry.

<sup>18</sup> Interview with a Nigerien political activist from the north, Niamey, September 2015.

<sup>19</sup> Interview with a representative of the local civil society in Niamey, September 2015.

### CONCLUSION: PRACTICING A HYBRID ORDER

The hybrid order resulting from the institutionalization of fraud networks is so ingrained that it has developed into a culture raising mutual expectations. From this perspective, big men politics is not only about individual agency and more or less rational choices, but it is also a social norm exercising structural constraints. At border posts, security forces reportedly receive specific instructions from their hierarchies to turn a blind eye on smuggling. Those who refuse to comply with this informal rule are muted, threatened, sanctioned, and eventually replaced. Custom agents emphasize that “the interference is now part of our service, it is recurring, and people seem to accept it [...] It is quite viciously systematized” (Tidjani Alou 2012: 151). In the northern localities of Dirkou and Séguédine, along the major migrants’ smuggling route, this has resulted in a veritable racket competition among different security forces, each levying its own “protection fee.” When the rising price of protection and the risk of an escalation prompted migrants’ convoys to circumvent these localities and look for alternative routes, local communities vehemently protested, since their (largely informal) economies had become heavily reliant on the smuggling industry. Local mayors then felt compelled to intervene and convince the security forces to lower their prices, by issuing a formal decree to settle the distribution of funds between the various forces (Molenaar 2017). These recent examples contribute to illustrating that those who do not abide to the informal rules of Niger’s hybrid order are either expelled or compelled to change their behavior.

Halfway between structure and agency, Niger’s hybrid order is then rooted in practices (whose double, bridging nature is often highlighted, for instance, by Pouliot 2010). As this chapter has tried to demonstrate, these practices of order should not be seen as reified, timeless entities intrinsically tied to a society’s “nature” but as the result of specific social interactions constituted by and across time. They are therefore part of a specific field in which the state is not entirely absent, although it is by no means the only source of authority. In the case of Niger, these practices have contributed to crafting a new logic of order, challenging the Weberian assumptions of ordinary IR. Against the black-and-white dichotomies of the logic of sovereignty, one needs to account for “liminal zones that the state has never fully controlled, which are not outside of it, but in relation to it, politically, economically, or culturally,” as Bayart (2010) noticed. The notion of gray areas (ibid.) nicely captures this alternative, more

nuanced patterns of interaction. This approach invites to cut across simplistic dichotomies and call into question the view that non-state actors, spaces, practices, and so on are outside the realm of the state and antithetical to sovereignty. The power of big men enriched by informal or illegal profits is rooted in the latter's capacity to convert economic resources into political authority, whereby redistribution is bartered with loyalty. Patronage politics is therefore characterized by the constant hybrid interpenetration between supposedly competing and mutually exclusive spheres: the formal and the informal, the private and the public, and the legal and the illegal, to the extent that "delimiting the boundaries between the criminal and non-criminal is problematic empirically and ontologically" (Hall 2012: 369). Characterized by a persistent moral ambiguity, the state apparatus is not an obstacle to the informal/illicit economy but an asset to be exploited to make it prosper. Or, from a different perspective, in the framework of a hybrid order, smuggling practices and their illegal profits simultaneously represent a challenger and an integral part of the state.

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## Informality and State-Society Relations in Post-2011 Tunisia

*Ruth Hanau Santini and Stefano Pontiggia*

### INTRODUCTION<sup>1</sup>

Streets and squares have been the loci of the protests that have shaken Tunisia not just in 2010–2011 but ever since. Street politics had been conceptualized before the 2011–2011 outbreaks, as “conflict between authorities and deinstitutionalized or informal groups over the control of public spaces and order”, and as the urban symbol where “people express grievances and forge identities, enlarge solidarities and extend their protest” (Bayat 2009: 12). In other words, street politics encompass both a vertical dimension, where streets become the physical location of political struggle between the governed and those in power, and a horizontal one,

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<sup>1</sup>Ruth Hanau Santini wrote the Introduction and Paragraphs 1 and 2; Stefano Pontiggia wrote Paragraphs 3 and 4, and the Conclusion.

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where people come together and discover a common denominator for their demands and a shared basis for their sense of identity and its articulation. These two levels are connected to practices of reappropriation of public spaces and processes of redefinition of state-society relations in post-revolutionary Tunisia (Tripp 2013).

Streets have taken on the qualities of urban symbols for the emancipation of citizens claiming for rights that have as much to do with economic redistribution as with social and cultural recognition (Daoud 2011; Fraser 1995). Claims for economic redistribution are typically associated to a politics of material interests or to standard social justice claims (Fraser 1995). The second dimension of social injustice, recognition, is related to status hierarchies, and—more broadly—to struggles over the cultural definition of social esteem and of politics of identity. Following Honneth, however, we consider these two struggles intertwined, and we reject the idea that demands for redistribution historically and logically come before those for recognition. Rather than reifying the separateness between socio-economic and cultural grievances, we abide by the insight that identity politics is not a new phenomenon, and that struggles for redistribution are locked into struggles for recognition. The 2010–2011 uprisings in Tunisia and, albeit to a lesser extent, the subsequent waves of protests that have shaken the country, including those in 2016 in the area of Tataouine, exemplify the mutually reinforcing discourses on the expansion of socio-economic rights and those of personal dignity and social esteem. Namely, protests went beyond the material dimension, as exemplified by the *karama* (dignity) slogan. Protests had been simmering since 2008 and originated from marginal areas, with a social geography clearly pitting forgotten peripheral areas against well-off coastal and northern ones around Tunis (Ayebe 2011). While Tunisia was not new to socio-economic protests, including bread riots which first started in 1984, the demands expressed in 2010–2011 and since then, have coalesced around two elements: on the one hand, more economic opportunities (reallocation of resources from center to periphery and from the few to the many) and, on the other, a more transversal request of recognition as historically disenfranchised subjects now claiming full citizenship. In other words, far from being disentangled, redistribution and recognition claims went hand in hand and mutually reinforced one another.

This chapter argues that horizontal inequality, the perception of the lack of equal opportunities and recognition of people in discriminated

areas, coupled with the historically rooted lack of redistribution, generates powerful drives for social unrest and violent outbreaks.<sup>2</sup> For this to happen, systemic wrongs need to be conceptualized as unjust by the social groups suffering from these injustices (Nelund 2011). People enact their social capital and rely on their status to gain access to symbolic and material resources in a way that is consistent with the form of governmentality taking place. The way people and the state rely on social relations to reach their goals, be it employment for the people or social control for the state, can display strong similarities (Pontiggia 2017).

This chapter also claims that the post-2011 political system has failed to address injustice in a transformative way, that is, modifying the ways of production and eradicating the origins of the distributive injustice, limiting, instead, its action to providing only some form of affirmative remedies.

### *Redistribution, Recognition, and Political Participation*

The economic system in Tunisia inherited from the postcolonial period presents systemic imbalances that have historically heavily impacted upon the capacity of marginalized regions to develop. As a matter of fact, despite being considered by Europe and the United States the poster child for competition and open markets, Tunisian development has come at the expense of southern and marginal areas and to the benefit of a lucky few, geographically concentrated in coastal areas and the Greater Tunis. A main point of contention in state-society relations—beyond unemployment—was namely the uncompetitive nature of the private sector, dominated by “networks of privilege” (Heydemann 2004). These were politically connected individuals, groups, and families benefiting from a preferential treatment for their enterprises, granted by the regime against national and foreign competitors (Rijkers et al. 2014). In such a fully operating system

<sup>2</sup>The data here presented are excerpts from the authors’ fieldwork researches. Stefano Pontiggia spent ten months in Tunisia in 2014, of which seven in the Southwest, during his work for the Ph.D. program in Humanities and Social Sciences at the University of Ferrara. He realized nonstructured and semi-structured interview, but the main part of the data were collected during several hours of observation and participation in the social activities of the inhabitants. Ruth Hanau Santini has carried out fieldwork in Tunisia from the spring of 2011, and in the southern area in November 2015, when she conducted a dozen semi-structured interviews in Medenine, Tataouine, and Zarzis.

of crony capitalism, elites close to the power center became the regime's choice players and were given special treatment, ranging from special tax breaks, insider information, and lucrative government contracts (Kalin 2012).

The fake competition and unjust rules of the game were perceived as acts of ordinary injustice which made the prospect of a dignified life and a safe job a distant one for most people. Socio-economic injustices, in other words, were a product of an institutionalized, top-down, ensemble of selective mechanisms designed to stave off social and economic competition in key economic sectors of the country, protecting a homogeneous group of selected few, close to the President in a textbook case of neo-patrimonial logics at play in a well-entrenched post-populist regime, having depleted the economic resources to maintain the previous social contract and failing to redistribute toward culturally, in addition to economically, excluded groups.

Since the 1990s, structural adjustment programs, coupled with a crony capitalist system, led to an increasing precarious job market unable to absorb qualified and unqualified workforce. This exacerbated the divide and inequalities between the area around Tunis and Sahelian cities on the one hand and the rest of the country on the other.

Redressing these historical inequalities impinges both on the redistributive aspect of material resources' reallocation and on the belated recognition of the state's neglect of these population since the country's independence.

Grievances linked to the perception of lack of political representation have diminished since 2011, as Tunisians, on a national level, have enjoyed democratic representation as never before. A multiparty system has been fully in place since 2011, when, in October, Tunisians cast their ballots for the election of the Parliament, which was in charge of ordinary legislation as well as acting as Constituent Assembly, tasked with drafting the new Constitution. Between 2011 and 2017, Tunisians have cast their ballot three times in free and fair elections, and there has been a rotation of power among the key parties. Despite initial enthusiasm for these steps, however, the appetite for economic democracy has obfuscated the democratic contentment. In the wake of the 2011 revolts, people expected not just an improvement in civil and political rights but considered tangible improvements in socio-economic conditions the real litmus test (Robbins 2016).

The political economy of the transition process has failed to generate a more balanced, participatory, and inclusive system of economic development, and was unsuccessful in devoting attention to local communities. In parallel, and not unrelated to that development, formal political participation has been diminishing, with rates of electoral turnout falling since October 2011 onwards. The new democratic Constitution entered into force in January 2014, while a consensus-driven political process which has contained political polarization has not sufficed to placate the increasing sense of disenfranchisement lying at the heart of several protests and political activities across the country.

Since 2011, informal participation, mostly revolving around sit-ins, marches, and protests, has remained high, particularly in peripheral regions. The expectations-capability gap between what had been promised in the early post-revolutionary phase and what has been delivered has fostered further protest action. As documented in a recent Report by a leading Tunisian nongovernmental organization (NGO) on socio-economic rights, protests have been on the rise since September 2016 across the country, and, in parallel, the use of violence to repress them has increased too (Ftdes 2016). Street mobilization has actually never disappeared in Tunisia in the last six years, but from the post-2013 intra-elite consensus—which paved the way for the technocratic government in 2014 and the national unity government in 2015—repression and criminalization of labor action and protests, accused to derail the country's slow pace of economic consolidation, have become commonplace (Boubekeur 2015).

The grievances expressed in these marginal areas since 2011, where almost three million Tunisians live (one-third of the overall population) with limited access to modern infrastructures, were characterized by the coterminous presence of economic claims and requests for social recognition. Post-2011 contentious politics in these areas had a twofold logic: on the one hand, far from being a form of resistance to the state domination, they were an attempt to induce politicians to apply the positive discrimination the new Constitution foresaw, in terms of greater social and economic involvement in the development of these areas, and, on the other, they manifested against state intrusion in the informal trade activities on the borders that keep these regions alive.

Probably no in-depth case study can illustrate this better than the southeastern area of Benguerdane, at the border with Libya, and the Kasserine region bordering with Algeria, in the western part of the country. In Kasserine and its surroundings live half a million people, and it is

where the highest number of fatalities and injured people were registered in the 2010–2011 revolts. It is also where rounds of protests erupted in 2012, 2013, and 2016. The chronic blatant dis-investment in these areas by the central government has led, from time to time, to periodic symbolic mass exodus toward Algeria, and to villages on the borders with Algeria displaying the Algerian flag, in an open act of defiance and demand for attention vis-à-vis the Tunisian authorities (Mejri and Zriba 2016). The political and economic discrimination of these regions has been an established practice since the creation of modern Tunisia in 1956 and increasingly so since the 1990s. Marginalization worsened under Ben Ali, when two-thirds of public investments were allocated to coastal regions and no strategy was devised to redress these imbalances. Suffice it to think that 85% of Tunisia's gross domestic product (GDP) came from the combined economic activities of Tunis, Sfax, and Sousse (World Bank 2014).

Interestingly, despite the urgency of protesters' social and economic demands, neither in 2010–2011 nor later has there been a clear articulation of what a "revolutionary" economic agenda would consist of.

Always resorting to solutions impinging more on the political dimension than on economic redistribution, the country has adopted a reform aimed at increasing powers for local authorities. Given the strong correlation between the presence and vitality of informal economy and geographic inequalities, the Constitution has singled out the principle of positive discrimination for historically neglected areas in need for visible investments (Article 12). Moreover, Chapter seven of the 2014 Constitution (consisting of Articles from 131 to 142) is dedicated to decentralization.

Decentralization had been a recurrent theme since the 1950s, triggered by contingent protest events. In the new Constitution, regions have been added as an intermediate level (Article 131) between municipalities and districts, or Governorates, with the goal of widening political representation and multiplying the levels of public accountability to local populations. Two ministries have been created, one in charge of governance and fighting against corruption; the other, previously incorporated into the Ministry of Interior, is now the autonomous Ministry of Regional Development, which has notably produced a *Livre Blanc* on regional development in 2011.

During the Spring of 2017, a Code for local communities was adopted, with the aim of demarcating areas of competence among the several layers of power that emerged during the transition. However, despite the

constitutional acknowledgment of the importance of local municipalities, the political elite has yet to follow suit with a more equitable redistribution of national resources: only 4% of GDP was destined to municipalities until 2013, while just eight of them (e.g. Tunis, Marsa, Goulette, Sidi Bou Said, Carthage) received more than half of the overall budget (Bellamine 2015). In other words, while political representation is granted on paper, economic redistribution fails to materialize. Rather than placating requests and demands, increased political representation without the corresponding economic tools and social recognition accompanying it has stirred tensions, contributing to the expectations-capability gap mentioned above.

*Gray Areas and Informality: Survival Policy Rather  
Than Resistance*

It was under the regime of Ben Ali, that smuggling in cross-border areas became not just tolerated but “approved” by the regime. On the one hand, its existence allowed the state to continue ignoring these areas, as their survival did not depend on public resources, which the regime could invest in central regions. Moreover, the state did not abdicate the control over these territories, as it kept controlling them through local notables and the security forces. Lastly, the regime profited from the revenues of informal activities, thanks to local intermediaries (Meddeb 2016). The lack of interest by the state in the development of marginal regions led to the emergence of a polycentric governance which helped maintain a form of social order and economic development, controlled by clienteles in cooperation with the security forces (Meddeb 2017). Smuggling, representing around 38% of the Tunisian GDP and 40% of existing jobs, embodied a “real economy of necessity” in areas like Kasserine. Hamza Meddeb refers to the cross-border informal economic activities performed by avoiding state controls as the “race for khobza”, literally “bread” (*yejri ‘al khobza*): the struggle for daily survival by ordinary Tunisians in these areas by resorting to illegal but legitimate forms of access to material resources (Meddeb 2011). Interestingly, this economy of necessity, rather than of resistance against the state or its authority, is strengthened by horizontal axes of solidarity among people sharing similar fate. These solidarity networks, against which the Tunisian state, even in the post-revolutionary phase and its democratic consolidation stage, has tended to respond aggressively and coercively, could be conceived as examples of “moral politics of material demands” (Chomiak 2016).

Until 2010, smuggling occurred under the benevolent eye of security forces and local notables (close to the Ben Ali clan) controlling the territory, within a tolerant approach by the state that considered smuggling as a safety valve, given the systematic politics of social and economic marginalization. Since the revolution, the sector has seen a proliferation of actors carrying out smuggling activities, partially acting individually, partially organized in criminal networks (Erguez 2016). Previous pacts have also been strained. Around Benguerdane, for example, the Touazine tribe was in charge of smuggling activities. In a tacit agreement with public authorities, arms, drugs, and terrorists were denied entry into Tunisia. However, with the proliferation and “democratization” of the smuggling arena, the previously centralized control of goods and people has been put in question, with serious implications for border security and for the capacity of the state to effectively monitor what and who goes out and who comes in (Bletry 2015). In an even more dramatic twist, the newly appointed President of the Anti-Corruption Authority (INLUCC), Chawki Tebib, has denounced the criminal nature of the Tunisian state, with key institutions, such as the Ministry of Finance, allegedly directly profiting from the informal sector. They would be infiltrated by smuggling cartels now able to exert direct control over the authorities deemed to curtail them (Belhassine 2016).

The “informal sector” does not necessarily include illegal activities, as it is defined along one dimension, that is, employing less than six workers, thereby mostly consisting of microenterprises. Informal work refers to the lack of any social protection and coverage for workers. While its costs can be measured in terms of lost fiscal revenues for the state and the ensuing gaps in public finances, others contend that in the last three decades Arab states have pushed young people into the informal sector on purpose as with the progressive dismantling of state bureaucracies this represented a safe channel of incorporation into decent work (Achcar 2013).<sup>3</sup> The uneven distribution of unemployment reflects long-standing decisions by

<sup>3</sup>In 2015, unemployment touched 15% as national average, but reaching 22% in the Southeast and 26% in the Southwest. Even within these three broad areas, there have been significant gaps among internal cities such as Tataouine (30%) and coastal ones such as Monastir (6%).

Informal economy represents between 35% and 50% of Tunisian gross domestic product (GDP), while illegal economy reaches 2.5% of the overall GDP. Informal economic trade revolves around the smuggling of tobacco, petrol, clothes, and electronics.

the central government not to invest in marginalized areas and concentrate public resources in the North and coastal areas. The central authority—through its local agencies, such as the Commissariat général du développement régional (CDGR)—deliberately chose to devote all its energies to the “useful Tunisia” (Bono et al. 2015: 117) accepting to penetrate in a less intensive way inland areas, leaving them under the influence of local notables and alternative sources of authority and loyalty. The hidden assumption was that this would enable it to concentrate its efforts in selected areas which could grow more quickly and which accepted the nationalistic project in a more enthusiastic way (Ibid. 2015).

Again, redistribution of economic resources (or its lack) went hand in hand with recognition of local population and the identification with a specific political and social project. Border regions in that respect present a more multifaceted layered structure of allegiances and identification. Suffice it to think that the area from Matmata in the Tunisian desert to Tripoli in Libya is thought of as a transborder Tunisian-Libyan region sharing strong communal and tribal ties, with the Ourghemma tribe having ramifications all along the area (Ayebe 2016).

Informal work tends to augment in periods of economic crisis. It was so after 2008 and especially from 2011 on, and, in the case of Tunisia, given the porous nature of borders and the shaky political transition punctuated by political violence since 2012, smuggling, among other informal activities, has also been on the rise. While Tunisia had, until 2010, the lowest rate of informal work across North Africa, this percentage has steadily increased and has also qualitatively changed since 2013, with a significant increase in illegal ones, mostly cross-border smuggling (Charmes and Ben Cheikh 2016: 47).

The cross-border smuggling with Libya through Ras Jedir concentrates on food, electronics, and clothes and plays on the price difference between the two countries, thanks to pre-2011 subsidies in Libya, allowing for significant revenues in Tunisia. On the western border, petrol smuggling represents 80–90% of the overall illegal commerce with Algeria and has seen the proliferation of armed groups controlling the smuggling routes, asking for payment to individual smugglers, and clearing the way from the police if the need arises (International Crisis Group 2014).



*The Place of Backwardness and Social Unrest: How Ruling Classes  
View Internal Tunisia*

Smuggling, contraband, and informal economy contribute to perpetuating an image of southern Tunisia as a place of backwardness inhabited by people that continuously pose a threat to the central government. This representation is partially explained by history: since the Ottoman Empire, the southern regions have indeed been engaged in protests, social unrest, and insurrections against power. The first massive wave of protest dates to 1864, when a new taxation system was imposed by the *bey*, the Ottoman ruler. The decision provoked the formation of a large armed social movement, mostly tribal, that spread across the country: Kairouan, Thala—near Kasserine—Sfax, Béja were among the theaters of the insurrections, which was rapidly repressed in blood (Smida 2007). In the South, the labor union movement took its first steps and armed resistance against the French colonial rule, launched by Habib Bourguiba, paved the way to independence (Chater 2003). Southern Tunisia is also the place of the major mass protests in the country's postcolonial history: this was the case in 1978 with the general strike, the so-called “bread riot” of 1984 (Rollinde 1999), and the prerevolutionary movement in Gafsa (Allal and Bennafla 2011). In the same Governorate, two revolts were organized at the beginning of the 1960s (Boursali 2006) and in 1980 (Baudel 1981). Not by chance, Salah Ben Youssef, Islamic nationalist militant who contrasted the rise of Habib Bourguiba and was killed by a commando in Germany in 1955 (Khliif 2005), came from the South. As argued in the previous paragraph, therefore, the widespread opposition to the Bourguiba-led nationalistic project in these regions has remained a cultural element in the legacy not just of how these populations perceive themselves in terms of cultural, horizontal identity but also of how they are perceived by the ruling regime.

Inner Tunisia has thus been depicted as a place of danger, social unrest, and backwardness—regions where development could only take place by extinguishing tribal solidarities.

In Tunisia, the debate over the notion of tribe has a long history. Here, the idea that the territories referred to as “tribal”, namely those of inland and southern parts of the country, are the site of backwardness, political restlessness, and barbarism, was widespread among historians and rulers. During the modern era and until the beginning of the colonial period, Tunisian historiography paid attention to the tribe through descriptions

that emphasized their wild and outrageous character and called for their disappearance (Ettayeb 2006). Even colonial historiography used similar terms and depicted tribes along the same lines. Tribes were described not as submissive, but as dissidents by nature, characterized by a predatory and violent spirit. The threat they allegedly represented to the beylicale state were, in fact, used to justify the French intervention, as the modern Tunisian state was considered inadequate to control and, whether necessary, eradicate the danger they posed (Ettayeb 2006).

After independence, Bourguiba divided the territory into Governorates that extended from East to the West, so as to dissolve tribal ties (Sandron 1998). In addition, the Personal Status Code of 1956 and the patronymic law were adopted to dilute the bonds of bloodline (Labidi 2008). In August 1959, a law specified the responsibilities of Tunisian citizens about their civil status and stated that each household had to pick a patronymic (Charrad 2001). This dualism between the industrialized East and the tribal South and West continued under Ben Ali, who resumed Bourguiba's expression of "gray areas" and defined the country's interior as sort of "behind the scenes" of the Tunisian miracle.

The tribal social structure and the historical reluctance of southern populations to passively accept any power contributed to their national representation as a "dangerous class". The same Habib Bourguiba used to define his opponents, such as a group of militants that attempted to kill him in December 1955, as *fellagha*. The term derives from classic Arabic and is used to refer to the combatants of the armed struggle in Tunisia between 1952 and 1954; it also identifies those who joined the Algerian liberation conflict, but it literally means "killer". Although the term has now almost disappeared in the public space, the image of the South as backward, uneasy, and threatening remains, and has received new force from the presence of terrorist cells in central and western localities, which were engaged in several fights with the armed forces that provoked numerous victims (Mejri 2014).

This led Beji Caïd Essebsi to affirm, during the 2014 campaign that saw him elected as President, that the voters of Moncef Marzouki, his opponent and native of the South, were Islamists and therefore terrorists—that is, people who threatened the integrity of the nation. Since the vast majority of Marzouki's supporters concentrated in the southern regions, Essebsi was operating under a regionalist assumption that linked geographical origins, religion, and national security. Moreover, as argued in the previous paragraph, a securitarian approach to social movements, border control,

and social requests has become the norm in Tunisia and has justified the birth of a coalition between the Islamic party Ennahdha and the secularists of Nidaa Tounes.

### *Informality in Southern Border Regions*

The western Tunisian border is probably less known than the frontier separating the country from Libya, where huge and well-furnished informal markets make the economy of cities like Benguerdane a symbol of the informal economy in the country. There, a form of commerce called *trabendo* (Péraldi 2001, 2007), that is, informal commerce, has a long history and, during Ben Ali's years, was not only tolerated but even managed by both the ruling party Democratic Constitutional Rally (DCR) and the police, as previously argued.

This activity, generally based on the purchase of clothes and other goods coming from abroad that are resold in garages or private homes, was increasingly controlled by informal capitalists linked to President Ben Ali and his wife, Leila Trabelsi. This type of activity needed to escape from custom control, and, for this reason, it was quickly monopolized by the elite in power. Sami Elbaz showed that informal economies were articulated and moved on a South-North axis favoring the so-called Sahel, the eastern coastal regions. In his analyses, the old DCR party profited of a lack of police control toward their representatives to organize a network of buses and *louages* that, while transporting political activists, could also bear clothes and goods illegally imported from the southeastern border and destined to the informal markets, the so-called *frip*, in the North and the capital.

Expanding on and refining what Meddeb (2011, 2012) says, placing oneself at the margins of legality can depend not only on immediate material needs or exclusion from the liberal market, it can be a choice motivated by the desire to achieve economic goals that would be difficult or impossible to realize otherwise. While survival is the driving force for a great part of the Tunisian population, and pushes them toward nonregulated economies, others choose informality because of its profitability. In this sense, the concept of the "race for *khobza*" can be nuanced by separating analytically the set of tactics used by the individuals from their final goal. For some Tunisians, informality is a by-product of their economic choices, and not only a consequence of the scarcity of formal employments.

Tunisian southern regions represent a vast informal market which differentiates by gender. Women sell marriage clothes and women outfits coming from Algeria, Turkey, or Libya in their private homes or in little boutiques they rent, while men import branded clothes from the North; an example is provided by the linkages between factories and sellers coming from the South. A network of accumulation and distribution of labels with little imperfections links Tunis to the periphery in the South. Imperfect outfits are stocked to be sold at a lower price in franchised boutiques; therefore, workers can take away apparels from these firms and either sell them directly to retailers or contact informal wholesalers who organize trade routes on a national level. At this point, retailers coming from the South reach Tunis and, thanks to a network of contacts and vendors dispersed in different neighborhoods of the capital, they buy the clothes and head back South.

Since they cannot produce a delivery note, small retailers try to avoid street police control by taking secondary routes; when stopped by a patrol, bribing is their first option. Clothes are then sold in little spaces transformed into informal showrooms. The profit is considerable, given that a pair of trousers that costs 150 *dinars* in official stores are bought by the informal vendors for 40 *dinars* and resold at the price of 50–60 *dinars*. This example helps to refine Meddeb's analysis. The informal economy is not just a "race for the bread", for example, collecting small amounts of money: it can be sustained by strategies of accumulation of economic capital. People can start selling clothes or other goods at home, saving money until they can rent a room and run a shop. The final goal, however, be it survival, accumulation of economic resources, or auto-entrepreneurship, is a matter of individual choices more than the result of an oppressive environment.

Most importantly, the informal economy extensively relies on social ties, showing that a relational logic is in place in every sector of Tunisian social life. It is commonly referred to by two specific terms: the first being the French expression *le relationnel*, which identifies the necessity to manage relations to succeed in daily life. Receiving a document, obtaining employment, accessing social services, and other tasks are almost impossible to fulfill without recurring to (and dealing with) a vast social capital.

This relational dynamic is at the heart of the Tunisian state since the immediate postcolonial era and was first personified by the Supreme Combatant, Habib Bourguiba; he was known for being willing to personally attend to requests. During a visit to the southern region of Gafsa in

1968, he read the letters of people directly asking him to solve their problems, be them social assistance or financial aid (Bourguiba 1981: 328–329). The Tunisian president envisaged the foundation of local commissions distributed all over the national territory charged with reading the mail addressed to him, solving individual cases, and transmitting to the central government only the communications regarding issues that presented a general interest. By doing so, the ruling class opened the doors to the practice of negotiation between local populations, *‘omda*, party representatives, and institutions, that would become the norm in postcolonial Tunisia.

By the time, and even more frequently during Ben Ali’s years, the initial social and humanitarian stance turned into a real governmentality rooted not in the effort to implement specific governmental plans, but in managing social discontent through accommodation and negotiation, and in transforming collective problems into individual cases. This form of governing people is still in place in the post-revolutionary moment. *Le relationnel* is, therefore, a social ability both the local populations and the state officials must develop to surf the difficulties of daily life.

The second expression, *khīt*, derives from Tunisian Arabic and means “thread”; it refers to the necessity of finding the help of friends, relatives, or acquaintances to access services or a good employment, usually in the public sector. In the marginalized areas of inner Tunisia, private firms and companies are too few to solve the problem of structural unemployment; the investment Code and a general lack of infrastructure keep entrepreneurs away from southern and central regions in favor of the coastal northern and eastern cities such as Tunis, Sfax, and Sousse. In addition, under Ben Ali, most of the firms investing in the regions proved to be just an instrument to accumulate economic capital that was transferred elsewhere in the North of the country. For these reasons, Tunisians say that an employment in the public sector, be it a state-driven firm or the administration, is like a nail in the wall: once it is inside, nobody can take it away.

The public sector has historically been the main resource employed by the state to ensure social stability and peace. In the Gafsa mining district, relational management of the local mining industry started during the colonial era, when the French officers recruited miners according to patriarchal lineage to respect the demographic weight of local families (Gobe 2011). Recently, the massive extension of the public sector made it more and more difficult to find stable employment, so that it is nowadays essential to rely on one’s own social capital to make a living. The dynamic is

spread all over the country and contributes to maintaining people in a subaltern condition before the state.

The family is the first source people address while searching for employment. Under the regime of Ben Ali, the one-party system was based on a capillary control of the territory by infiltrating every corner of the social life. In the southern regions, where the job market is asphyxiated by the lack of direct investments and by a political economy based on the mono-production of primary goods, people are forced to find their *khīṭ*, for example, they turn their efforts toward the search for a contact that could open the doors of an employment in the public sector, the possibility of a career, or the funding for an entrepreneurial project. Consequently, the more one's social net is wide, the greater the chances to find a job will be; gatekeepers are in fact people who have the power to enter friends or relatives in well-paid, stable employments. This has led to a double set of consequences. First, the ability to find a *khīṭ* can result in an accumulation of different jobs by the same person. Since the great majority of public employments are scarcely controlled and monitored, people can absent from work and attend to their previous occupations while being still paid for their work in the public sector. This dynamic not only contributes to perpetuate the relational logic of the peripheral labor market in the southern regions, it also results in the exacerbation of inequality between those who can count on social capital, and those who cannot.

Second, people who have access to friends or relatives working in the public sector increasingly gain the social status of gatekeepers and start making their fortune by selling services and contacts. Rumors and stories spread in the most deprived regions such as the Gafsa mining basin in the Southwest, where the local economy turns around the public Gafsa Phosphate Company (Dougui 1992, 1995). Here, the local bureau of the labor union UGTT (Tunisian General Labor Union) has historically played a great role in the company's hiring system and is nowadays a center of power capable of orienting the recruitment policies of the firm.

These examples show that a close tie between families, intermediary bodies, and state representative is always in place. On the one hand, the patriarchal family is still an institution capable of economically and materially helping its more vulnerable members, especially youths. On the other hand, the search for a *khīṭ* is a historical reality in Tunisia, and particularly in the border regions where the state tends to perpetuate a logic of negotiations and exploitation of one's social capital to rule. Local forms of solidarity are not a form of opposition or resistance to the state, but, on the

contrary, they link people and families to public institutions and contribute to reproducing inequality and subordination.

## CONCLUSION

Tunisia has a pluri-secular history of production of injustice on a territorial basis. Since precolonial times, a “southern question” has earned the center of the scene and invites researchers to analyze how and to what extent the prerevolutionary situation is the result of long-standing relations of power (Gherib 2017). The national space has been split into two parts, one oriented to the extraction of primary resources and the second open to trade, industry, and commerce. History shows that this happened not in colonial times, but during the last decades of the Ottoman empire, with the French colonial rule “limiting” to establish once and for all this imbalance through a vast campaign of modernization of the infrastructures, the expropriation of the land, and the transformation of the country into a market for the European industrial products (Mahjoub 1987). Thus, it is not surprising to remark that one of the motivations that led people to protest Ben Ali in 2010 was economic injustice and social marginalization.

Yet, despite a Constitution that recognizes not only the right to development for every region in the country but also the principle of positive discrimination for historically marginalized areas, injustice has continued to grow even since the 2011 uprisings, and the same is for social movements, protests, and unrest. Their growth in the aftermath of the revolution is dramatic, and it testifies to the new possibility to stand up and reclaim dignity and a good life, something that was strictly forbidden during Bourguiba’s and Ben Ali’s years. Until now, however, if these movements succeeded in making Tunisia change direction on a political level, they failed in modifying the state’s institutional outreach across the country and, moreover, its political economy.

Out of the three grievances Nancy Fraser elaborates on—that is, lack of redistribution, recognition, and political representation—we have analyzed the extent to which, in the Tunisian case, the first and the second coalesce and mutually reinforce each other. The negative discrimination toward the marginal areas of the country, especially the border region with Libya, historically overlaps with the most resistant one vis-à-vis the nationalist project of President Bourguiba, holding a different vision for the future of the country. The strength of horizontal ties in this cross-border region where tribal bonds play a crucial identity source even today accounts

for different sources of horizontal allegiances and cultural ties that have further diminished the will by central authority to contribute to the development of these areas.

Finally, the Tunisian state is less weak than generally perceived. Paradoxically, it is effective because it works a-systematically. Despite the great centralization of power, Tunisian landscape is characterized by informality, negotiation, and accommodation. As we have highlighted, state institutions and locals share a common relational principle that serves both as a tactic employed to earn one's living and as a form of governmentality through which the state ensures a certain degree of control over the territory. The paradoxical effect is that what is normally conceived as a centrifugal and threatening force, for example, informality and negotiation, is, in the case of Tunisia, a centripetal one that helps the governors to continue imposing the rule of the state over a space that, otherwise, would be shaken by even greater unrest and violence.

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# Informal Communities and Cannabis Regulation in the Emerald Triangle

*Liza Candidi*

## INTRODUCTION

The Northern California district known as the “Emerald Triangle” is estimated to produce two-thirds of the cannabis consumed in the United States, thus representing the nation’s largest “illegal pot market”. This region’s underground production, which informally started in the 1960s with the Back-to-the-Land movement, has greatly increased over the years, accounting for an estimated US\$6 billion in 2016 (Wilson 2017) and for the majority of the 13.5 million pounds of marijuana produced in California (Sumner and Matthews 2017).<sup>1</sup>

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<sup>1</sup>For the most recent data on California’s cannabis production, cf. Sumner and Matthews (2017). Hidden cultivations do not allow precise estimates of the black market. According to a frequently cited 2011 report, Humboldt County’s marijuana growers alone accounted for a minimum of US\$1 to US\$2.6 billion in gross annual revenues (depending on the calculated plant eradication rate), which constitutes respectively a quarter and almost three-quarters of the total economy in a county of 135,000 residents (Budwig 2011b; Hecht 2014, p. 35).

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In the US, the evolving cannabis regulatory landscape is still cluttered and uncertain. Marijuana currently has a dual legal status: it is illegal under federal law, but it can be legal on the state level since state governments are allowed to pass laws for decriminalization and regulation.<sup>2</sup> The clash of federal and state marijuana laws creates instability in those states transitioning from prohibition to regulation, creating gray zones between legal and illegal activities. For example, marijuana users in compliance with state law cannot be prosecuted by state or local police, but by federal law enforcement. While the federal government under the Obama administration left marijuana law enforcement up to the states, the ambiguity of cannabis policy under the Trump administration keeps the federal-state conflict alive.<sup>3</sup>

In California, cannabis for medical use has been legal since 1996; however, its recreational use was only recently legalized with the November 2016 voter initiative. The massive state consumption of marijuana previously relied—and still does—on the Emerald Triangle’s flourishing black market and farms (which can be considered the wealthiest small farms on the continent).

This chapter intends to offer a reflection on the practices, strategies, and interactions of the different actors involved in illegal cannabis production. On the other hand, it explores how regulatory powers reframe long-established informal communities, by suppressing “grey” zones between what is legal and illegal, while redefining new ones. A reflection on how self-managed, countercultural, and marginal practices can become mainstream and institutionalized is also attempted.

Along the (rather unclear) line of legality, fluid spaces of legitimacy and morality exist, in which several subjects move: some follow the logic of community legitimacy (licit), others operate illicitly within illegality, other informal actors appeal to morality and the community good. The problematics of the transition from licit (illegal but legitimate for informal actors) to legal (legitimate as defined by formal authorities) will be also addressed.

<sup>2</sup> As of 2017, eight US states and the District of Columbia have legalized marijuana both for medical and recreational use.

<sup>3</sup> Besides the threat of federal law enforcement, there are many other consequences caused by ongoing federal prohibition, including marijuana users in compliance with state law who still risk losing their jobs, parental rights, or government benefits if their marijuana use is discovered (Chemerinsky et al. 2015).

To this purpose, the present chapter is divided into three parts. The first considers the history of the Emerald Triangle within the Californian cannabis regulatory system and additionally the effects of the “War on Drugs” in these communities, as well as the impact of the “Green Rush” on the marijuana industry.

The second part investigates different types and generations of actors involved in this business: their attitudes, rules, and moral codes, along with their strategies of flying under the radar of authorities. It analyzes, in particular, the shift in the participatory forms within the community and the environmental problems related to large illegal crops.

The third and final section examines how the state legalization of recreational marijuana is likely to impact the county’s economy and threaten the livelihood of numerous residents. Political counteractions and community narratives about the regulation process are considered as well.

This contribution is based on ethnographic research carried out, particularly in Humboldt County, during the fall and winter of 2014–2015, when recreational cannabis usage was still illegal, and in June and July 2017, after its legalization. Since the cultivation of marijuana remains a federal felony, some names and other sensitive data identifiable with interviewees have been changed.

### *Half a Century of Clandestine Crop. A District and Its Open-Ended Struggle*

Northern California’s mountainous and rural areas, 200 miles north of San Francisco, have other reasons to be famous besides cannabis production. With the gold discovered in California in 1848 and the resulting Gold Rush, these lands were rapidly populated by settlers from all over the US, who did not hesitate to enslave and slowly exterminate native people. Yet, the northern area of this new land conquered from Mexico soon revealed another precious resource: the “red gold” of the extraordinary redwoods, among the longest living organisms on the planet, that can live up to 2000 years and reach a height of over 300 feet. With the commercial logging era – which began in the middle of the nineteenth century and reduced the old-growth redwood forest to 5% of the original 120,000 acres—the lumber industry was the thriving economic sector of this region, exporting timber from Humboldt Bay Harbor throughout California until the 1970s. Cold, humid winters and dry summers, with dense fogs rising from the Pacific Ocean, are the best climate for redwoods

and Douglas firs, and also for cannabis plants that thrive in the vast forest, away from prying eyes.

The Emerald Triangle—so called because of the clandestine crop’s color—is a district that covers a densely forested rural area of ca. 11,000 square miles with less than 250,000 people, according to the 2010 census, and a very low population density (almost one-tenth of the state average). This region is made up of three counties—Humboldt, Mendocino, and Trinity—but it is mainly the first that is internationally known as the hidden marijuana paradise.

Its reputation dates back to the mid-1960s with the Back-to-the-Land movement. After the 1967 Summer of Love in San Francisco, some hippies chose to leave Haight Ashbury, the then already too famous neighborhood of the American counterculture, ironically renamed “*hashbury*” (Anderson 1995, p. 174). Many of them turned their backs on the materialism of the city and its gradual gentrification and moved to remote rural areas in order to experiment with a simple life based on communitarian principles and self-sufficiency. They headed to the woody hills in Northern California, where the land already exploited by the timber industry was cheap, and above all – like good ole pioneers “going west”—to the state’s most westward county, settling in rural areas then populated mainly by rednecks from the declining logging industry.

The hippies—many living self-sufficiently or on government checks—would grow their own food and, in addition to vegetables, cannabis plants. These new settlers grew marijuana primarily for themselves or traded it to friends in the city for gas. Up until that point, the majority of marijuana consumed in California came from Mexico and Colombia. When at the end of the 1970s the US government decided to support the Mexican government’s campaign to eradicate cannabis with the toxic pesticide “paraquat”, things changed. The news about the health risks associated with this chemical triggered increasing local production of cannabis, so that soon California-grown marijuana earned the title of “best quality” in the US market. Moreover, a new horticultural technique—the “sinsemilla”—spread throughout the Emerald Triangle during this time and revolutionized the economy of this area. The technique involves the eradication of male plants, so that the non-pollinated female plants produce more resin,

which contains most of the psychoactive THC.<sup>4</sup> Thus, seedless plants with more potent effects than regular cannabis were in higher demand on the market. In a short time this technique was adopted by the new inhabitants of the county who gradually began experimenting and crossing cannabis strains. Even long-time resident ranchers and lumberjacks, who were left unemployed by the timber industry and initially despised hippies, learned from them and started growing cannabis. Hence, this plant is considered the cultural glue between the two different worlds of the rednecks and hippies, so much so that the term “hipneck” was later coined to indicate the cultural hybrid embodied in children born in the 1970s.<sup>5</sup>

With the 1980s, the criminalization of cannabis possession, which had already begun in the 1930s,<sup>6</sup> and the infamous “War on Drugs” started to break out. In 1983, what is commonly called Campaigns Against Marijuana Planting (CAMP), the largest multi-agency law enforcement task force in the US, was established, consisting of over a hundred local, state, and federal agencies specifically engaged in eradicating cannabis crops.

For Emerald Triangle growers, the 1980s and the first half of the 1990s were marked by the constant fear of being “busted”. Authorities could confiscate crops and property and arrest farmers who could spend years in jail. During high season and harvest—from late summer through October—these portions of Californian sky are toured daily by low-flying helicopters—a loud symbol of the silent struggle in this land.

The decade-long collective paranoia finally came to a halt at the polls. On November 5, 1996, California was the first state in the US to legalize

<sup>4</sup>Marijuana comes from the dried flowers and leaves of the *Cannabis sativa* plant and includes THC (delta-9 tetrahydrocannabinol) and CBD (cannabidiol). THC is the main psychoactive ingredient that causes an intoxicating high, while CBD is not intoxicating and has medical benefits in treating neurological disorders. Over time, marijuana has been genetically modified to yield plants with higher THC concentration. In “sinsemillas”, the THC increased from 7.5% in the 1990s to 16% in 2013 (NIDA 2015; Manzanares et al. 2006).

<sup>5</sup>For a vivid description of the cultural clash between hippies and conservative loggers, cf. Brady (2013, pp. 71–95).

<sup>6</sup>The first US hemp-based pharmaceutical preparations date back to the mid-nineteenth century. Restrictions on the sale of cannabis began at a national level with the “Marijuana Tax Act” of 1937. In the 1950s, possession of marijuana could be sanctioned with up to life imprisonment. In 1972, a California ballot for decriminalization failed; however, possession of up to an ounce of marijuana was downgraded in 1975 from a “felony” to a “misdemeanor” (Moscone Act) and finally to an “infraction” in 2010.



the medical use of marijuana by approving Proposition 215, also known as the “Compassionate Use Act”, which grants chronically ill people the right to obtain, use, or grow marijuana for medical purposes when recommended by a physician. Further regulations followed, such as the California Senate Bill 420 which in 2003 introduced a Card Identification System (MMIC) to obtain medical cannabis, giving the green light to “marijuana stores” or “dispensaries”. If initially these stores worked in the name of non-profit compassion, they soon became formally open to patients with less significant ailments, effectively blurring the distinction between medical and recreational marijuana. In 2010, state limits on medical cannabis possession were abolished by the Supreme Court of California.

The legalization of medical cannabis was a significant turning point for the Emerald Triangle since many long-time illicit growers sought legitimacy as medical cultivators while continuing to grow illegally for commercial purposes. Additionally, more and more outsiders began to move into the Northern California forests to cultivate hundreds or thousands of plants, disregarding the limit set by the county and taking advantage of the gray areas created by medical legalization.

This triggered a sort of “Green Rush”, much like the “Gold Rush” over a century earlier. The so-called “guerrilla growers” arrived, planting on other people’s private plots or on public land (for example, in large parks and forests where they create their own plots, often cutting down trees). Even big-crop farmers bought land in this region, contributing, in some areas, to a very distinctive rural gentrification based on the informal economy.

In those years the “weed and greed” assonance began to form an increasingly inseparable unit: tax-free get-rich-quick schemes. The hippies’ old wooden cabins were soon replaced by large fully equipped ranch houses. If cultivating cannabis was at first part of the counterculture, the large windfall ended up consolidating this practice as a hypercapitalist trend, very different from the original ideology. The rebel subculture with its “ascetic mystique” became mainstream, compliant to the most classic American spirit based on personal freedom, individualism, and the “obsession with private property” (Raphael 2012, p. 189).

At that point, the use of cannabis—and its cultivation, which was no longer the prerogative of a few—had already become a “mass counterculture” phenomenon. Thus in 2010, California—not by chance the birthplace of the term “counterculture”, coined by Theodore Roszak in 1969 (Roszak 1969)—was the first US state where a voter initiative for legalizing

the recreational use of cannabis took place (Proposition 19). The result was, however, negative: 53.5% of Californians voted to keep marijuana illegal—a resurgent prohibition heartily welcomed by many illegal farmers, who saw state legalization as a threat to their own interests (with the notorious slogan by the anti-legalization campaign in the Emerald Triangle “Keep pot illegal: Save Humboldt County”).

However, the “complete legalization” process could not be postponed very long, as more and more states in the US (starting with Colorado in 2012) began legalizing cannabis for recreational use. In 2016, in fact, during the November 8 elections, 57% of Californian voters passed Proposition 64, known as the “Adult Use of Marijuana Act”, which legalizes the sale and distribution of cannabis for recreational use: now adults over 21 can possess up to an ounce (28.5 g) of marijuana and grow up to six plants for private use. Licenses for growers and distributors will be issued in 2018, when the Proposition will come into force in all respects.

Until then, a transition stage keeps the Emerald Triangle growers and the many people indirectly relying on cannabis production on pins and needles.<sup>7</sup> How radically legalization could affect this district is indicated by the change in the price of cannabis on the black market. In the 1960s, a pound cost up to ca. US\$6000, but in 2016 the price dropped to US\$1500, while with full legalization, it could fall to US\$500 (Borchardt 2017b). The perspectives and coping strategies related to the legalization process will be examined in the third and final section.

### *Rules of the Unruled. Self-Organizational Forms, Participatory Models and Changes in Outlaw Living*

The earliest growers in the Emerald Triangle only cultivated outdoor cannabis—with sun-grown seeds (rather than clones) and annual flowering—and thus the situation remained until the “Green Rush” led to industrial-scale greenhouse crops and indoor cultivation where flowering can be induced by artificial light and air every 3–4 months.<sup>8</sup> In California,

<sup>7</sup> Of the US\$1 billion in gross annual revenues in Humboldt County, US\$415 million was spent in area businesses (Budwig 2011a). According to another report, marijuana fed the economy with US\$675 million in direct local spending in the Mendocino County, home to 87,000 people (Williams 2012).

<sup>8</sup> The indoor cannabis-growing industry—an unintended result of punitive drug control measures—has a significantly larger carbon footprint than outdoor growing since it uses a considerable amount of electricity: 2% of household-use nationally (Mills 2011).

indoor marijuana is generally sold at a higher price on the market,<sup>9</sup> yet many “Emerald growers” continue to opt for the traditional outdoor style, in part because the plants can be cultivated in remote areas, hidden behind a curtain of redwoods and Douglas firs.

The social calendar in this area revolves around the cannabis life cycle: 6–9 months ranging from sowing to harvest, depending on the type of cultivation, followed by 2–3 months of trimming and curing buds. In general, seedlings and sowing begins in February, followed by the growth (vegetative state), the late summer flowering, and the harvesting in Fall. The high season, when plants are blooming and ready for harvest—from August to October—is crucial, as flowers can easily develop mold, which can spread in a few hours and render the whole crop unusable. Moreover, adverse weather conditions, police raids, and rip-offs can destroy all of the previous months’ work in the blink of an eye. The pungent smell of flowering plants allows the crop to be located easily, and robbers may be ready to harvest ahead of the grower.

In late summer, impressive photos showing massive quantities of marijuana seized from illegal industrial crops, with hundreds of uprooted plants rising into the air from police helicopters, as well as pictures of seized cash, guns, and paraphernalia, abound in local newspapers. For both growers and police, this time of year is the most intense one, characterized by a timely turnover of “unregular growing” and “regular punishment”. Growers have tricks and camouflage to avoid identification, disguising their coming and going from the crops often at night or in low-visibility conditions and at different times of the day in order to divert ambushes or stakeouts.

During the flowering process, growers and helpers carefully observe the flowers with a magnifying glass to immediately remedy any mold emergence or to monitor when “trichomes” and “resin glands” ripen, that is, when pistils take on a red and brown color. At that point, the branches with flower clusters—called “colas”—are cut down and hung up to dry upside down in backrooms or barns. Once dry, the buds are conserved in

<sup>9</sup> In 2016, one-eighth of an ounce of cannabis cost US\$30 (sun-grown), US\$60 (greenhouse), US\$90 (indoor). Indoor marijuana is in higher demand as its elements are allegedly better manageable. Outdoor cannabis has a 60% share of total production in California (Sumner and Matthews 2017).

paper bags for a couple of weeks of “curing process”: a slow drying process in a controlled environment that enhances natural essence by increasing flavor and reducing harshness. When buds become soft inside and crispy outside, they are ready to be “trimmed”. After that, processed marijuana is typically stored in anonymous plastic garbage bags. It is usually immediately sold to customers or dealers, who then sell it elsewhere—a more frequent and less risky option—or it is hidden for a few months. In this case, the marijuana returns back to the woods, hidden in tree holes, in order to be sold later on at a higher price after the seasonal peak sales (if in the meantime the hiding spot has not been discovered by others). Transporting marijuana from the Emerald Triangle usually takes place in regular cars or in anonymous courier delivery packages, especially if shipped to other states.

Over the last 50 years, many things have changed for these outlaw farmers, yet some of their behavioral codes have endured the test of time and will most likely remain unchanged, as long as this black market exists. All the people involved in this economy, namely growers, dealers, and seasonal workers, conform to these basic rules.

The first pillar rule is *stealth*. Protect your privacy and respect that of others. Secrecy is a constituent part of any illegal affair, and in these communities—where thousands of people are involved in the same illicit activity within a concentrated space—protecting the private sphere and implicitly letting other people protect it by respecting one another’s privacy is crucial. Generally, no one in the Emerald Triangle asks what other people do for a living. The community rule “Do not ask. Do not see” is implicit, and the commandment of every good farmer is “Do not tell. Do not smell. Do not show”: no one (possibly not even friends) must know about the cultivation; hide the crop, reduce the flowering smell; keep a low profile, and do not make your economic status too obvious. The requirement of secrecy has also become a stigma, involving social double-ness and neurotic attitudes both among growers and close relatives, leading to isolation and, especially in certain seasons, constant paranoia about being discovered. In the culture of silence so embedded in informal economic activities, children of growers are taught not to talk about their parents’ livelihood at school; they soon learn to lie or hide certain aspects of their lives (Brady 2013, pp. 130–138).

In 1996, however, the legalization of medical-use marijuana has partially softened the secrecy order. With California Proposition 215, cultivating a certain number of plants (depending on local ordinances) for

therapeutic purposes has become legal, provided the grower has state-issued certification visibly posted outside the garden (the famous “Two-fifteen”, which has become California’s numeric expression of impunity). For law enforcement, however, it is not easy to determine which plants are cultivated for medical purposes or for profit, so the regulatory process, while bringing some “pot growing” out of the darkest shadows, has also created new areas of invisibility or informality (i.e. partly legal in its nature, but partly concealed).

The second rule is *self-reliance*. Illegalities by definition lie outside the protective measures guaranteed by the law and thus necessarily rely on alternative strategies. The black market operates almost exclusively with large cash transactions concentrated at certain times of the year. Such large amounts of cash cannot pass through banks or legal entities without raising red flags and must necessarily be hidden (typically in tree trunks or buried in the ground) or laundered. Moreover, remote crop locations require a farmer to be energetically self-sufficient with electric generators or solar panels and tools for emergency situations, such as booby traps and, last but not least, weapons. Illegal growers certainly cannot call the police if a robber steals their harvests or paraphernalia. Therefore, to avoid this form of illegality within illegality (burdened also by a stigma of illicit and immorality), “frontier justice” is fairly common when it comes to protecting large outdoor crops. This mind-set mirrors the spirit of the first American settlers, but is a far cry from the peaceful principles of the Back-to-the-Landers. The diffusion of weapons, certainly not uncommon in rural areas in the US, is typical in unregulated economies in remote places, hours away from towns, and can lead to the private settlements of disputes and even murders, as a result of crop defense or deals gone wrong. This self-reliance is the direct reflection of a “tax-exempt free enterprise” that forges its own rules without permits or environmental or social requirements to fulfill. Anybody can start one, even on public land, without access thresholds. This is what has been defined as “people’s capitalism”: a small, independent farm becomes the embodiment both of the entrepreneurial American dream and the Jeffersonian agriculture ideal, as conceived by the US founding fathers (Raphael 2012, pp. 191–192).

Among the immutable rules, the third and most often quoted behavioral code in the interviews is that of following one’s *sixth sense* or *gut feeling*. In informal economies at any level, where you cannot turn to attorneys or trade unions, carefully choosing the people you do business with is critical. Seasoned Emerald growers follow the explicit rule of never

doing business with outsiders, choosing rather to deal always with the same loyal people, as contractors are usually bound by a simple handshake without witnesses. Having the wrong partners could cost one one's life or lead to years in prison. A variety of phone codes, security devices (such as radar detectors), and specific warranties are used. "Fronting", or providing goods prior to payment, is now a rare practice among new growers as it requires a lot of trust and luck (entailing cash will not be seized or ripped off).

Among outlaws, different types of legitimacy exist. New growers from out-of-town, who are attracted by easy cash, are pushed by community members to the utter edges of illegitimacy. Following well-known patterns, long-time residents and veteran growers consider outsiders the bearers of "greed" whose end in itself is wealth—very different from the time when "pot farming" was a way of life without constraints. The "Green Rush" is literally seen as a movement "from the outside": no longer horticulturist "mom and pops", but "transient entrepreneurs" who begin to grow thousands of plants, become rich and then fail even to invest the revenues in the region (as such, it is also perceived as a "run out" of district-produced money). Massive crops on public land are often credited to out-of-town cartels and organized crime. The "new greed" dominating the Emerald Triangle is linked with a sense of danger that is reported by very concerned interviewees.<sup>10</sup> Over time, heavy drug addictions, such as heroin and methamphetamine—which is also produced in the area—have spread to the region,<sup>11</sup> and subsequently drug-related crimes have increased, with local media daily reporting alarming news.<sup>12</sup>

<sup>10</sup> A small grower with 30 years' experience says, "Really bad things happen here every day. I've started to think about leaving. It's no longer a safe place for our children" (Charles, 65). Another resident says, "Some people only want to become rich, they don't care about where they live or who is around them. They destroy the environment and then leave" (Carol, 48). "The reputation of this place has worsened, old residents move away, even store incomes here dropped", explains a bartender, "and far-right militants are back" (Willi, 45). The interviewee refers to recent attacks by white supremacists on migrants in the Eureka area.

<sup>11</sup> Grace, 65, complains, "Crystal meth trucks are common here. A short while ago the church caught fire because a nearby RV exploded: probably another meth lab". She refers to a fire on June 16, 2017, in Garberville, the causes of which are still to be verified.

<sup>12</sup> The metropolitan area of Eureka-Arcata-Fortuna has a "violent crime" (i.e. murders, rapes, assaults) rating of 64 out of 100 (the US average is 31.1), while Humboldt County has a rating of 56. As for "property crime" (i.e. burglaries, thefts, arsons), on the same scale, the value stands at 66 for the metro area (the US average is 38.1); while Humboldt County

Outsiders attracted by the “weed industry” have been progressively integrated into the perception of local danger. Such criminal phenomena, along with the natural longing for a past where the elements of danger used to be more identifiable, have created an increased need for security and order in certain parts of the community.

Beside the “local/outsider” binomial, another powerful narrative and rhetorical concept mentioned in the interviews is “community identity”, a very important aspect of rural areas, especially in the US West Coast. However, in the Emerald Triangle the community has assumed a state-opposing rather than state-integrative trait, which is common in informal economies: when the state incorporating the law—or, in this case, the nation with its federal enforcement—becomes an antagonist, identity connotations are typically remitted to the local community, not only on a symbolic level. Indeed, many local growers, not paying taxes because of their black market revenues, fund local projects, such as self-managed schools, community facilities or services, and fire trucks or ambulances. This form of “rural anarchy” is reflected also in ad hoc toponomastics, such as “Humboldt Nation” or “Mattole Free State” (named after the Native American tribe near Cape Mendocino). In 2007, in the area called “Lost Coast”, even a local coin—the silver “Mattole Petol”—was minted in order to stimulate the local economy by facilitating the barter system.<sup>13</sup>

Another local identity icon is KMUD-FM, a community entertainment radio station that has been broadcasting since 1987 and offering advice and news to cannabis workers. Since its founding, this radio station alerts listeners when law enforcement involved in the CAMP is spotted in the area, enabling growers to escape. Furthermore, over the years, KMUD has been an important platform for political debates on environmental and ecological issues, including cannabis regulation, and has contributed to raising public awareness. Yet, there is another common denominator that links these underground communities: the noise of the Black Hawks, the

has a value of 56 (Sperling’s Best Place, August 2017). According to a non-profit organization, Humboldt County is “well above the national average for homelessness and mental health issues and is four times the national average for drug use, overdose rates and Hepatitis C” (HACHR 2017).

<sup>13</sup>The project is credited to Ken Young. A sequoia, a salmon leaping river, a farmer, and a rising sun are represented on the coin, along with the writings “Ecology Economy Culture” and “For a sustainable society”.

helicopters flying over the area during the high season. “This obsessive noise is part of the collective memory of our folks” (Grace, 65 y.o.), so much so that it is mentioned in local songs and pop culture, such as stickers and T-shirts, celebrating, with unabashed romance, escape strategies from the “Feds”.

During the “War on Drugs” in particular, the community proved to be more cohesive, as testified by the unified opposition to “Operation Green Sweep”. Between July and August 1990, more than 200 army soldiers and agents were sent by President Bush to the Emerald Triangle, which represented an international embarrassment for his administration. Such a colossal deployment of armed forces—who were allowed to persecute and even arrest without warrants—was an outrage to the community, which started organizing massive protests; even gunfire attacks against federal helicopters were reported, so that the operation broke down a few days later with miserable results. This episode entered the history of Northern California as spontaneous political mobilization. One Back-to-the-Lander recalls, “We were considered a sort of anarchist hippies but we proved that if we get together, we can defend our interests, and we can do good to our community” (Ann-Susy, 70).

The “good” and the “bad” for the community is often articulated in interviews, as well as in public debates on the economic perspectives in the region. If the primary criticism attributed to outsiders is that they “bring money out, instead of investing in the community” (Grace, 65), according to long-time residents, there is also a “very bad” pole represented by those “new big growers” credited with causing serious environmental pollution. In large cannabis crops, with thousands of plants grown on public land, pesticides and fertilizers that compromise the delicate ecosystem are used. Additionally, illegal garbage dumping and diesel leaking from generators are not uncommon. Some hidden areas in the forests are clear cut, paralleling some logging practices of a not so distant past. Native vegetation is damaged, and soil-eroding paths and small infrastructures built. Moreover, some species, such as spotted owls, Pacific fishers and coho salmons, are endangered (Carah 2015; Fimrite 2016), due not only to pollutants but also to the many illegal water catchments for the marijuana crops. The violations committed by these “criminals”—who among interviewees have lost any sort of romantic “outlaw” image and are grouped instead with the worst immoral infractors—are not just “illegal growing” but also causing “water diversion”, “unpermitted stream bed alteration”, and



“discharged sediment in water”.<sup>14</sup> From time to time, enormous bladders of water, subtracted to semidry streams, are found hidden in the undergrowth. The “blue gold”—an extremely precious resource especially in California, threatened by recurring and dangerous droughts—is hoarded to water the thirsty “green gold” of over 50,000 estimated small pot farms (Patterson 2015; Bauer et al. 2015).

The reported eradications of non-compliant marijuana operations in the Emerald Triangle show environmental degradation and land abuse in a region which is world-famous for its unique forests. From “almost sacred plant”—where the farmer established “a brotherhood and loving relationship with the plant” (Charles, 65)—the clandestine crop has become merely a commodity to exploit as much as possible, claim seasoned growers. However, not all new growers have massive cannabis crops. Stephen, a young man who cultivates several strains on public land for his cancer suffering mother, says, “All this pollution makes me suffer. This is not farming, it’s industrial exploitation [...] Plants know your intentions, so if you have bad intentions, you have bad plants; if you have good intentions, they are veeery nice. That’s why I sing and play to my babies: I want to thank them” (Stephen, 29).

In addition to growers and dealers—the latter representing a sort of seasonal moveable bridge between urban/rural—there is another key figure in this informal economy. It is a special category of “transients”, who seasonally pour into the Emerald Triangle from around the world for the marijuana harvest or its processing. In jargon they are called “trimmers”, whose task is trimming the cannabis buds to prepare them for consumption. How these undercover practices take place, mostly in hidden shacks where different backgrounds and cultures connect, are described in my next article (Candidi 2019), which examine also power relations, solidarity, and the risks of this job.

### *After Legalization. Perspectives and Strategies*

After a decade of constantly fearing the looming legalization, in November 2016, the “big regulation” finally arrived for real. California Proposition 96 immediately legalized marijuana possession for adult use, while allowing legal sale as of January 1, 2018. Now the district is about to enter a

<sup>14</sup> Cf. Humboldt County Sheriff’s Office press releases (LCO 2015; HCSO 2017).

completely new and far less predictable era. The long-kept secrecy is over and the “war on drugs” definitively lost: billions of dollars spent on making a drug-free country have not managed to reduce the use of cannabis among the population.<sup>15</sup> The end of California’s prohibition will lead to substantial savings in enforcement and detention—detentions that, according to various reports, affect mainly ethnic groups, such as blacks and Latinos (Levine et al. 2010)—and prisons will no longer be filled with cannabis consumers.<sup>16</sup>

In California, cannabis is now definitively part of the mass counterculture and accepted also in public and media discourse. It has become the main topic of so-called “stoner movies”, TV series and reality shows, such as “Weeds” (2005–2012), “Disjointed” (2017), or “Weed Country” (2013), the last one set in the Emerald Triangle. At school, the perceived risk of harm associated with marijuana use is lower than the one associated with “binge drinking”.<sup>17</sup> According to the World Health Organization, the world’s highest marijuana per capita consumption is in the US, so that 55 million adults (22%) are currently using cannabis (Ingraham 2017) with an estimated 8 million daily users (Tae 2016). A very tempting target for the legal cannabis industry, which—according to a 2016 report by the Cowen Group—is estimated nationwide at about US\$30 billion per year, with only US\$6 billion spent on legal products and the rest on the black market. Over the next decade, the nation’s legal market is expected to grow ninefold, with consumer spending on recreational and medical marijuana hitting US\$50 billion by 2026 (Cowen 2016; Murphy 2016).

Even in California, home to 12% of US citizens, formalizing the informal market of recreational use is a multi-billion dollar opportunity. In 2016, the medical cannabis industry reported US\$2 billion of sales through the nearly 2800 dispensaries available in the state (Wilson 2017; MBD 2016). California is expected to triple the size of the legal market in 2018 (Mosendz and Kaplan 2016), collecting a special 15% excise tax at retail and an additional US\$148 per pound of flower at the farm. Counties

<sup>15</sup> Cannabis use in 2004 was the same as 30 years earlier, despite the US\$4 billion spent on drug control by federal enforcement in only one year (Miron 2004). The annual savings on enforcement and incarceration costs from the legalization of marijuana would amount to US\$8.7 billion (Miron and Waldo 2010).

<sup>16</sup> According to the FBI, out of the 1,488,707 people arrested nationwide for drug abuse in 2015, 38.6% were due to cannabis possession (FBI 2015).

<sup>17</sup> Cf. NSDUH (2014, pp. 70–73).

and municipalities are allowed to further regulate and tax commercial cannabis operations in their jurisdictions. This is also expected to impact land speculation and the regeneration of remote areas (such as Desert Hot Spring, a little town saved from bankruptcy by the double tax income coming from marijuana-growing operations).

As the illegal plant goes legit, its price dramatically drops, falling to US\$500. If this occurs, profit will become impossible for non-compliant businesses, while regular growers may need to turn to agricultural technology in order to drive down production costs. With legalization, the large outlaw community of the Emerald Triangle is suddenly disoriented. The clandestine system, its rules and codes, the cat and mouse hunting, which constituted the essence of this district for 50 years, crumbles. In the eyes of justice, those who a few months ago were criminals can now become regular farmers. However, the “mom-and-pop growers” who have thrived in an unregulated gray zone for years, struggle to come out of the shadows. To take the first step toward legal compliance, they need to follow government regulations, apply for expensive local permits, and then legitimize operations by complying with soil and water regulations, fertilizer storage, proper road construction, labelling requirements (which may cost up to US\$500,000). “Ordinances constantly change, each time you read new requirements. It will kick out of business all small growers. We can’t protect the business we’ve cultivated for so many years from corporations and eager entrepreneurs” (Charles, 65). Becoming a legitimate member of society is insidious also for other reasons: “How do you explain to the Social Security Service what you’ve been doing during the last twenty years? And how to build an alternative into a monoeconomy-region?” (Willi, 45).

Many have been speaking about alternatives for years. Some see a future in organic cultivations or in brand-marking the Emerald Triangle cannabis from the competition, as the rich soil in this area is claimed to be critical to the yield quality. Others aim at cannabis tourism for out-of-state visitors. In the meantime, veteran growers, if they cannot adjust to the new economy, begin to adjust their properties to be rented online (“Airbnb is my only answer: cannabis business won’t be profitable anymore”, Johnson, 60).

Until 2018, however, things will remained unchanged: a further gray area period in which non-compliant marijuana operations in the Emerald Triangle continue to be eradicated. In any case, the transition will be slow. During the first years of legalization, with the existing production surplus

and high demand, the black market will continue to thrive (approximately 30% of total sales will still take place outside the legal system, Wilson 2017), and a lot of illegal labor will be needed for the out-of-state market (Sumner and Matthews 2017).<sup>18</sup>

The debate on legalization often involves a debate on the quality of legal marijuana. According to veteran growers, “weed” will undergo a standardization process, just like in the tobacco industries, that will sacrifice quality for profit. Hand-trimmed buds are considered to be of superior quality to the machine-processed ones. Nonetheless, the majority of people think that regulation, including security requirements and quality testing, will monitor the presence of mold, THC level, and any residual pesticides from the farm to the consumer. This opinion is also shared by Carol, 48, sister of an illegal grower, who now works as a quality certifier in the medical cannabis industry. She believes that legalization will create new job opportunities in the county: “Illegal cannabis can be easily adulterated. Now you have a standard production that has to be maintained. The regulation will make it more difficult to grow cannabis, but that means you have to become better at it” (Carol, 48).

In any case, “the transition will be very hard”, according to Kevin Jodrey, one of the best known cannabis breeders in Humboldt County and director of the organic nursery “Wonderland” in Garberville:

[In the County] there is a sombre mood now. Regulations are very difficult. So it is hard to go to one direction so much to the other direction so fast [...] because you have to change everything you’ve done. It’s scary for people. It’s kind of sad, because some people are gonna end their carriers [...] then you see some good too, because you realize if some other people won’t grow here, Humboldt will have a positive future too. Just not the same future, not the same people. People in Humboldt are very independent, strong-willed, fascinating, brave and that doesn’t really fit in in the new model. The new model is ‘can we march along like good little soldiers’: not everyone has this strength [...] They are gonna find out, can we survive or can we not? No guarantee.<sup>19</sup>

In conclusion, it can be asserted that the transition from licit (legitimate for informal actors only) into legal (legitimate even for institutions)

<sup>18</sup> For the impact of legalization on trimmers cf. Candidi (2019).

<sup>19</sup> From an interview with Kevin Jodrey in July 2017.

is a change that is generally desired by the former illegal actors if and only if culture or ideology is the driving force behind the former illegal practice (as the institutional legitimization of past illegal activities in history testifies, e.g. euthanasia and abortion in some Western countries). However, when the driving force behind a certain practice is primarily economic in nature, the legal transition is generally unwelcome among the former outlaws. The hippie founders in the Emerald Triangle would have been happy to see the cannabis prohibition come to an end; however, the “Green Rushers” feel differently since the legalization means considerable economic losses for them.

### FINAL REMARKS

It is estimated that the cannabis industry has a compound annual growth rate of 25%—a larger and faster growth than even the dot-com era. Since this market is not yet filled with multinational companies, it represents a unique opportunity for investors (Borchardt 2017a). The mushrooming industry draws legions of hardened entrepreneurs following the mantra of “diversification”, “slick branding”, and “professional investment”. Countless legal consultancy companies are already advising investors in the new market, and the publishing sector is also releasing a number of newspapers and guides for new marijuana ventures, full of well-known terms linked to the most rampant neoliberalism: outperformance, super-profits, strategic plans, precision control, beating competitors, and capital advisors.

The cultural shift, which began over three decades ago, is now perfectly accomplished and irreversible. This part of Northern California experienced three main movements: from the Back-to-the-Landers, who chose to run away from consumerism, creating a market “out of the love for the plant”, followed by the arrival of outsiders and the clash between old and new growers, to people seeking “pure canna-biZ over cannabis”, who are going to rule the new game. The Emerald Triangle is a symbol of how a self-managed, countercultural informal community turned mainstream and institutionalized through economic interests and regulatory powers. A mutual cause-effect relationship can also be detected. If with cannabis prohibition, state authorities in a sense created the Emerald Triangle district, the same authorities are now partially destroying it through legalization. On the other hand, we can underline that it is the district itself, with

its cultural challenge and economic significance, that unwillingly influenced the construction of a regulatory process and governance.

Nevertheless, with one of the few remaining illegal countercultures going legit, the Emerald Triangle is expected to definitively lose its brilliance and to acquire the matte tone of just one green: that of dollars.

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PART III

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Informality and Resistance



## The First Moldovan Students in Romania (1990–1991): Informal Traders or Agents of Change?

*Petru Negură*

One of the victories of the “flowers and songs” revolution of the late 1980s in Moldova and of the December 1989 Revolution in Romania was giving the right to many young Moldovans<sup>1</sup> from the former Moldavian Soviet Socialist Republic (MSSR) and Ukrainian Soviet Socialist Republic to study in Romania. Part of the first cohort (academic year 1990–1991) of Moldovan students in Romania tried to obtain collateral benefits from

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<sup>1</sup> In this chapter we use the term “Moldovan/Moldovans” for the residents of Bessarabia, southern Bessarabia (today Ukraine), Transnistria (de jure Republic of Moldova), and northern Bukovina (Ukraine).

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the liberalization of the border-crossing regime and from the difference between markets in Romania and MSSR<sup>2</sup> by transporting (more precisely, by exporting from MSSR to Romania) various goods in order to make a profit. Systemically engaging in “secondary economy” activities contradicted the common expectations regarding student conduct. This informal commercial activity (called *bişniţa* in Romania<sup>3</sup>) also challenged the idealist ethics, promoted by the official discourse of the communist regime of personal austerity in favour of the presumed collective good<sup>4</sup>.

Informal trade activities (*bişniţa* among them) did not appear out of the blue after 1989. In the socialist era, a wide variety of secondary economy activities existed both in the USSR and in the countries of the socialist bloc (see Sampson 1987; Kornai 1992; Verdery 1996; Ledeneva 1998; Mandel and Humphrey 2002; Chelcea and Lăţea 2000; Osokina 2001; Rostas and Mamoc 2013; Ţone 2009). However, the fall of communist regimes, which stigmatized and even outlawed any informal market activity, not only brought these practices to light but also prompted their effervescent proliferation (see Humphrey 1991; Verdery 1996; Konstantinov 1996; Mandel and Humphrey 2002; Carey 2004; Verdery and Humphrey 2004; Heintz 2007; Morris and Polese 2015). Once political regimes changed and old powers and ideologies lost their legitimacy, these informal activities acquired new social, moral, symbolic, ideological, and identity meanings. Long considered a dishonest if not illegal practice, soon after 1990, *bişniţa* has been embraced as an almost honourable occupation and as a considerable source of income by individuals from all walks

<sup>2</sup> According to Mircea Druc, then Prime Minister of the Republic of Moldova (Moldavian Soviet Socialist Republic [MSSR]), more than 3000 young Moldovans went to study at high schools and universities in Romania in 1990. Please, see: <http://www.druc.ro/content/blugsection/1/88/lang/> (web page accessed on February 20, 2015).

<sup>3</sup> A diminutive and slightly pejorative term derived from “business”.

<sup>4</sup> And, to some extent, among intellectuals educated in the tradition of the nineteenth-century Russian intelligentsia, opposing the “capitalist spirit”: “L’idéologie bourgeoise n’a jamais été au pouvoir chez nous, elle n’a jamais exercé d’attraction sur les cœurs russes. Nous n’avons jamais connu de base idéaliste pour les droits des classes bourgeoises et pour le régime bourgeois. Au fond, presque tout le monde considérait la bourgeoisie comme un crime, pas seulement les révolutionnaires et les socialistes, mais aussi les slavophiles et les croyants, et tous les écrivains russes; même la bourgeoisie russe elle-même se sentait humiliée de son état”. Nikolai Berdiaev, *Un Nouveau Moyen Âge*, Paris, 1927, p. 210, cited in Besançon 1967: 523.

of life who were selling and buying goods according to their own investment potential and access to tradable merchandise.

The golden days of *bişniţa* among Bessarabian students were between 1990 and 1991. Starting with 1991, according to several testimonials and data we consulted, consumer goods prices on the Romanian and Moldovan markets tended to be the same due to the fact that in Romania imports of goods from other countries grew,<sup>5</sup> while in the Republic of Moldova, production of consumer goods fell drastically. These economic trends led to the lower profitability and eventual disappearance of border commercial traffic by Moldovan students in Romania during the 1990s, when the legal and economic relations between the two countries became stronger (Bîzgu 2006; Chiţu and Bălăşescu 2004).

This case is emblematic and revealing about the process of radical social and economic transformations through which passed this Soviet Republic, which was soon becoming (in the period of this study: 1990–1991) an independent country. This informal cross-border trade practice appears within a normative “grey zone” (Knudsen and Frederiksen 2015), created by the transition from a political (and economic) regime to another and by the disappearance of a state (USSR) and the emergence of other ones (including the Republic of Moldova)—a short period when the previous norms were strongly relativized, if not altogether abolished, and others had not yet been adopted and recognized as such at the time, at least in the perception of informers.

This case study also follows the dynamics of this informal practice from a “survival tactic” (when the *bişniţa* gave the opportunity to supplement the low student income) to a “strategy of enrichment”, when this practice became a means to multiply the revenue. As far as the relationship between citizens and the state (in fact, the states) is concerned, this evolution from “survival” to “enrichment” overlaps with the transition from an unregulated or insufficiently regulated cross-border trading framework to an increasingly regulated one. In this respect, the students’ involvement in the transportation and sale of goods from one country to another was subject to a shifting of the position of “students traders” in relation to state agents: in the terms advanced by Abel Polese et al. (2018), *bişniţa*

<sup>5</sup> Starting from 1991, in Romania, imports increased (overpassing exports, administratively maintained during the 1980s) especially from developed countries (from 15.4% in 1989 to 44.7% in 1991), while imports from East European countries decreased (from 43.5% in 1989 to 26.2% in 1991). See, Chiţu and Bălăşescu 2004.

was performed at the beginning “beyond the state”, under the conditions of an uncontrolled regulation, then as cross-border trade became more regulated, “in spite of the state” (Morris and Polese 2015; Polese et al. 2018). This “grey area” in which the evolution from “survival” to “enrichment” took place, and at the same time from “beyond” to “in spite” of the state, acquired a series of moral implications that became elements of a new social and economic ethos that emerged in the following years and decades to come.

### NOTE ON SOURCES AND METHODOLOGY

For this chapter, in January and February 2011 and in February–March 2014, I conducted a series of semi-directive interviews with 20 individuals: 15 respondents were part of the first cohort of Bessarabian students at a Romanian university in 1990–1991; two respondents were high school students during that year; one respondent, at that time, was the wife of one of the university students (who was also interviewed); and, finally, one respondent, part of the leadership of the Education Commission of the MSSR Supreme Soviet (and of the Parliament of Moldova, afterwards), was involved, between 1990 and 1992, in the selection of Moldovan students (Bessarabian) going to study in Romania. On this topic, I also had a brief but consistent correspondence with Mircea Druc, Prime Minister of Moldova, between May 1990 and May 1991. For privacy reasons, the names and social characteristics of respondents are confidential. I am profoundly grateful to the individuals I interviewed, whose openness to my research made the analyses in this study possible. Moreover, I am myself part of the second cohort of Bessarabian students studying in Romania and, starting with October 1991, I experienced directly the times and the people I analyse here. A constant exercise of introspection and self-reflection, then, also made this chapter possible. I consulted all the articles published on the topic between January 1989 and December 1991 in two Moldovan newspapers: *Făclia*, the newspaper of the Ministry of Education, and *Literatura și Artă*, the newspaper of the Writers Union, a newspaper which took a pro-Romanian stance, especially after the 1989 Romanian Revolution. I also consulted relevant archival documents from 1989 to 1990 of the Ministry of Education of Moldova and of the Central Committee of the Communist Party of Moldova (MSSR). This chapter, then, is the result of a combined reading of these sources, which represent

as many voices and instances of power, that evolved during 1990 and 1991, as the social and political conditions themselves changed from day to day.

### THE FIRST BESSARABIAN STUDENTS IN ROMANIA: THE REVELATION OF DIFFERENCE

For most young students from Bessarabia and Bucovina going to study in Romania in the fall of 1990, the relationship with the host country was informed by romantic and nationalist expectations created by fiery speeches given from the pulpit of the literary circle “Alexei Mateevici” and at rallies in the capital’s main square, by the “flower bridges” between Romania and the MSSR<sup>6</sup> and by other manifestations of the “national movement” from 1989 to 1990. Promoted by the Popular Front of Moldova, the representatives of the new political elite reached the parliament of MSSR riding the wave of the “national movement”. They focused their patriotic expectations, including the union with Romania, on this new generation of young people who were going to study in the neighbouring country, a possibility they had not even dreamed of during their Soviet youth. Guided by their noble mission to educate young Moldovans in the spirit of the Romanian school and tradition, the education officials on both sides did not pay much attention to the quality of candidates.<sup>7</sup>

After they settled in, the new students went to their first classes, where they were warmly and overwhelmingly welcome, but they soon discovered their shortcomings compared to their colleagues from the “Country”. The Romanian language spoken by most Bessarabian students usually had a poor vocabulary, with many words borrowed or translated from Russian and with a heavy regional and/or Russian accent, which made locals smile. Bessarabian students’ knowledge acquired at home and during the ten years of secondary education (compared to the 12 years of secondary and high school education in Romania) was riddled with serious gaps, especially

<sup>6</sup>These are two events approved by the USSR and Romanian governments wherein free border crossing between MSSR and Romania was allowed for a day: on 6 May 1990 from Romania to MSSR and on 16 June 1991 from MSSR to Romania.

<sup>7</sup>This is what the member of the Education Commission of the Moldovan Parliament told us. Similarly, several respondents informed us about the poor training of a significant part of Moldovan students in Romanian universities.

with regard to Romanian culture and specialized information (Stoica 1991). Last but not least, Moldovan students were on average several years younger than their Romanian colleagues, who were graduating high school later and were thus more mature. All these differences and gaps in education made Moldovan students studying in Romania experience an inferiority complex, amplified as rituals of convenience, official routine, and broken expectations replaced the excitement of the first meetings between the people living on the two banks of the Prut River.

After a warm welcome and a brief period of intense fraternization, the newcomers and the locals began to notice their differences. The perception of these differences was all the more striking as the identity of the “brothers” on the two banks was expected to be one and the same. Discovering the difference—in language, behaviour, appearance, and the daily life of the other “us”—deepened the identification within the visiting group. In order to offset the image deficit, students from Bessarabia and Bucovina, whom locals often referred to as “Russians”, a label assigned until recently to feared and hated foreign neighbours, employed strategies of affirmation that ranged from loud segregation (speaking and singing in Russian) to slow assimilation (see Goffman 1963).<sup>8</sup> These two extreme options made Moldovan students adopt a whole range of negotiation and compromise tactics in order to assert their identity by communicating and playing with local expectations.

### THE *BÎȘNIȚA*: THE PHANTASY OF RICHES IN AN IMPOVERISHED WORLD

Freshly out of the Ceaușescu era and out of the tumultuous revolution of December 1989, Romania appeared in the eyes of the first Bessarabian students as an impoverished and humiliated country, still bearing the burden of the persistent penury of the previous totalitarian oppression.

In state-owned grocery stores, glowing empty shelves still lacked staple commodities. On the streets and elsewhere, however, everyone was selling and buying something, and the whole country became a huge flea market. Practically, everything was sold and bought with passion and frenzy, all over the place: in train stations, bus stops, market stalls, and on the street.

<sup>8</sup>These survival strategies to the rules of the majority group are similar to the strategies used by discredited individuals and groups analysed by Erving Goffman (Goffman 1963).

Student dormitories had become the true shopping malls of those times of need.<sup>9</sup> In a dorm room, you could buy cigarettes and beer, in another room, coffee, in the third, blue jeans, household appliances in the next room, and so on. Bessarabian students found in post-revolutionary Romania a world where the ubiquity of consumer goods could hardly hide the inability of the many to actually enjoy them (see Chelcea and Lăţea 2004: 152–174; Ţone 2009).

For most students from Bessarabia and Bucovina, *bişniţa* emerged as a natural and handy means to supplement their meagre student budgets and satisfy more than their immediate needs. On the first trip to Romania, parents and friends encouraged some students to bring over certain goods, such as coffee or small home appliances, in order to sell them once at the destination in exchange for local currency until they cash in the scholarship funds, at a time when in Chisinau the Soviet ruble was still in use. However, most of the Bessarabian students only found out about the high demand for goods made in the USSR only after they arrived in Romania.

At first, almost anything could serve as merchandise in this “small border trade” because Romania at that time was an insatiable market in need of almost every type of consumer good: light bulbs, bubble gum, scented soaps, name brand toothpaste, and so on (see Chelcea and Lăţea, op. cit.: 155–166; Chelcea and Lăţea 2000; Ţone 2009). Familiar with “high-brow” culture, some students successfully brought over “symbolic” goods, such as books and vinyl records, produced by the Russian label “Melodia”. Camus and Kafka, masters of existentialism and the absurd, were sold like fresh bread, while Western rock legends, such as the Beatles, Rolling Stones, Pink Floyd, and Led Zeppelin, were cherished by Romanian rockers of all ages.

As Romanian buyers’ demand for quality goods increased, so did the traders’ need to find more cost-effective traffic formulas. With some effort, intelligence, and practical sense, part of Bessarabian students soon discovered that *bişniţa* could increase their revenue substantially. According to documents (see Chandler 1998), because the customs control was more relaxed during the first months after Bessarabian students went to Romania, informal trade tended to become a systematic occupation. After accumulating a small capital from selling small appliances or with money

<sup>9</sup> I borrow this metaphor from an interview with one of the respondents, former student of the first cohort of Moldovan students in Romania.



borrowed from relatives and friends, some students started to bring in larger objects (TV sets, refrigerators, stereos), thus making larger profits. In fact, demand for TV sets was so great that some students never made it to the flea market or to the consignment shop, which were the main venues for selling and buying products from the USSR, because they sold their merchandise directly at the train station or to taxi drivers without sales tax or commission fees.

In the informal border trade, women mostly sold small objects, while men dealt with sizable objects, such as electric appliances, chainsaws, and motorcycles (see Chelcea and Lăţea 2004: 160; Konstantinov 1996: 769; Zhurzhenko 2008: 97–117; Yurchak 2002b; Polese 2012; Pine 2015; Joyce 2015). This gender division of tasks, in part motivated by the uneven distribution of the physical force needed to handle heavy goods, had consequences in the material and social gains of each group. In 1990–1991, even though it involved various risks and a certain degree of violence, Moldovan students associated the big *bişniţa* with an ideal of manhood, often inspired by the shady [gangster] folklore (see Yurchak 2003; Fitzpatrick 2005: 345–362; Volkov 2002; Ries 2002; Frederiksen 2015) and based on the cult of brute force and contempt towards “feminine” values, such as sensitivity and non-aggression. Female students of the first Moldovan cohort studying in Romania also engaged in small *bişniţa* activities to cover any holes in their budget, once everyone around them was buying and selling stuff. However, the goods they trafficked were accessible and easy to carry, such as light bulbs, toothpaste, books, and cheap jewellery, which were usually sold around the dorms or in consignment shops, whose commission was preferable to the effort needed to sell those products at the flea market. Their limited involvement in border trade gave female students more free time which they could spend studying or interacting more harmoniously with their colleagues. At times, some female students would break ranks from the stereotypical representation of the “weaker sex” and join their male partners in trade activities that require equal amounts of physical strength and character (Zhurzhenko 2008; Yüксеker 2004; Pine 2015; Joyce 2015). In these situations, some of them sometimes felt compelled to interrupt their studies for the benefit of *bişniţa* which became their full-time job for a year or two.

A survival strategy at first (see Konstantinov 1996: 762; Chelcea and Lăţea 2000: 191–207; Polese 2012), *bişniţa* was soon considered an opportunity for enrichment and a mark of status. Contrary to the image of

the poor student, which many Romanian and Moldovan students were at that time, Bessarabian students doing *bișnița* stood out because of their lavish consumption of “luxury” goods and services. They preferred expensive cigarettes, wore “good” name brand clothes, and could afford taking taxis to go together to dine out at “select” restaurants. To many of these students, a considerably higher standard of living, which others could see, was the equivalent of conquering Western “normality” (see Rausing 2002: 8; Fitzpatrick 2005), longed for but unattainable under the communist regime yet deeply rooted in an intense imaginary nourished by foreign films and strengthened by the *à rebours* reading of official propaganda. Even a less ostentatious consumption of name brand products, perceived by relatives and peers as fantasy or vice, signified freedom and a sense of power to students coming from a world where access to goods was administratively controlled. Sometimes, however, ostentatious consumption (*consommation*) in the expensive restaurants of the city, in the true spirit of the alleged Russian *soulness* (see Pesmen 2000), turned into the compulsive consumption (*consummation*) of a wealth surplus (see Bataille 1949), in direct contradiction with the image deficit students doing “bișnița” had due to their poor academic performance.

### 1990–1991: THE AGE OF OSTAP BENDER’S OFFSPRING

The visible opulence, sometimes unwittingly displayed by Moldovan students doing *bișnița*, inspired admiration and envy among their less enterprising colleagues. The fact that some of “them” attained this ideal of wealth in a short time, just a few months after the beginning of the 1990–1991 academic year, made them appear as inventive, resourceful, and strong individuals. For the community of Bessarabian students, those who were able to create such an image about themselves embodied the many success stories that fuelled the myth of getting rich “overnight” in the post-revolutionary era when everything was possible. Both *bișnița* and regular students believed in legends about Ostap Bender’s local descendants who had such a special commercial instinct that they managed to make their fortunes by transporting and selling goods without any immediate commercial demand, such as mercury or ink pen mines. Many students kept on dreaming one day they would be lucky enough to make the chimerical “first million”, just like the more resourceful of their peers presumably did. During that time of legal and moral ambiguity, some students were ready to break the law if that meant they could get closer to the

most coveted “Holy Grail”. Some tried to make homemade (or dorm-made) counterfeit vodka but gave up when the quality of the alcohol was compromised, while others entered less honourable schemes promising to quit once rich.

Moldovan students engaged in *bişniţa* considered the limits state officials imposed against border trafficking as barriers they needed to overcome, no matter the price. At the time, USSR/MSSR custom regulations allowed each Moldovan student to carry to Romania only one electronic device, which was marked with a stamp in their passport; furthermore, the device was for personal use and therefore under the obligation to be returned to the country of origin. This obligation forced student traders to come up with various strategies needed to continue to move technical equipment (especially TV sets) from MSSR/USSR to Romania. One of those strategies was to use the services of another Bessarabian student who would agree, in exchange for a small gift, to carry an electronic device to which he was entitled when crossing the border. Bribing customs officials, another means to circumvent the ban on carrying more than one personal device, was also a widespread practice, which established complicity between student traders and state agents, defeating the legal norms instituted by the authorities of that state (Ledeneva 1998, 2006; Yurchak 2002; Polese 2012).

To Moldovan students, the border trade and other forms of the informal economy were directly linked to the representation they had of the state they belonged to and to the authority that the state embodied in their eyes (see also Polese et al. 2018). During the academic year 1990–1991, Bessarabian students’ perception was that the USSR was on the verge of weakening its authority and consuming its legitimacy (Verdery 1996: 205; Humphrey 1991). This year was therefore perceived as a period in which old laws and customs were no longer valid, while the new ones were not issued yet. Pro-Romanian and anti-Russian nationalist beliefs, shared by many Moldovan students attracted to the “national movement”, gave these “anti-Soviet” sentiments a much-needed ideological legitimacy. Moreover, students had a hard time adapting to Romanian legislation not only because they faced integration problems, but also because the host country’s rule of law was itself adaptive. Not even the birth of the Republic of Moldova, on 27 August 1991, could offer young Moldovans a clear set of rules to abide by since many believed this new state was a provisional one.

In that “grey” period of legal uncertainty, many students did not necessarily consider reprehensible the breaking of some legal norms because, in their eyes, these rules violated the private interests of citizens. The students’ behaviour and their possible acts of “deviance” (see Becker 1997; Goffman 1963; Merton 1938; Ogien 2012)<sup>10</sup> were coordinated and sanctioned according to a personal and collective value system inherited from the family and the community. However, during this “revolutionary” period, when the ethical positions of the older generations were associated with the old systems of values and norms, contradictions surely appeared between the parents’ views and those of their sons and daughters (see Spitzer 1973; Burguière 1994). In their ambition to break away from the old regulatory framework that contradicted their new principles and aspirations of freedom, power, and material comfort, young people expressed more and more openly their disapproval regarding a way of life, marked by shortcomings and sacrifices on behalf of a normative code, a symbol of a supposed common good, which they considered unjust and outdated. One of the consequences of this socio-mental process, by which regulations are partly abolished and partially substituted, had been the emergence of a sort of axiological nihilism, which French sociologist Émile Durkheim called “anomie” (see Durkheim 1897: 113; Merton 1938: 672–682; Orrù 1998)<sup>11</sup> and which Dostoevsky’s character Ivan Karamazov summarized when saying that “if God [i.e., the eternal and almighty State, in which all believed like in God] does not exist, everything is permitted”. Some students engaged in informal economic activities defined for themselves and for their friends a new moral horizon, which gave their activities ethical cover and practical rationality (see Konstantinov 1996: 764–766). Since this horizon varied from case to case, certain “deviant” intentions and acts from the perspective of “old” laws and customs could be found in its margins.

<sup>10</sup>In this chapter, we use a constructivist and symbolic interactionist definition (see also “labeling theory”) of “deviance”. We therefore consider “deviant” a behaviour called as such by a certain group during the social context of a certain interaction, based on a given code of socio-cultural norms, valid within the dominant group which uses the “deviant” label (see Becker 1997; Goffman 1963; Merton 1938; Ogien 2012).

<sup>11</sup>Anomie is a state of an individual or a group characterized by disintegration of norms that regulate people’s behaviour and their relationships (Durkheim 1897). Robert K. Merton considers that anomie is caused by the contradiction between cultural goals and social norms (legitimate means to achieve them). From this perspective, anomie can generate deviance (acts that violate existing social norms) (Merton 1938). Moreover, Jean-Marie Guyau, the father of the concept of anomie (Guyau 1885), believes that anomie can create new forms of human relationships and creative autonomies (break from established norms).

## TRADE HAS NO FRIENDS

Once they arrived at Romanian universities, Bessarabian students generally got together based on the friendly relations they made and strengthened during the romantic and revolutionary events from the late 1980s. During the first months after the start of the academic year, relationships of solidarity and cooperation of groups of friends and fellow students helped increase the efficiency of informal trade practices as well as its level of organization.

Some groups of student traders, brought together by friendships, camaraderie, or kinship, adopted a clan structure, with a hierarchical organization of the relations of cooperation and subordination within the group and coordinated by a self-imposed leader, recognized as such by the other members of the group (see Humphrey 1991; Volkov 2002; Ries 2002). Other Bessarabian students formed “teams” of several members, without a clear leader, but with a kind of administrative “council” following some unwritten “regulations” which controlled entries and outputs (both strictly) and set out rules for members interacting both within and without the group.

The tasks were diverse and interchangeable: one (or two “members”) would go to Chisinau (or another town from the MSSR/USSR) to buy merchandise and then transport it through customs to Romania. Another (or two others) would find buyers or sell the merchandise at the flea market (or consignment shops). Other co-teammates (usually, unstable members of the group) would form intermediate, if necessary, partnerships with key local figures and merchant networks.

Early on in the existence of these teams, relationships among the founding members were based on solidarity and mutual trust while tasks and revenue were both fairly shared. After several months, however, an individualist ethic—based on personal interest—imposed its primacy over the communal ethic (defined as the primacy of group interests and relations of affection), thus diminishing the degree of trust and solidarity among “members” (Dumont 1983; Descombes 1999). In this way, friendships were progressively substituted by rational partnership relations. While typically these groups of students acted separately (or the market was large enough for all of them), sometimes they partook in certain activities which demanded their collaboration. Student traders—or the teams to which they belonged—needed more money if they planned to increase their investment in the objects they trafficked and consequently increased their

return on investment. Money lending was one of the most frequent forms of collaboration among groups or members of different groups. Most students involved in commercial activities repeatedly borrowed or lent money. Some transactions, however, could fail if, for example, customs officials confiscated goods. In such situations, another loan was offered in order to cut the losses of a failed business opportunity. When new loans did not help, debts grew and the possibility of repaying them narrowed down. The indebted, trying hard to cut down heavy losses, had it in their interest to delay as much as possible repaying of debt, while the loan sharks used any opportunity they had to come up with new strategies to recover their money. Sometimes, the relationships between lenders and borrowers became complicated when the former failed to recognize, for whatever reason, the debt claimed by the creditor. Relations between partners, often colleagues and old friends, gradually deteriorated with each unpaid debt and creditors resorted to intimidations and threats in order to recover their money. If they started the academic year as good friends and colleagues, by its end, after months of animosities, mistrust, and failed relationships, some students became formidable and despicable opponents (see Caldwell 2004; Pesmen 2000). Taking the appearance of a power struggle, these conflicts were not fought over dividing areas of activity (because there were no real reasons for competition) but rather represented a symbolic manifestation of supremacy.

### “BIȘNIȚĂ” STUDENTS: BETWEEN DEVIANCE AND NON-CONFORMISM

Bessarabian students who regularly practised *bișniță* in the early 1990s had sacrificed many things that they regretted later: friends, “idealist” values, and time, which they would otherwise have spent studying. At the same time, these student merchants certainly gained new experiences, which formed and consolidated certain interpersonal, persuasive, and negotiation skills in relation to members of their group and other partners, as well as state agents. Furthermore, under the pressure of multiple and different requirements, dictated by the fluctuating activities of an informal economy and, in parallel, of university studies, they became more adaptable to the harsh conditions of living in a normative “grey zone”, on the edge of social and moral borders. This life experience, which for most of the Bessarabian students took place at the end of two or at most three years of study, gave some of them the qualities of leaders and opinion makers,

which came up just a few years after graduation. Crossing borders (of any kind), still banned until recently, led to the birth of a new *ethos* which went on to seek legal adjustment and moral legitimacy in the years to come. Together with individuals from other social categories, students doing *bişniţa* in 1990/1991 have become, without pretending it, the promoters of market activities, which soon became the norm (international trade, import/export, border trade). They also became the exponents of almost revolutionary thinking and behaviour models within the context of the break-up from the obsolete communist regime: individualism, consumerism, the primacy of material values, and so on. Adopting a behaviour and a discourse described as vicious at that time, the students belonging to this “active minority” (Moscovici 1991) helped reformulate in their own way those rigid models of practices and values (considered idealistic and/or ideologically manipulated) which lost their efficiency once the state suddenly loosened its “monopoly on legitimate violence” (M. Weber 2003) and individual freedoms thrived.

The analysis and attempt of a “thick description” of this case of informal cross-border trade, following the dynamics between survival tactics and a strategy of enrichment, and, at the same time, between this practice performed “beyond” and then “in spite of” the legal normality emanating from the state, highlight new dimensions and meanings of this type of informal trade (Polese et al. 2018). In an early, “grey” transition period (see Knudsen and Frederiksen 2015), informal cross-border trade hastened a process that had been underway for several years during perestroika, towards further transforming social and legal norms and institutionalizing this commercial practice. From this perspective, *bişniţa*, qualified under the old rules as deviant or even illegal, can be considered, in that specific socio-historical context, an act of innovation and a factor of change (see Merton 1938; Moscovici 1991).

We do not suggest here that this socio-economic innovation would necessarily have led to a “positive” change. The ethical and economic model that this type of practice, among other informal practices, generated and reproduced was and has remained part of a deregulated capitalism—a “cowboy capitalism” (Pine 1996) that has characterized—and in many respects still characterizes—the socio-economic development in Moldova and other post-socialist states in the years 1990–2000. At the same time, various elements of this informal practice, such as corruption of officials or the use of physical pressure in economic transactions, have not disappeared after cross-border trade was regulated and institutional-

ized—they have further accompanied the institutional framework of all types of trades, including the cross-border trade (see Ledeneva 2006). Certain practices, considered informal or illegal, such as influence peddling and the intrusion of vested interests into state machinery, are now being decriminalized and even institutionalized by the Moldovan authorities. This process is taking place in a context in which the state (led by certain leaders who launched their businesses in 1990–91) is facing a profound crisis of image due to high corruption scandals, but also through a structural transformation, being qualified by several analysts as a “captured state” (Ciobanu and Tirdea 2013; Ciurea 2016).

One way or another, and if we accept this interpretation of facts as a legitimate one, the present study tells a certain facet of the post-socialist “transition” from a bottom-up perspective through survival and enrichment practices of ordinary citizens. This facet of history is seen not only as objects of history staged by leaders and institutions, but also as full-fledged subjects of this historical narrative, and even as agents of change, whatever that may be.

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# Nothing to Lose: The Power of Subtle Forms of Resistance in an Immigration Detention Centre

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## INTRODUCTION

Contemporary migration policies, whether at the European or national governance level, have relied increasingly on the use of administrative detention as a tool to sort and eventually expel unwanted migrants (Ceccorulli and Lablanca 2014; De Genova and Peutz 2010; Agier 2011). The restrictive turn that has made the fight against irregular immigration a priority on the agenda of most European countries continually conflicts with international law, despite the visibility of a humanitarian crisis in the form of hundreds of thousands of asylum seekers stuck at Europe's external borders and hunted down at each and every one of its internal borders (Lendaro 2016).

The majority of studies devoted to migrants in administrative detention emphasise the difficult conditions of their confinement as well as the processes of disempowerment to which they are subjected (Welch and Schuster 2005; Stumpf 2006; Bernardot 2009; Bosworth and Turnbull 2014).

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This literature has empirically documented the effects of contemporary immigration management policies, which are aimed more at classifying individuals than at guaranteeing their fundamental rights, and according to criteria that sometimes conflict with major international conventions (Aas and Gundhus 2015; Borchelt 2001; Carens 2008; Houtum and Boedeltje 2009).

This contribution aims to highlight the merits of taking the agency of migrants in administrative detention into consideration and of observing everyday acts of resistance which emerge in spaces of extreme deprivation of rights (Isin and Rygiel 2007). By virtue of their status as closed spaces, detention centres make these everyday, commonplace protests invisible, or at least mean that they are scarcely studied.

These subtle acts of resistance are, however, key in bringing new depth to the study of contexts of domination. The figure of the migrant which emerges from works on the condition of the illegal immigrant—and on administrative confinement, in particular—is often that of a person who is deprived, and prevented from acting in a context which at the very least limits his or her freedom of movement, and almost always exposes him or her to situations of violence and abuse (Rajaram and Grundy-Warr 2004; Fekete 2011). The case of the resistance of migrants on Lampedusa adds complexity to the picture by showing that the capacity for resistance of migrants in detention changes according to the space in which the action initiates, and, in particular, according to whether it develops inside or outside the detention centre.

Within this place where foreigners are confined for periods which often exceed those defined by legal documents, everyday acts of resistance may take the form of refusing to let the law enforcement agency responsible for implementation of the ‘Dublin Regulation’ record their fingerprints.<sup>1</sup> This recurrent refusal does not constitute a resounding act of violent revolt, nor is it accompanied by collective demands from within the detention centre—demands through which spokespeople address the law enforcement agencies or other public authority representatives. It is, rather, a subtle act which comes to sabotage the deployment of a procedure that is

<sup>1</sup>The European ‘Dublin Regulation’ (which has become Dublin III – No. 604/2013 of 26 June 2013)—aimed at identifying the member state responsible for examining an application for asylum—prohibits migrants from filing an asylum claim in any member state other than that through which they first entered the European Union (EU).

seen by the majority of migrants as an obstacle to their planned movements. This refusal to comply, which begins as individual and anonymous, renders the transfer of migrants impossible to the point of a situation of breakdown that is unmanageable for the public authorities. This silent and repeated transgression of the procedure is far from ineffective.

Inspired by work on ‘infrapolitics’ (Scott 1990), this contribution proposes to reconsider invisible and anonymous practices that attest to the agency of migrants in a context in which respect of the law and rights is in question. In particular, it aims to show that these acts of resistance ‘that dare not speak in their own name’ (Scott 2009: 33) help determine the emergence of more open and visible forms of struggle. More than this, they are the very condition of their emergence.

### LAMPEDUSA AND THE ADMINISTRATIVE DETENTION OF IMMIGRANTS

Lampedusa, a small Italian island of only 20 km<sup>2</sup> and fewer than 6000 inhabitants, has progressively become one of the busiest gateways to Europe. The construction of the first detention centre for migrants in 1996 marked the beginning of a profound sociopolitical transformation, turning this arid piece of rock into a symbol of the frontier between Europe and Africa. Far from having merely symbolic consequences, the location of the First Aid and Reception Centre (Centro di primo soccorso e accoglienza—CPSA—which became a Hotspot in 2016<sup>2</sup>) led to the concentrated arrival of migrants and asylum seekers, and the implementation of a specific land and sea policing system, as well as the presence of humanitarian organisations (Cuttitta 2014).

The centre currently operating on the island of Lampedusa, which is periodically the focus of controversy concerning conditions for migrants and the opaque management of public funds, was built at the bottom of a

<sup>2</sup>In 2015, the European Commission, anxious to try to resolve what is now generally referred to as the ‘refugee crisis’, proposed the creation of identification centres for asylum seekers at the borders of Europe which would facilitate the rapid classification of, on the one hand, migrants wanting to benefit from asylum in the EU, and on the other, those known as ‘economic migrants’, who are unable to claim refugee status according to the Geneva Convention, or subsidiary protection. The initiative was presented as a new measure, but in reality, it simply renamed, as in the case of Lampedusa or even Lesbos (Greece), migrant detention centres that were already in place and had been pursuing the same aims for years.

valley, out of sight, and was initially designed to serve as a first aid centre. It is therefore not equipped to host migrants for periods of more than 72 hours. Yet the process of identification and transfer of detainees regularly exceeds the maximum duration for confinement specified by law. While there, the migrants have no recourse to justice. As in the ‘camp’ analysed by Agamben (2005), defence through the law and its tools of litigation is therefore not an option.<sup>3</sup> However, in response to the failure to meet living standards, and despite the impossibility for migrants to act within and through the law, Lampedusa has also become a space for resistance (Lendaro 2015).

The forms that the migrants’ resistance takes deserve to be studied here since they can shine light on the conditions for the emergence of protest in a particularly extreme context of isolation, deprivation of freedom, and lack of outside support, in which everyday defiance comes to play an essential role. Unlike the figure of the migrant reduced to ‘bare life’ (Agamben 1998), migrants held at the Lampedusa centre in 2013 showed that they were not completely destitute: by subtly transgressing the norm, they circumvented the rules of the game without taking too many risks. They had nothing to lose.

#### **Box 16.1 Methodology**

This research is based on a survey which allowed me to collect a varied set of data from different sources. It is a qualitative, ethnographic study carried out over two years (2013–2014) on the basis of in-depth interviews (43 in total) with migrants, inhabitants of Lampedusa, humanitarian aid workers, and representatives from local institutions on the small Italian island.

<sup>3</sup>The concept of state of exception (*Stato di eccezione*) formulated by the Italian philosopher Giorgio Agamben refers to the suspension of common law. It involves the decision of a sovereign to place or abandon certain individuals outside its borders—thus to a space in which protection and recourse to the law are not possible. Sovereign power is thereby characterised by the possibility it grants to include some and exclude others from the protection of the law which is supposed to limit its power, under the pretext of a situation of emergency and danger. The Lampedusa detention centre is not, however, a place in which sovereign power is absolute: the presence of non-governmental organisations (NGOs), which can publicly account for what goes on there, limits this power to some extent, even if it cannot compensate for the absence of the recourse to justice.

These observations were made in the vicinity of the CPSA in July 2013, and then at the time of the demonstrations, during which I was also able to carry out in-depth interviews with nine migrants of Eritrean origin. A second phase of in-depth interviews in 2014 focused more on inhabitants' perceptions of the protest.

Analysis of secondary sources—both academic and legal—completes this work on the place of non-compliance with the law and procedures in the emergence of a form of resistance in two stages—first of all subtle and then public and overt.

Analysis of the data took place in several stages. First, I recreated the spatial and legal context within which the protest formed. Then, via observations and the first interviews with migrants who refused to record their fingerprints, I recreated decisive moments in the emergence and development of the protest. Once again using observations and interviews with inhabitants, migrants, aid workers, and representatives of local institutions, I analysed the negotiation phase and its effects on the end of the movement.

### EVERYDAY DISOBEDIENCE; AD HOC PROTEST

The procedure for the reception of migrants on Lampedusa requires all persons who have been rescued and taken to the centre, after having been presented to the law enforcement agency in operation, to be registered immediately by having their photograph and fingerprints taken. The process of identification and transfer to another centre or another country should take no longer than 72 hours.

In July 2013, several hundred migrants were locked up for weeks inside the CPSA. On 18 July, approximately 1200 people were detained compared with 380 places available. Aware that the European Dublin Regulation would force them to begin steps towards gaining asylum in Italy, a group of around 30 young Eritreans refused to have their fingerprints taken. Since their arrival at the start of the month, their hope had been to be transferred on the continent, and thus to have a chance of being able to leave the country without having left a biometric trace. This would allow them to settle in another European country without fear of being sent back to Italy.



The number of people refusing to have their fingerprints taken grew day by day. However, in this confined space with few alternatives to waiting for an indefinite period, psychological resources varied from person to person: some migrants agreed to have their prints taken to be able to leave Lampedusa and its insalubrious detention centre more quickly, even if this meant not then being able to request asylum in the member state of their choice. Indeed, while the presence of non-governmental organisations (NGOs) within the CPSA protected migrants from the use of force that the authorities could have deployed to compel them to register, the prolongation of their detention was an effective deterrent.

By mid-July, the centre was so overcrowded that there were people occupying every available space inside and especially outside the CPSA buildings: beneath trees to protect them from the heat; in the shade of the prefabricated buildings which housed the administration offices; and in full sun for those queueing for meals, to go to the toilet, to have a shower, to speak to the NGO staff present, or to have their fingerprints taken by the police. There were so many residents, and new arrivals were so regular, that migrants who decided not to have their fingerprints taken were lost in the crowd since those in charge did not have the means to deal with them individually. They waited—patiently—then they grew impatient. They knew that asylum seekers' transfer to another centre was conditional upon the procedure of identification.

At the CPSA, waiting becomes a diffuse, collective experience—one that is shared by all migrants detained there, and one that infiltrates all the spaces they inhabit, permeating the time they spend inside its walls. But the wait is also a time of socialisation in which the 'hidden transcript' (Scott 1990) of the insubordinate can circulate and be heard by other migrants. While a migrant may not have envisaged refusing to follow procedures on arrival at the CPSA, this quickly became an option. The spatial dimension of these commonplace acts of resistance is essential: the scale of the detention centre represents a space of acquaintance and the circulation of information. The individual choice not to respect the procedure may be shared with a neighbour; reasons for this refusal can circulate and contribute to the emergence of a collective sense of injustice from which another form of protest can potentially develop. This is especially so when a 'turning point' situation occurs.

'We have nothing to lose' (A.J., 28, Eritrean). Having one's fingerprints taken would mean the start of a long and uncertain procedure which, in the best-case scenario, results in these migrants obtaining a status in a country in which they do not wish to settle. In difficult physical and

psychological conditions, this daily resistance is possible because the alternative is perceived to be unsatisfactory. This form of resistance would not, however, have effective consequences for migrants if a critical point were not reached: a crucial threshold of people disobeying, provoking a transfer process blackout, since theoretically no one can leave the island without having first been identified. The authorities were concerned about the number of people detained at the centre—the conditions of detention became unacceptable. The decision to let migrants leave the centre would be a pivotal moment which allowed the protest to enter the public arena, and caused concern among residents and policymakers.

Resistance thus unfolded in two stages: first, migrants refusing to record their fingerprints reached a number high enough that, on 20 July 2013, the law enforcement agency decided to let the migrants out of the centre. The repeated refusal, which now involved more than 300 people, caused the identification and transfer operations to stall. The impasse destabilised public order: faced with the impossibility of forcing migrants to comply and following the continuous arrival of new migrants to the island, the number of people confined in the centre became too great and resulted in the release of migrants on the island in order to avoid riots at the CPSA.<sup>4</sup>

In the second stage, which followed this decision, the protest took the form of a march which ended with the occupation of the main square of the village for two days and two nights. At the end of July 2013, at the height of the tourist season, a group of migrants from the CPSA demonstrated twice in the space of three days, marching through the streets of Lampedusa to demand the right to leave the island without recording their fingerprints in the Eurodac database.<sup>5</sup> Following the second

<sup>4</sup>No explicit or violent opposition would be tolerated inside the detention centre. After migrants caused a fire in a wing of the centre in 2007, the Centro di primo soccorso e accoglienza (CPSA) was closed and renovated, but personnel working there are deemed to be very careful regarding possible misbehaviour, which must be controlled before tensions explode.

<sup>5</sup>Created in 2003, the aim of the Eurodac database is to supply the system for comparing fingerprints of asylum seekers and various categories of illegal immigrants. It is designed to facilitate application of the Dublin II Regulation, which aims to determine which the European Union (EU) country is responsible for examining an asylum claim. In particular, Eurodac allows EU countries to participate in the identification of asylum seekers and those recorded as having crossed a border of the EU illegally. By comparing fingerprints, EU countries can check if the migrant has already formulated a claim in another EU country or if they have entered EU territory illegally. For more information on surveillance systems of illegal immigrants to Europe, see Btihaj 2013; Broeders 2007.

demonstration, the group decided not to return to the centre, and to occupy the main square of the village. The mistrust and even hostility of a section of the population of the island was palpable. July being the most important month of the year for tourism, the visibility of the migrants in the public space was perceived as detrimental to the image of island.

The situation eased the next morning as a result of the meeting which took place behind closed doors between representatives of the town hall, the police, the church, and the Ministry of the Interior. It was decided that a number of migrants originating from the Horn of Africa would be allowed to leave Lampedusa without their fingerprints or their photograph being taken. Thanks to the collective action, many migrants were able to leave Lampedusa without their fingerprints being recorded.

### REFUSAL: THE IMPORTANCE OF SUBTLE RESISTANCE

In refusing to be identified, the migrants of Lampedusa performed an act of resistance similar to that described by Ellermann (2010) in which she considered the destruction of identity documents as a strategy against deportation. According to Ellermann, migrants who deprive themselves of an official, administrative identity succeed in tying the hands of the state within the 'liberal constraint': destroying their documents is a way of evading the possibility of being expelled from the country, since the expulsion procedure can only work in conjunction with a document which certifies the identity of the individual. Linking this act to Scott's 'weapons of the weak' (1985), Ellermann shows that there is potential for a destabilisation of established power. Indeed, the state's potential attempts to convince insubordinates to toe the line of respect for the law in force have little chance of success if those it is addressing have already been denied their rights and/or freedom by the state. Which is precisely the case for migrants of Lampedusa.

The refusal to have their fingerprints taken acts as an instrument of silent, anonymous, and individual protest, first of all. It is a form of protest which is invisible to most, since the inhabitants and tourists on the island do not have access to the closed space of the detention centre. However, when a critical number of individuals refusing to have their fingerprints recorded is reached, this act attains a subversive level of impact capable of sabotaging the system of classification and transfer of migrants. In order to work, this system must be able to identify migrants and transfer them quickly. Delays in the transfer process, usually due to the impossibility of

identifying migrants following their refusal to give fingerprints, can cause the system to break down: this sabotage, made possible thanks to the multiplication of refusals during a period of daily new arrivals, creates the possibility to transfer the protest outside the centre. It was because the law enforcement agency ultimately authorised the migrants to leave the centre that the organisation of a protest in the public sphere became possible.

Acts of resistance prior to the organisation of public protest are under-researched in social science. In addition to the fact that researchers are not generally allowed inside these places, this is even more the case when the situation escapes the control of the public authorities, and the latter have no interest in documenting these acts. To a certain extent, the refusal to comply highlights the injustice of a procedure which forces the migrant to claim asylum in a country that he or she has not chosen. The public authorities naturally have no interest in opening up discussion on this issue, and protests, which would also cause information to spread about poor confinement conditions, are unwelcome.

These reiterated refusals to comply constitute, however, a decisive action to allow the protest to become explicit, even if they are located in a scarcely visible spectrum of political struggle. The anonymity is, moreover, both the condition which allows migrants detained at the centre not to comply, since it means they avoid personal reprisals, and one of the objectives of their refusal: the absence of identification gives them the chance to continue their journey.

Distinct from violent and open forms of protest which have already been studied by numerous migration and social movement specialists (Clochard 2016; McGregor 2011; Lecadet 2014; Bernardot 2008), the refusal to record fingerprints is testimony to a subtle opposition which operates within the detention space where migrants' rights are not in any way guaranteed (in terms of duration of detention exceeding the maximum prescribed by law; living standards which do not respect the dignity of those concerned; and the lack of recourse to justice for migrants). Faced with a system which confines them within the centre, and which is based on the non-respect of fundamental rights, these 'protesters in the shadows', nevertheless, demonstrate a capacity to act—individually and collectively—which brings nuance to the image of the migrant crushed by absolute power and reduced to 'bare life' (Agamben 1998).

The subtle refusal in the shadow of the detention centre wall then allows, once the conditions are met, the emergence of the 'public transcript' which openly translates the protesters' demands, making visible the

collective entity which bears this criticism of power. 'Once the conditions are met': this is the moment when all is in the balance. The number of migrants refusing to be identified is crippling the centre's management; the migrants see the opportunity to leave this place of confinement and to organise themselves so that they may disturb the public order; and use this disturbance to turn to their advantage the public authorities' need to silence the protest quickly (to avoid having to admit, at the height of the tourist season, to a situation that is beyond what is prescribed by law regarding the reception of migrants). The larger protest would not have been effective were it not for the prior refusal to have fingerprints taken by a sufficiently large number of migrants. This form of repeated, everyday defiance performed in the shadow of the detention centre walls, out of sight of residents, tourists, and researchers causes the system of reception and transfer of migrants to break down, and pushes the public authorities to take initiatives which transform into opportunities for protest.

The result of the protest in the public arena also tells us about the nature of the 'hidden transcript' of the public authorities, which is reflected in practices which cannot be revealed openly (i.e., the compromise which consists of transferring migrants without their fingerprints having been taken). These practices must remain hidden or else the situation would become truly explosive at the point that the arbitrary nature of power and the injustices caused by its deployment are revealed to a wider audience which can be mobilised beyond this tiny island territory.

The weakness of the system of classification and transfer is made visible to the migrants, who then take advantage of the opportunity to breach the system whose rules they have already circumvented. However, the decision to derogate from the procedure ultimately rests with the established power, which can define its conditions before proceeding to 'exceptional' transfers of migrants: the main condition being the return of the migrants to the centre, to a discreet space in which the public transcript of the struggle becomes hidden again, where silence masks the discontent once more, and where migrants become invisible to the public again (residents, tourists, researchers, journalists, etc.).

## CONCLUSIONS

The migrants responded to a situation of suspension of the rule of law (prolonged confinement in an overcrowded environment in which adults and children were mixed, without the possibility to appeal to justice) with

a protest which in turn bypassed the law. Not only did this protest infringe the obligation of confinement in the centre, but it also had the aim of claiming a right (to freedom of movement), which required non-compliance of another obligation (that of keeping a record of the migrants by means of taking their fingerprints).

Lampedusa provides a prime example of the conditions in which migrants, deprived of legal existence and freedom, can attempt to subvert, even if only temporarily, public order. The timing was opportune, since summer is a period in which the presence of tourists can be used as a weapon. The apprehension of residents and the local authorities about the tourist season played in the protesters' favour.

Prior to the outcome of the protest, the case of the migrants' struggle on the island of Lampedusa served to highlight the essential role played by a subtle form of resistance such as a refusal to comply with the law. This study reinforces the idea according to which 'each realm of open resistance to domination is shadowed by an infrapolitical twin sister who aims at the same strategic goals but whose lower profile is better adapted to resisting an opponent who could probably win any open confrontation' (Scott 1990).

More specifically, the case studied here has shown that the silent refusal to comply with the injunction to have fingerprints taken was the prerequisite and the condition for the transformation of the protest into a visible demonstration in the public arena, capable of conveying the causes of the battle which was being led by these migrants.

Finally, it consisted of subverting the public order within the detention centre, via a subtle, individual, and anonymous act of protest that was visible to residents of the island of Lampedusa and the media. This protest reached a critical threshold of refusal, which then enabled the emergence of an opportunity to translate this invisible dissensus into a demand in the form of a march and the occupation of a public space. The protest having been made visible, the next step was its perception as threat to public order outside the centre, which worried the public authorities to the point of convincing them to yield to the migrants' demands on the condition of an end to the visible version of the protest.

The choice to pay particular attention to what happens before a protest becomes visible—and conveys a stated dissensus—was aimed at understanding a process which leads to the emergence of a political force where the researcher does not necessarily expect to find one. In other words, it was necessary to explain the conditions which enabled the passage from

subtle forms of insubordination to open protest. To focus only on the explicit and exceptional demonstrations of this dissensus, ignoring the subtle roots of the protest in everyday acts of sabotage and refusal that are invisible to most, would risk missing the immense political terrain that lies between quiescence and revolt (Scott 2010).

Ultimately, this case study aims to show the capacity for resistance—both behind the scenes and explicit—of a group considered by a large section of the literature not only to be dominated but also often to be destined to normalise its subordinate position. To counteract a vision which assigns migrants the double identity of being dominated and alienated, this contribution returns to possibilities of emancipation for migrants in a context of exception (Doty 2007), without, however, transforming them into beings free of all oppression.

By analysing ways in which migrants disobey in a situation of administrative detention, this case shows how people have increasingly negotiated the outlines of their identity as subjects of legality (Barbero 2012: 531), experimenting with a way of being ‘political’ (Isin 2002) by way of the subtle transgression of a procedure, then through a claim to what they consider to be a freedom of movement that is more just (Fraser 2009). The example of migrant protests on Lampedusa shows ways in which forms of existence can be experimented with in order to call the fairness of migration law and policies into question. It serves as a critique, through action, of a political and social world within which unjust hierarchies of status persist.

Their demand for mobility without this right being conditional on the granting of a legal status by a state or institution requires a capacity to imagine a society in which the current hierarchies lose their *raison d’être*, and in which the granting of fundamental rights does not depend on a legal identity inherited at birth (Shachar 2009).

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## Out of the Rubble: Affective Infrapolitics in Bangkok

*Jaime Moreno-Tejada*

### INTRODUCTION

From the 21st floor of a newly built condominium, one can easily count ten high-rise towers under construction. Looking down, though, one sees a mostly empty rectangular space (Fig. 17.1). It used to contain four blocks of houses. The two perpendicular streets separating them are still visible, and when fieldwork for this essay began, about a year and a half ago, the old buildings were still standing. It took the bulldozers four months to flatten the land, but they could have done the job in a week or two. Following contractor orders, the machines moved in sudden bursts of destructive energy, punctuated by curiously quiet weeks, when lush vegetation covered over the rich tropical soil. Eventually, one of the quad-

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**Fig. 17.1** The ruin seen from the North. The campus is to the left

rants was paved and turned into an open-air parking lot for the new shopping center that lies across the road. The other three quadrants remained rubble-free, but positively abandoned, until last week, when a small, red bulldozer started clearing the overgrowth and breaking up the asphalt. The land is owned by Chulalongkorn University, a very affluent real estate developer, whose large, leafy, royally sponsored campus lies immediately to the East of the field. South and West of the field, about a dozen blocks of two-storied shophouses (*tuek thaeo*) await demolition.

These are the remains of a Chinese neighborhood called Pathumwan Siang Gong, or Siang Gong Suan Luang, most of it vacant and in various states of dereliction. The area has been long known for its many car parts and car repair shops. Its narrow *sois* (lanes) are littered with metal scrap and the ground is covered in layer upon layer of dense black grease, a rubbery substance that creeps up the sidewalks and merges with the bottom of the walls. Pathumwan, though, is a central district of Bangkok, filled with shopping malls and condominiums, and built around the handsome sprawl of the university campus. The ruin was once a prosperous sino-Thai working-class community. In the light of gentrification, it's "matter out of place" (Douglas 1966, p. 36). Cleaning up and clearing out is the new paradigm. There are a few families living in the partly or totally derelict blocks, but the majority have left. The *sois* and the field attract the disen-

franchised, many of whom are Thai migrants from the countryside—taxi drivers, street vendors, and drifters with no clear occupation. These people, along with the rubble, the soil, the grease, the discarded plastic bags, and the foul tropical smells are also part of the ruin. From where I’m sitting now, in an air-conditioned, Christmas-decorated, Starbucks-inspired, faux-French coffee place, with floor-to-ceiling windows overlooking the sun-drenched rubble in the field, the place looks dead and unworthy of attention. But stay with it, keep looking, and the derelict streetscape will quickly come to life. It occurs to me that the ruin has an air of quiet dignity about it, as if these stones and weeds and bodies were the last relics of an old city that had been besieged and bombed into oblivion. This *air of quiet dignity*, almost offensive in its blunt commercial meaninglessness, is what I refer to as affective infrapolitics.

\* \* \*

In an afterword to a special issue on infrapolitics (2012), James Scott pondered on the “exotic” usage of a concept that had seen its fair share of action over the previous two decades. While Scott admitted that a broad understanding of infrapolitics was to be expected, he nonetheless pointed out that some of the uses of the term were a little off the mark. The main question he asked was whether or not mobilizations, including those with alternative credentials, should be given infrapolitical status. Probably not, was the answer. Infrapolitics is not the same as informal politics, nor can it be reduced to grassroots or communitarian activism. Infrapolitics, as first outlined in 1985 and 1992, lies beneath (*infra*) the surface of political struggle. It’s hidden by necessity, mostly because protest is dangerous, or at the very least counterproductive. In its original meaning, infrapolitics was a feature of the Global South, where “the rights of citizenship secured by the French Revolution” (Scott 2012, p. 113) had only been nominally recognized, or not recognized at all. Scott drew inspiration from at least two sources: the French theorists of everyday life, namely Henri Lefebvre and Michel de Certeau, who came to despise the totalitarian channels of Marxist ideology (the Communist Party), and American sociologist Erving Goffman, who famously put forward a theatrical model for the study of public conduct. Scott has been more or less clear about these, if not always explicit, which might explain the colorful journey of the term. The ample use of the metaphor, “art”, which Scott took from de Certeau, highlights

the author's own (anarchist) leanings vis-à-vis the bureaucratic stance of the modern state.

To this we could add George Orwell, a staunch anti-authoritarian, whose essay, "Shooting an Elephant", was sharply discussed in the opening chapter of Scott's 1992 book, *Domination and the Arts of Resistance*. The first paragraph in Orwell's account of his days as an imperial police officer in Burma is, in my view, what infrapolitics is all about:

In Moulmein, in Lower Burma, I was hated by large numbers of people—the only time in my life that I have been important enough for this to happen to me. I was sub-divisional police office of the town, and in an aimless, petty kind of way anti-European feeling was very bitter. No one had the guts to raise a riot, But if a European woman went through the bazaars alone somebody would probably spit betel juice over her dress. As a police officer I was an obvious target and was baited whenever it seemed safe to do so. When a nimble Burman tripped me up on the football field and the referee (another Burman) looked the other way, the crowd yelled with hideous laughter. This happened more than once. In the end the sneering yellow faces of young men that met me everywhere, the insults hooted after me when I was at a safe distance, got badly on my nerves. The young Buddhist priests were the worst of all. There were several thousands of them in the town and none of them seemed to have anything to do except stand on street corners and jeer at Europeans. (1936 [online])

Now, we should think beyond postcolonial theory. Colonialism is not a dead European project; it's an ongoing historical age, alive and well in the torn landscapes of late capitalism. "Shooting an Elephant" is about imperialism, but more generally is a meditation on the arbitrariness of power. It's also an outline of class conflict, between those who claim ownership of modernity (the "civilized") and those who have been drawn into the vortex of progress and struggle to keep up (the not-quite-yet "civilized"). Orwell's text, though, contains no discernible politics. The only victim—and the only one *playing the victim*—is Orwell himself. In the absence of grassroots politics (always, necessarily, politics of self-victimization) there must be something else at play. That elusive something is what Orwell (and Lefebvre too) discovered in the 1930s: that resistance needn't be political in the traditional sense of the word; in fact, it almost never is. This was as true in the provincial towns of British Burma as it is in the gentrifying backstreets of contemporary Bangkok.

If grassroots politics is the performance of victimhood, then infrapolitics is the exact opposite of grassroots politics. It's not performative (not everything is done to impress), and it's not a recipe for attracting sympathies. Infrapolitics is anti-political resistance. It's driven by gut feelings, not by ideology, and its goal is the protection of dignity. *The pursuit of dignity* will require further investigation. Could it be the last human trait to disappear in any given situation of disenfranchisement? In more-than-human research, the question has already been raised: do animals have dignity? Is it a cultural construct, a biological given, or both? In a context of state and market expansion, a process that involves the creation and reproduction of an underclass, infrapolitics means everyday resistance through petty gestures that deviate from the norm and signify non-compliance. Infrapolitics is also reflection of (1) the state's failure to incorporate large sectors of the population, both geographically and morally, and (2) the continuity of tradition, whatever "tradition" means, in the face of modernity's totalitarian agenda. These behaviors are often confined to the body: ways of moving and posing, facial expressions, and the like. Infrapolitics is the unreadable smile of the servant, for instance.<sup>1</sup> Infrapolitics can sometimes be illicit, in the sense that it's forbidden by law, when law enforcement is generally understood to be weak or flexible, or both. More often, though, infrapolitics is illicit because it's immoral, contrary to "culture", never codified and only governed by unwritten rules of etiquette. Impossible to organize and highly reliant on picaresque (it is referred to as an "art" for a reason, even if it benefits the wider community), infrapolitics has an unmistakably anarchist, not socialist flavor. Infrapolitics goes deeper than grassroots politics. One might call it "dirt politics", or "worm politics" as it operates underground, beneath the tents-in-the-park realm of social activism.

This chapter deals with "dirt politics". The focus is on affect, that is, embodied emotions that operate in the pursuit of dignity. Have another look at Orwell's quote. The keywords are all there: "aimless", "petty" feelings, "spitting", "sneering", and "jeering". Infrapolitics is impolite in relation to middle-class rules of propriety. Propriety is a state of cleanliness that is both metaphorical and real, albeit also utopian. Infrapolitics is

<sup>1</sup> Laziness is of critical importance, for modernity is often a question of labor, or rather of laborers upsetting moral and economic standards by testing the limits of unproductivity (Moreno Tejada 2016).

always there, so it's mentally unnerving. When it relates to bodily fluids, as it often does, infrapolitics is physically disgusting. It's a threat to what Freudian historian Norbert Elias (2000 [1939]) referred to as "the civilizing process"—centuries of training in which the European elites, first, and the lower social strata, second, learned to use their bodies in ways that distanced them from animality. The birth of modernity, in Elias' view, is observable in the transition from the aggressive social relations of medieval Europe to the passive aggressive politeness of Victorian Britain.

In Thai language, there is a term for "civilization" in the Western sense of the word—*siwilai*—that dates back to the Franco-British colonial adventures of the mid-nineteenth century (Winichakul 2000). Consuming foreignness, as Thorsten Veblen wrote more than one hundred years ago (1899), is what the middle class does, mimicking the aristocracy and connoting higher status, or "civilization". Many of the features of European "civilization" (such as the use of the handkerchief to catch snot expelled from the nose) were imported from the East. Conversely, the bulk of *siwilai* comes from the West. *Siwilai*, like "civilization", is a set of cosmopolitan tastes, manners, and opinions (dispositions) that indicate superior economic and social rank. In Thailand, a highly stratified society, the upper-middle class, or *hi-so*, is responsible for identifying and appropriating "civilization" (the hippest brand of shoes, for instance) and dispensing it downwards in the form of *siwilai*. Affective infrapolitics may be understood as an intimately offensive type of anti-politics that operates at the beating heart of *siwilai* (the dirty feet of the manual laborer protruding out of worn-out sandals, for instance). Affective infrapolitics is not only about causing offense but also about offense taken or perceived—a form of paranoia, a daily encounter with "uncivilized" otherness that, as Orwell confessed, gets badly on one's nerves. This chapter deals with the deeper, darker levels of infrapolitical agency. It makes an admittedly stark but useful distinction between the middle and the working classes, and it explores how rubble is embodied by the disenfranchised, against a background of middle-class colonization of everyday life and everyday space.

## LIVING RUBBLE

Scott (1976, 2009) situated infrapolitics in upland Southeast Asia—what some scholars refer to as Zomia. The thesis goes that tribal peoples have historically drifted toward the forested hills in a conscious effort to escape state administration. The ruin is a refuge zone too, an urban iteration of

Zomia. In the ruin, to put it simply, the body is closer to nature. The field and the derelict *sois* allow for a degree of informality in personal and professional behavior that would not be tolerated elsewhere.<sup>2</sup> The taxi drivers that circulate along the main *soi* use the field to cool their cars, take a rest, and relieve themselves. In the ruin, there is a moral economy of sorts, “patterns of reciprocity” (Scott 1976, p. 3) that even out the social game. The “moral economy”, an expression first used by social historian Thomson (1971), was Scott’s earliest approximation to the concept of infrapolitics. Cars are left with the doors wide open and unattended, as the driver finds a hidden spot to urinate. Violent crime is rare in the area—a mugging caused great commotion last year, and a security guard was given the job to distribute warning pamphlets outside the mall. The mugger, the security guard of the condominium told me pointing in the direction of the ruin, came “from there”. As Norbert Elias explained (2000 [1939]), “civilization” starts at the threshold between interpersonal violence and emotional restraint. This rings even truer in Thailand, where *similai* is infused with widely held Buddhist ideas about community harmony (Parnwell and Seeger 2008). The Thai understanding of community harmony is similar to Scott’s moral economy—a celebration of pre-modern conviviality—but in urban settings the limits of harmony simply coincide with middle-class standards of behavior. Middle-class harmony is a corporate reworking of the moral economy: the unwritten rules of *similai*, combined with the hijacking of history, pushed vertically from the top to the bottom of the social ladder. At the bottom, “civilization” dilutes into the out-of-bounds manners of the working class. Improper bodies drift into, then out of the ruin, as if reinvigorated by the clandestine qualities of unconquered space.

As dawn breaks in the background, a rooster sometimes crows at the southern end of the field. Farm animals provide visual and in this case noise pollution to the modern streetscape. Like stray dogs and vagrant elephants—pachyderms were banned from the streets of Bangkok a decade ago—farm animals in the city are a source of day-to-day, perhaps unconscious embarrassment. Elias (2000 [1939]) also noted that shame was the precise mechanism behind the “civilizing process”. Again, this observation is particularly poignant in Thailand, where the fear of losing face is the

<sup>2</sup> Interestingly, the Thai phrase for “informal economy” is *sethakit theuan*, which literally translates as “wild economy” (Johnson 2012).



most effective form of social control. “Face” is a ground rule across all social classes, although in contemporary Thailand there is a definite link between face and money, and they both can be estimated on the basis of external appearance (Parsons 2008). A rooster crowing in central Bangkok makes Thailand sound like a poor country. In more general terms, it could be argued that modern space is utopian in principle. As suggested earlier, modernity is a totalitarian project. Like the shiny walls of the shopping mall, the ideal modern surface is spotless clean. Arjun Appadurai (2006, p. 9) has written about the “anxiety of incompleteness” typical of all modern nations, that invariably strive toward ethnic and racial purity. The same expression may be applied to the spatial projects of modernity. In the high-rise, a container of sophistication, the rooster is a harbinger of chaos. Affective infrapolitics, represented here by the sight and soundscape of the rooster, is a reminder of the necessary incompleteness of modernity. The unholy animal is kept outside a makeshift dwelling, the only construction in the field, occupied by at least three men, one of whom drives a pink taxi. The policemen who patrol the area in their motorbikes, unable and unwilling to enforce state power on every corner of the city, turn a blind eye on this and other irregularities.

During the day, the sun is sizzling hot, and mobility in the open is reduced to a minimum. In the field, only the shades of the remaining trees provide some living space. Idle couples sit on mats and eat with their hands—not something middle-class Thais would do in polite company. Unsuspecting tourists crumble in shock and mostly immobilized Bangkokians drive across the city in sealed, smoky windowed, air-conditioned cars. There is a machine-like stiffness in driving techniques, as the driver’s body is caged and strapped, and his or her limbs accommodate to the mechanistic demands of the automobile (Urry 2004). For over a century, driving has been a sign of distinction. Around 1905, King Chulalongkorn became the foundational hero of Thai driving culture when he made the court parade in automobiles along the newly built boulevards of Bangkok (Askey 2002, p. 35). Drawing on phenomenology, David Seamon (1979) referred to the unrehearsed coordination of urban bodily movements as body-ballets. It’s an apt metaphor. Driving your own car, particularly in the capital cities of the Global South, is not unlike dragging your home, your castle, across a hostile wilderness. Inhabiting one’s car is a key component of “the good life”, “that moral-intimate-economic thing” (Berlant. [e-book]) that best defines the aspirations of the middle class and that is always at risk. Ballet dancing, a moneyed spectacle for the

upwardly mobile, reassuringly tinged with fin-de-siècle Europeaness, is a near miraculous balancing act. It can't possibly last. We hold our breath watching pirouettes, like we do at home, our mortgaged home, in the age of finance. There are bourgeois body-ballets specific of car drivers, including of course taxi drivers. A typical taxi driver in Bangkok, however, might drum his fingers on the wheel to the sound of country music, and he might reach periodically for a little plastic bag containing glutinous rice—vestiges of rural life. Taxi drivers in this area may also move out of the “civilized” flow and into the quasi-“barbaric” space of the ruin, should they need a nap or a bathroom break. Only the working-class body is visibly active under the sun. Their tanned skin, face and arms, hidden under protective clothing, speak volumes. Blackness is dirty/dangerous and *simi-lai* is unapologetically white. (This is true to an extent that shocks the innocent Western visitor; almost all skin products on sale at the mall across the road carry the promise of “whitening”, but that is only the tip of a rather sinister iceberg.) Between seven and eight in the morning traffic becomes dense and four-wheeled taxis struggle to find speed. Tuk-tuks (three wheeled bikes) and above all motorcycle taxis make their appearance at this point, de facto dominating transportation services in the *soi* until midmorning, when the rush hour comes to an end, and again after four or five in the afternoon.

At the intersection between the gates of the University campus, the shopping mall's main entrance and the derelict field, but confined to the corner of the field, there is a motorbike taxi service. (See Fig. 17.2.) Three or four large trees, reminders of a built environment that no longer exists, provide shade in the hot hours of the day. At any given time, it is possible to find a handful of young male drivers on stand-by. In the past week, the little red bulldozer has worked its way through the sidewalk, so their office space has been compromised. As mentioned above, the bulldozers are unpredictable, and no one knows when the process of ruination will be completed. The leaseholder of a nearby land, on the opposite end of the main street, failed to pay the rent to Chulalongkorn University and—rumor has it—is now in jail. For about a year the place functioned as a self-styled Night Bazaar, but it was mostly vacant. Now there are three open-air restaurants along the edge that operate informally thanks to rumbling electric generators. Otherwise, the land has been fenced. People on this end of the street are unaware of what exactly is under construction. The office space of the motorcycle taxi service is a menagerie of objects that, compared to the branded newness of the shopping mall, seem tired



**Fig. 17.2** Motorcycle taxi service at the corner of the field. The picture was taken from the main entrance to the mall. The gates of the university campus are to the left

and transient at the same time. These objects are part of the infrapolitical streetscape, a threatening disorder that must be kept at bay or, ideally, eliminated. Chaos is rooted in the past and projects itself onto the future. As modernization closes in, the bulldozer being a tool of *damnatio memoriae*, hybrid spaces become incongruent. Even the old trees are strangely out of context. There is a low, white stone bench, of the kind sometimes found in provincial road restaurants, under a large Domino's Pizza umbrella. There is an empty telephone box too. Plastic bags and food containers hang from the lower tree limbs. The men park their bikes on the last portions of even ground and wait.

It is not difficult to see them squatting in the shade, a highly symbolic posture that brings them closer to nature, poverty, and the countryside (the majority of motorcycle taxi riders come from the rural Northeast). A squatting young man reinforces the social order, and it reminds the accidental shopper, who walks across the parking lot and into the mall, of the failure of bodily indoctrination. It could also be construed as a subtle act of infrapolitical disobedience. The original docile body, Michel Foucault noted (1977), was that of the early modern soldier. Shortly after, the state apparatus produced the schoolboy, who among other things was taught to sit

straight. In the twentieth century, propaganda (a cocktail of fascism and advertising) turned every able body into a soldier and a child. Such is the ideal citizen in the totalitarian state. Fascism lingers in Asia in the form of authoritarian capitalism. It's not a thing of the past; quite the opposite, it provides a hint of what is to come in the Asian Century. Docility is much better understood in Asia than it is in the West. It follows that disobedience, no matter how trivial, stands out much more prominently in Asia than it does in the West. Let's not forget that Thailand has been effectively ruled by fascist-type military regimes since the 1930s. Marshall Phibun, Thailand's answer to Mussolini, instilled new life into the project of *siwilai*, banning the tooth-blackening custom of chewing betel in 1940 and stipulating the use of shoes and hats "in accordance with civilization" in 1941 (Peleggi 2007, pp. 150–1). A squatting, front desk agent of the service industry embodies the discourse of political letdown. Tim Ingold has explained that the squatting position, in Western societies, "is reserved for those on the very lowest rung of the social ladder" (2004, p. 39). This is also the case of modern Thailand, where squatting represents an affront to *siwilai*. The middle classes do not squat, not in public anyway. Sitting down on chairs is one of the postural rules of the modern, globalized body.<sup>3</sup> "A fourth of mankind", anthropologist Gordon Hewes wrote in 1955, "squats in a fashion very similar to the squatting position of the chimpanzee, and the rest of us might squat this way too if we were not trained to use other postures beyond infancy" (Hewes 1955, p. 231). Genital exposure and the fact that it is a position of defecation also explain the polluting overtones of squatting and its symbolic distance from the "civilized" dominant ideology. The riders are well-aware of the connotations of their posture, and by choosing to rest in the deep squatting position, they both assume and challenge the embodied rules of *siwilai*. Squatting, in short, signifies animality and filth. It's a proud gesture and a marker of *habitus* of the "peasant in the city".

Everyone seems to know someone who has been involved in a terrible accident while riding on the back of a motorcycle taxi. Riders are said to be young and reckless and sometimes inebriated. This is a cliché but, like

<sup>3</sup> On chairs, Simon de la Loubère, leader of the French diplomatic mission to Siam in 1687, wrote: "They have no chairs or seat but bulrush mats: no carpets, but what the King bestows on them. The rich, indeed, have cushions; but they are used only to lean on, never to sit on" (in Richardson et al. 1759, pp. 230–1).

all clichés, it contains an element of truth. Motorcycle taxis are licensed, however, and even if they are not mentioned in the massive billboards that advertise the swanky condominium lifestyle, they move many of their residents in and out of the *soi* (Askew 2002, p. 248; Sopranzetti 2013). They take customers to the subway and the SkyTrain, and into the campus. Their body ballet is more aggressive and arrhythmic than that of the car drivers, as the motorcycles move swiftly between traffic. The gestures of the riders are, to follow up the metaphor, closer to Thai boxing than they are to ballet. Most of the riders wear a helmet, which seems to be a ubiquitous practice in Bangkok (customers almost never are offered one). But they will challenge all other road regulations, providing they can get away with it. Sixty baht (\$1.5), or approximately the value of two local rides, is the going rate when stopped by the police. There exists a balance between bribes and leniency, which is also integral to the moral economy of the *soi*. Widespread corruption, another incarnation of dirt, is acknowledged by the Thai middle classes with gestures of shame (such as lowering their eyes). Riders will joke about corruption in front of the inquisitive foreigner, and they will continue using the sidewalk and every conceivable shortcut, often moving against traffic, riding as fast as they possibly can. There are individual differences between them, though, and one gets to learn which riders are more likely to crash. Claudio Sopranzetti has written about the subversive mobility of motorcycle taxi riders in Bangkok, connecting everyday resistance with the mass street protests that shook the Thai capital at the time of his fieldwork, in 2010. Sopranzetti's work only explores the uppermost layers of the infrapolitical game, but it does shed light on the liminal qualities of this type of labor:

A framework that lures drivers to flexible post-Fordist capitalism, propels them in a space of resistance from capitalist organization of labor in the factory, and orients their struggles against local mafia and control over their occupation, as well as their larger political demands. (2013, p. 130)

Their bodies are exposed and so are the bodies of their customers. Since virtually all motorcycle taxi riders are male, female passengers find themselves in a vulnerable position (Sopranzetti 2013, pp. 75–77). In a culture where bodily contact between men and women in public is frowned upon, traveling on the back of a motorbike carries some stigma. Most female passengers are young, clerks, and students who, it is assumed, cannot afford the comfort of a four-wheeled taxi. Some (by no means all)

Chulalongkorn University students, however, will choose the motorcycle taxi over the free-but-sluggish shuttle bus when they are running late for class. It goes without saying that female passengers are a topic of conversation among riders in private moments of conviviality. As it happened in other tropical regions, at the turn of the twentieth-century Siamese bodies were unnaturally covered in the name of Victorian-inspired propriety. The bodily exposure of riders and customers, the brisk physicality of their movements, and the proxemics involved in carrying passengers also contribute to the “wild” (or not quite modern) halo of the motorcycle taxis. From the riders’ perspective, speed and unstructured mobility are synonymous with liberty. *Khwamidsara pen sing thi sam khan thi sud*—“Independence is the most important thing”—is something that I’ve heard, phrased in different ways, on several occasions. Freedom has a lot to do with dignity, and dignity is outwardly articulated through bodily gestures that refuse to be accountable. Again, these men have been excluded from the discourse of “the good life”. They are simply not part of the middle-class utopian imagination. But they can be seen, or rather felt, through the corner of the eye. Furthermore, exclusion generates a timespace for self-realization, an opportunity to rekindle what Karl Marx referred to as the species-essence—freedom of expression in the playground of the possible. These men could have other jobs in the service and construction industries, but they have chosen to live dangerously because finding release from schedules “and from bosses who look down... on them” is a central part of their urban identity (Sopranzetti 2013, p. 15).

Night falls around six-thirty, when the streets of Bangkok are filled with pedestrians, flashing mega-screens, and ineffable traffic jams. I sometimes eat dinner at a restaurant that lies on the southern end of the field, facing the shopping mall and right across the street from the shaft where the rooster crows in the morning. It’s one of the last establishments of its kind in this area. One by one, the buildings have been boarded up with large metal plates, placed strategically along the *outer* edge of the sidewalk. The message is clear: not even pedestrians are welcome any more. Infrapolitics may be understood as a kneejerk reaction to a situation of injustice. Modernity claims that progress is freedom, but to many it *feels* like an enhanced version of the master-and-slave dialectic. The service industry relies on servants. It’s in the name, after all. Urban renewal is violently geared against those unable to afford or accept the economic and cultural reevaluation of the neighborhood. Gentrification is a “civilizing mission” in the strict sense of the expression. The native residents, who worked at

the various garages on the ground floor and who lived with their families upstairs, have been dispersed all over the city, although evidently some will occupy the derelict buildings up until the day when the bulldozers come knocking on the door. Lit windows here and there give them away in the night time. Walking along the pitch-black streets, beyond the “civilized” frontier of electric lighting, the ground feels rubbery with grease, and one can easily discover the “hidden transcript” (Scott 1992) of affective disobedience: men sleeping on car bonnets and squatting in silence in the dark, women washing quietly in blue plastic bins taken from the nearby construction sites, territorial packs of stray dogs, and occasional cooking fires on the pavement.

This particular corner has not yet been boarded up. (See Fig. 17.3.) There is a constellation of three or four lit windows at the crossroads, and an outdoor restaurant on the sidewalk. Months ago, I was told by one of the waiters that they were planning to close down for good in December. They are still in business as I write these words at the year’s end. There is a large, new indoor market a couple of blocks away, where some of the street sellers from Pathumwan Siang Gong and other districts have been relocated. But higher rents, regulated schedules, tighter hygienic standards, and a general loss of *idsara* (freedom) are sacrifices not everyone is willing to make. Not many vendors moved to the Night Bazaar on the

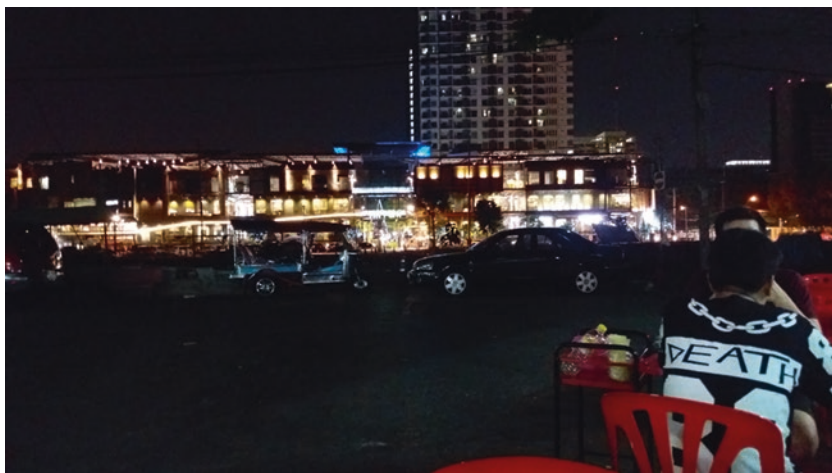


Fig. 17.3 The mall and high-rise as seen from the restaurant



opposite end of the street either. The indoor market retains at least some of the “aura” of the street restaurant—it’s an inexpensive canteen for university students; the Night Bazaar was a textbook case of urban rebranding and gentrification (Smith 1996). Eateries offering cosmopolitan street food at three or four times the price of local street food is the kind of economic jump-start that underpins a wave of modernization. This time, it wasn’t meant to be. Michael Herzfeld made an interesting comparison between the contemporary death of the Greek *agora* (an archetypal public space) and the disappearance of the traditional Thai market place (*talad*), a process of ruination of both architecture and local communities that Herzfeld referred to as “spatial cleansing” (Herzfeld 2006). The expression conveys the violence of ethnic cleansing and also highlights the symbolic and literal importance of cleanliness in the making of modern space. In a recent book, Herzfeld analyzed the subtle language of resistance used by local spokespeople in their doomed fight versus eviction from Bangkokian prime real estate. This is the terrain of social activism, not infrapolitics. Herzfeld’s thick description of the meetings between community leaders and city officials, a game of speaking (on the part of the powerless) and not listening (on the part of the powerful), rather proves my point that grassroots politics has none of the raw, unsettling energy of affective infrapolitics:

A dreadful politeness, like a cloud of cheap scent, seemed to fill the tense space around the bureaucrats, whose white shirts and neckties and stiff demeanor emphasized their detachment from the poverty-stricken but socially vibrant life around them and the conceptual and ideological distance that separated them from their supporters. The formal speech and, at times, noticeably strained smiles of both sides did serve a useful purpose, by preventing the proceedings from deteriorating into a shouting match, although the conventions only thinly masked the mutual anger and contempt. (2016, p. 112)

The public politics of the community can easily turn into a fangless form of diplomacy. Their whole way of life, on the other hand, pulsates with a primordial sense of justice. Take this restaurant, run by an extended family of Lao ethnic migrants from the rural Northeast. It’s excluded from the networks of exchange value crisscrossing the newly gentrified spaces, and it’s also alien to ISO health and hospitality industry standards. Everything here—from the lack of “customer service” to the taste of fish



sauce to the occasional whiff of rotten water—is a frontal challenge to the *similai* values of cosmopolitan Bangkok. In the TV commercials of home cleaning products that punctuate the long and lazy Thai evening, all one sees is glossy kitchen tiles and fresh, fair-skinned housewives. This restaurant falls on the opposite end of the spectrum of urban “happiness”—a poisoned euphemism that is deployed, in Thailand and elsewhere, to justify economic disparity and patriarchal impunity. Here, a non-mediatized geography of misery, bacteria breeds. Dirt functions on at least three levels: the matter-of-fact, the symbolic, and the affective. Flavors, smells, and sounds grow in intensity as the sense of sight dwindles after dark. In the distance, the lights of the mall and the high-rise shine dully behind the deep, black void of the field. The tropical ruin comes to life as a “wildly sensual” experience (Edensor 2007, p. 5). The music in the old stereo is a mix of unfashionable Thai rock songs and Northeastern *morlam* (country-Lao) tunes that stand in sharp contrast with the numbing Christmas muzak at the shopping mall. Electric power is *taken* from the grid—there is no generator—and in all likelihood the restaurant has no license to operate (see Yasmeen and Nirathron 2014). More importantly, the intangible atmosphere of the place is an “art of resistance” (Scott 1992) against the blandscapes lurking across the field.

## CONCLUSIONS

The mall and condominium, though, cast a long shadow and the famed Bangkokian street food experience is fast morphing into a new kind of spatial, and social, arrangement. Sidewalk cooking, often the easiest and only job available to thousands of rural migrants in pursuit of the ever-elusive good life, is being replaced with franchised kitchens and trendy corners for outdoor eating. A typical sidewalk in Bangkok, however, still feels like a pungent mess of unsophisticated bodies that have made themselves at home. But it’s a grave mistake to assume, as many scholars and all city guides do, that Bangkok exists in a suspended state of hybrid cultural modernity. Far from it. Modernity remains a totalitarian project and the Thai government is doing every bit to bury once and for all any embarrassing leftover of peasant culture, with the exception perhaps of the obvious tourist enclaves, where self-Orientalism is in high demand. In a recent modernizing push by the ruling junta, a city official announced the end of street vending (in line with the moral economy of the *soi*, illicit stalls have always paid their dues to the police) making the astonishing

claim that it is “time to return the pavements to the pedestrians” (quoted in CNN/Punyaratabandhu 2017). This is a good example of the passive aggressive, patronizing, and inbred politeness inherent to *similai*. One can almost see the man smiling gently at the camera as he pronounced these words. As if removing plastic chairs was the solution to the dilemma of how to turn the world’s most traffic-congested city into a walkable space.

The disenfranchised are a waste of space and will be invited to leave in due time. Neoliberal theory claims that, eventually, they too will be the beneficiaries of trickle-down economics. The reasoning is as flawed as claiming that the unjustly jailed will be eventually freed. Their stubborn survival is expressed through myriad, infinitesimal examples of affective infrapolitics. To return to the original question: What is affective infrapolitics? It’s a type of resentment—sometimes illegal, more often illicit, and always immoral—that feeds on the fear of the middle classes. Resentment, of course, is mutual: masters and slaves smiling at each other. Finally, we should not overlook the massive street protests of 2010 and the not-too-hyperbolic talk of impending civil war. An excessive focus on everyday forms of resistance could make us blind to the fragile harmony upon which Thai society, politics, and the economy rest. For starters, an Asian financial crash is long overdue. If, or when, it happens, as it did in 1997, gentrification might come to a screeching halt. Lisa Wedeen (1999) published an inspiring account of the exquisite equilibrium of Syrian society, achieved thanks to the feigned compliance of the Syrian people, only a few years before it all fell apart. But war, like revolution, is the exception to the rule. As Scott noted, infrapolitics is not so much a safety valve as it is the norm. Or perhaps it’s both. It’s not merely, at any rate, a cheeky song with ambivalent lyrics, nor is an annual water-splashing revolution (*Songkran*, the Thai New Year) where the poor can vent their suppressed anger, while hegemonic rule continues undisturbed. It’s more like a year-round feeling of alertness.

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## Informal Governance on Cryptomarkets for Illicit Drugs

*Meropi Tzanetakis*

### INTRODUCTION: THE RELEVANCE OF CRYPTOMARKETS

This chapter contributes to the ongoing debate about the degree to which informal practices of drug users and dealers on the recently emerged phenomenon of cryptomarkets are a subversive form of governance (van Schendel and Abraham 2005). A subversive approach responds to dominant drug control models in unexpected ways. The aim of the chapter is to analyse the development of practices of resistance in relation to anti-drug policies, practices that unfold through anonymous drug market-places. While law enforcement agencies have an intrinsic occupational motivation to focus on tackling the drug trade on the darknet, drug policy scholars, criminologists and other social science scholars increasingly are focusing on harm reduction aspects of and libertarian political motives on

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drug cryptomarkets, as both have implications for resisting dominant prohibitionist drug policies. In this chapter, I follow the subversive approach to anonymous online drug markets and expand it by taking into account socio-economic characteristics of cryptomarket users which allow us to shed light on those actors which are negatively affected by the international drug control regime and at the same time systematically excluded from advantages of the subversive potential of anonymous drug marketplaces.

The remainder of this chapter is structured as follows: The introductory section clarifies the motivation for the work presented in this chapter. Section “[What Is New About Anonymous Online Drug Markets?](#)” identifies new features of cryptomarkets for drugs, especially in contrast to material drug markets. Section “[Cryptomarkets Versus International Drug Control](#)” presents the foundations of the current regulatory framework for drugs and outlines the negative consequences of the dominant drug policy paradigm. This section deals with the question of how drugs are being regulated by the state and therefore helps to better understand what may provoke resistance. This is followed by a digital ethnography on social practices of self-proclaimed informal resistance on anonymous marketplaces for drugs in section “[Informal Practices of Resistance](#)”. Section “[Discussing Ethnographic Evidence: A Subversive Potential?](#)” critically discusses the subversive potential of cryptomarkets at a structural level by asking which groups participate in cryptomarkets and which groups are being systematically excluded. Subsequently, the final section assesses the potential of online drug markets to challenge the boundaries of the dominant drug paradigms.

Cryptomarkets can be defined as online platforms that serve the supply and demand of, among other things, legal and illegal psychoactive substances (Tzanetakis et al. 2016). The name originated from the use of anonymising software such as Tor (short for The Onion Router) to access the marketplaces, encryption software such as Pretty Good Privacy (PGP) to communicate securely and the use of decentralised virtual currencies (e.g., Bitcoin) for making pseudonymous payments. This technological innovation enables users of cryptomarkets to conceal their identity and physical location and, hence, allows for low-threshold access and increased security. However, the other side of the coin is increased complication for law enforcement interventions. Cryptomarkets lead to the paradoxical situation where technologically enabled anonymity facilitates the exchange of high-quality illicit products and minimises the risk of law enforcement

intervention at the same time. In other words, encryption software facilitates global transactions of individuals and networks operating out of the control of the state by concealing illegal activities. Following van Schendel and Abraham (2005), norms and rules of formal political authorities are violated on cryptomarkets; however, informal practices of the actors involved are accepted and hence regarded as licit, within the community of participants. The terms anonymous drug marketplaces, cryptomarkets and darknet drug markets are used interchangeably and refer to the same phenomenon as defined above.

The original platform ‘Silk Road’ had a monopoly position, offering a wide range of psychoactive substances for sale by different vendors but also pornographic material and false documents such as fake ID cards and driving licences (Christin 2013). At the beginning, weapons were traded as well, though they were later moved to a separate platform. Since ‘Silk Road’ started operating in 2011, the community of anonymous drug marketplace users strictly rejects the exchange of child pornographic content on the platforms (Martin 2014). Only when ‘Silk Road’ was shut down by the Federal Bureau of Investigation (FBI) in 2013, numerous new platforms opened—some closing voluntarily and others being taken down by law enforcement, or ceasing operation after having scammed the sellers and customers. As of July 2017, almost two-dozen platforms of varying sizes and with varying features for their users are online (DarkNet Stats 2017). Customers can choose between various marketplaces and vendors, indicating a high level of competition between vendors and between platforms.

Recent scholarship on anonymous drug marketplaces demonstrates the relevance of this new field of research. Van Hout and Bingham (2013a, b, 2014) explored users’ purchasing practices and motives on ‘Silk Road’, as well as accounts from vendors. They found that the relationship between vendors and customers is shaped by trust and professionalism. Furthermore, Barratt et al. (2016a) conducted a digital ethnography to describe how the consumption behaviour of users changed due to the high availability of drugs on the darknet. While consumers reported an increase in drug use when they started buying from ‘Silk Road’, the very high availability of drugs helped some users to reduce the need for drug hoarding and subsequently enabled them to autonomously control their drug use. In addition, by means of an anonymous online survey among 9470 users, Barratt et al. (2014) found that drug purchases were made on ‘Silk Road’ because it offered a wider range of drugs, better quality and greater convenience than usually available offline. Accordingly, Caudevilla et al. (2016) tested

the content and purity of 219 drug samples in a laboratory and found that 91.3% of the samples matched the substance advertised online, and most samples were of high purity. In addition, Barratt et al. (2016b) found that cryptomarkets may reduce violence related to drug markets.

While measurement analyses are limited on offline drug markets due to restricted availability of reliable data, anonymous drug marketplaces allow for the use of semi-publicly available market data to, for example, estimate sales volumes. In a long-term measurement of 16 different anonymous online platforms between 2013 and 2015, Soska and Christin (2015) reported an increase in annual sales volume from 15 million by mid-2012 (Christin 2013) to over 100 million USD for 2013. In addition, Soska and Christin (2015) discovered that about 70% of all sales were of cannabis, MDMA (3,4-Methylenedioxymethamphetamine), ecstasy and stimulants (cocaine-related products). Moreover, these scholars were able to demonstrate the effects of a large international law enforcement operation in 2014, which resulted in the closure of numerous anonymous online marketplaces. This led to an immediate decrease in total sales, but had no long-term effect, observed in a renewed increase in revenues shortly after the operation.

Additionally, current scholarship explores darknet drug markets in the light of challenging dominant drug prohibition models. On the one hand, libertarian political motives and views being shared by users of cryptomarkets were discussed (Aldridge and Décary-Héту 2014; Maddox et al. 2016; Martin 2014; Munksgaard and Demant 2016; van Slobbe 2016; Van Hout and Bingham 2014). In this context, ‘cyber-libertarianism’ (Maddox et al. 2016) is a political philosophy advocating online illicit drug trading as a response to perceived unjustified state interventions into the lives of drug vendors and consumers (Martin 2014). On the other hand, several researchers discussed the potential of cryptomarkets to reduce harmful consequences caused by illicit drug use (Aldridge and Décary-Héту 2014; Bancroft and Scott Reid 2016; Barratt et al. 2016a, b; Caudevilla et al. 2016; Tzanetakis and von Laufenberg 2016; Van Buskirk et al. 2016; Van Hout and Bingham 2013a, b, 2014). These scholars suggest that cryptomarkets may minimise harm due to the availability of high-quality drugs with a low risk of contamination. Moreover, online transactions may reduce the risks associated with buying on illicit open street markets and cryptomarkets allow users to exchange information about the quality and effects of substances and vendors. Consequently, drug users can disseminate their knowledge and feedback easier on online platforms and



associated forums, and it is thus straightforward to acquire experience of other users. The interconnection between harm reduction and libertarian values has been discussed by Keane (2003).

Previous research findings contribute to an overview of supply and demand on anonymous online markets. However, current research largely neglects drug users without digital literacy and those users who do not belong to the target group of cryptomarkets (e.g., with dependent or problematic drug use behaviour), as well as the cultivating and producing countries of the global South. In contrast to the previous research, this chapter takes into account those systematically excluded from participating on cryptomarkets. The main question that this study set out to explore is whether, and if so to what degree, practices of informal resistance on online drug markets (e.g., peer to peer harm reduction strategies or self-proclaimed libertarian political motives of users of cryptomarkets) have the potential to challenge particular relations of power, or if they rather reinforce existing social structures in terms of the international drug control framework. The underlying assumption is that, under current dominant paradigms of drug policy, distributing drugs on cryptomarkets has similar excluding side effects to offline drug markets, at least for particular actors and particular regions. I shall argue that economically disadvantaged, socially excluded, marginalised and technically non-skilled users and drug addicts, as well as drug producers of the Global South, are systematically excluded from these expressions of informal resistance to prohibition-based drug policies as they cannot participate in cryptomarkets.

### WHAT IS NEW ABOUT ANONYMOUS ONLINE DRUG MARKETS?

Though buying and selling drugs on the Internet go hand in hand with the rise of the Internet, a set of technological innovations enabled, for the first time, systematic trading of licit and illicit drugs on the net (Barratt et al. 2014; Martin 2014). Additionally, the commodities ordered on the Internet are delivered by traditional postal services without their knowledge. By using encryption software, illicit drug transactions proceed without any face-to-face meeting, and identities and locations of its actors are almost not traceable. Thus, while cryptomarkets are easily accessible for users, they are very difficult to shut down for law enforcement agencies. In

this regard, outlawed actors question and challenge governance by state institutions though informal practices of resistance.

Irrespective of current drug policy, Internet technology facilitates an increasing global availability of a wide range of both controlled and new psychoactive substances (Trautmann 2013). Moreover, supply and demand serve to self-regulate through informal social norms, conventions, values and cultural beliefs, which have fuelled the growth of a global drug market on an unprecedented scale. User-friendly interfaces and features offered on drug platforms are similar to those provided by e-commerce companies on the World Wide Web, such as customer feedback systems that allow customers to rate sellers and review products. At the same time, customer feedback helps to build trust between sellers and buyers who do not know each other (Tzanetakis et al. 2016). Moreover, different payment systems are offered on these anonymous platforms that allow for dispute resolution, for example, by a third party (such as the administrator), in case of conflict (Tzanetakis 2015). Another novelty is that vendors can openly advertise their (illegal) products for sale, including special offers or discounts. At the same time, the level of transparency increases; for example, the customer can compare information about the quality of drugs, prices and vendors prior to making an order.

## CRYPTOMARKETS VERSUS INTERNATIONAL DRUG CONTROL

This section briefly sets out the political order against which resistance is formed on cryptomarkets and sheds light on some of the unintended consequences of the international drug control system. The contemporary drug control framework is based on the 1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), the 1971 Convention on Psychotropic Substances and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances (Nadelmann 1990). These conventions, which are administered and monitored by the United Nations, aim to eliminate the production, distribution and consumption of narcotic and psychotropic drugs. The international treaties are based on the premise that the best way to reduce problems caused by the use of illicit drugs is to minimise the scale of the drug market, and that this can be achieved through prohibition-oriented supply-side measures against the non-scientific and non-medical use of drugs (Bewley-Taylor 2012). Almost every country in the world has either signed one or more of the conventions or has laws in accordance with them (Levine 2003). As

a result, a universal model of drug control was institutionalised that criminalised the production, trafficking, selling and, in many cases, also the use of cannabis, cocaine, opiates and other psychoactive substances. The global consensus is a means to an end, a means to control drug availability. ‘Any weak link in the chain of consensus is a potential centre for drug production and trafficking, and this would undermine the efforts of other states to restrict public access to drugs’ (Buxton 2006, p. 1).

In accordance with the system of international drug control, policy responses in many countries focus on creating a drug-free society (MacCoun and Reuter 2001). To realise the aim of reducing supply and demand of drugs, criminal laws, police enforcement and imprisonment are used to punish any behaviour related to the cultivation, manufacture, possession, transportation, sale, import, export or use of controlled drugs (Buxton 2006). In a study assessing the development of the global market for drugs on behalf of the European Commission Directorate-General for Freedom, Justice and Security, Reuter (2009) systematically analysed the unintended consequences of drug prohibition and enforcement. Consequently, effects that are either inherent in prohibition or that result from the force with which it is enforced were identified in both consuming nations and producing countries. On the one hand, users purchasing drugs of unknown composition are affected negatively by a lack of quality control, which is a consequence of prohibition itself, as a government cannot regulate the quality of an illicit product. Furthermore, drug enforcement makes needles unavailable or incriminating, which comes with the effect that users injecting drugs economise on needle purchase and possession by sharing them with others, through which transmission of AIDS increases. On the other hand, a shift of production to other regions and/or to neighbouring countries occurs in response to aggressive enforcement, which is named geographic displacement. Another effect is the opening of new areas for coca or poppy cultivation—the response of growers to eradication—which is environmentally damaging. Moreover, innocent farmers lose legitimate crops as an effect of inaccurate spraying and, in addition, face negative health effects caused by the herbicides used. Furthermore, higher percentages of smuggled cocaine or opium are seized due to tougher enforcement; however, this increases incentives for corruption in public institutions, as well as for drug-related violence against other market participants. Reuter concludes that decision-making surrounding regulating a substance should not only consider the direct effects of a drug on the user but also ‘the extent to which the creation of a control system

would increase criminality through the growth of a black market' (2009, p. 159).

An additional policy response to solving the drug problem is managing it. Of particular note are harm reduction policies and practices aiming 'to reduce, maintain or limit the growth of the drug problem and to limit or reduce the harmful consequences of drug use' (Trautmann et al. 2009, p. 144). These interventions started in the early 1980s in the Netherlands and the United Kingdom as a response to the growing hepatitis and AIDS epidemics, and they include, among other schemes, needle and syringe distribution and exchange, methadone maintenance, injection rooms, medical use of cannabis, safer use of education and drug-testing services at parties—all of which are aimed at reducing harm for consumers (Levine 2003). On the production side, harm reduction approaches are centred around alternative development programmes for farmers of drug-linked crops, with the aim of securing alternative livelihoods; however, they are not as recognised as practices for drug users (Jelsma and Metaal 2004). Although harm reduction programmes encourage policymakers to shift drug policies from criminalisation and punishment towards decriminalisation and the domain of public health policy, Levine (2003) argues that harm reduction approaches are within the current drug control framework. They do not, on the one hand, require users to stop taking drugs; on the other hand, they do not require governments to give up drug prohibition, as harm reduction aims to reduce its harmful effects. Hence, the universal agreement that drug prohibition is an appropriate policy response to the problem of drugs is not called into question by harm reduction approaches. In the following section, a digital ethnography on social practices of self-proclaimed informal resistance towards the current drug control system is conducted.

### INFORMAL PRACTICES OF RESISTANCE

Ethnography allows the social meanings, beliefs, practices and activities of actors in naturally occurring settings (as they occur independently of experimental manipulation) to be understood, while the researcher is a cultural insider among the people studied in order to systematically collect data. Internet-mediated research enables access to hard-to-reach online communities, which are difficult to access in an offline environment. Digital ethnography (Barratt et al. 2016a; Coleman 2010; Maddox et al. 2016; Pink et al. 2016) is thus a particular ethnographic practice that takes

into account the digital environments (digital media and technologies) that are part of people's everyday practices. The chapter draws on a multi-sited, digital ethnographic study of social practices of actors on cryptomarkets. The study was conducted between February 2015 and August 2016 and includes online observations of cryptomarkets, various discussion forums related to anonymous drug marketplaces, self-presentations of users and 18 anonymous interviews with users of these platforms.<sup>1</sup>

The exploration of informal practices of resistance against the international drug control regime is, for the purpose of this digital ethnographic analysis, based on the expression of libertarian political ideologies. This study applies a working definition of libertarian ideologies according to which their proponents: (1) promote liberty rights of individuals, including the right to bodily integrity, talents, capabilities and their own working capacity; (2) claim that restrictions to individual freedom of action are morally just only where they limit courses of action against the will of other individuals; and (3) claim that state interventions to protect individuals from themselves are not legitimate (which, of course, is controversial as state interventions often protect the interests of other individuals) (Knoll 2008; Nozick 1974). In addition to holding these beliefs, 'cyber-libertarians' (Maddox et al. 2016) use online encryption technology for communication purposes.

How was resistance expressed informally on anonymous marketplaces for drugs and their associated forums? In the following, I present some results of the ethnographic exploration. An initial and therefore directive statement for promoting the liberty rights of individuals (1) was made by the administrator of 'Silk Road':

*Silk Road is a global enterprise whose purpose is to empower people to live as free individuals. We provide systems and platforms that allow our customers to defend their basic human rights and pursue their own ends, provided those ends do not infringe on the rights of others. (...) Individuals own their bodies, thoughts and will. Anything they create with their property of obtain without coercion is also theirs.* (Silk Road Charta, in: Martin 2014, p. 13)

<sup>1</sup>The study was approved by the Austrian Data Protection Authority. Participants were informed of the aim and purpose of the research project, as well as confidentiality measures, through an uploaded consent form and a study website.

In line with this approach was the administrator of ‘Outlaw’, a platform that went online in December 2013, only two months after ‘Silk Road’ was closed (Gwern 2016). They stress the importance of the freedom of the individual, which provided motivation to run the marketplace:

*Q: So does it feel to run the longest (or second to that) running market?*

*A: This was our goal – instead of trying to grow extremely fast and exit-scam the users, we want to keep up the idea of freedom and self-reponsibility [sic] and create a secure marketplace for our users. We love what we do, we do not look for fast money and we want to make the world a better place. Yes, sure, we earn money but it’s in healthy relation to the time we invest! (Deepdotweb 2015)*

Another libertarian practice refers to the legitimacy of restricting individual freedom of action when it interferes with the courses of action of another individual against his/her will (2). Although some platform operators presented the freedom of action of individuals as an achievement of cryptomarkets, explicit discussion entries are rare. By contrast, the limitation of options for the actions of others are discussed regularly, mostly in relation to other illicit products or services being sold on anonymous marketplaces. Most remarkable in this regard are clear statements disallowing the sale of child pornographic content on cryptomarkets for drugs. A position largely supported by the community in forum entries and in the terms of sale of marketplaces is the prohibition of child pornography. However, media coverage sometimes incorrectly reports otherwise. In this way, the community of cryptomarket users regulate themselves. This is regarded as an informal social norm established since the phenomenon of cryptomarkets first appeared in 2011. Although the moral self-restriction of banning child pornography is currently based on the premise that it harms innocent and vulnerable minors, this norm will be negotiated and renegotiated in the future.

A vendor on the platform ‘AlphaBay’ takes an unequivocal stand: *Any market and or person dealing Child Porn getting busted is something great* (vendor ROQ, ‘AlphaBay’ forum, accessed 13 November 2015).

Many darknet marketplaces also disallow the sale of weapons and ammunition since, in contrast to drugs, their main objective is to harm other human beings and thereby restrict their freedom of action:

*The following rules apply for trading: (...) Anything related to prostitution, child pornography, and murder / assassination is prohibited on the marketplace. (‘AlphaBay’ terms of sale, accessed 13 November 2015)*

While platform operators and vendors follow a restrictive approach regarding the sale of pornographic content and the sale of weapons, if allowed at all, is rather modest, the trade of fraudulent goods and services is discussed more controversially within the community. This includes the selling and buying of stolen credit card data or hacked PayPal user accounts. According to the self-assessment of many vendors, selling fraud is ethically and morally not reprehensible as the amount of loss is usually refunded to those affected by their banks. Hence, the banks and not their customers are those liable to financial damage. Moreover, the economic benefit to the vendors outweighs the damage caused to the parties concerned, as illustrated in the following statement from a vendor:

*(N)o I do not feel remorse because everyone gets their money back at some point, except for the banks, and no one likes them. (...) Of course it cannot be justified lol you are litteraly [sic] directly taking money from someone, its virtual mugging. (...) I make thousands of dollars a day flipping my electronics, im [sic] sure there are huge vendors who are making millions a year, but, I am happy with how much ive [sic] made and how I can send money to anyone I want, give money to anyone in need, donate it to charity, buy my parents anything they want – its a great feeling.* (vendor VIZ, ‘Subreddit Darknetmarkets’, accessed 13 November 2015)

However, for most of those selling (illicit) drugs, trading in fraud is not justifiable. According to them, it is not only the large banks that are damaged but also credit card holders. It is thus ordinary people without the possibility of avoiding the damage who are harmed. Selling and consuming (illicit) drugs is instead related to the rights over one’s own body:

*Drugs are only illegal because they’ve decided they are. (...) We also didn’t give them permission to grant or deny US permission over what we put in our bodies. As far as I’m concerned, I have complete sovereignty of all the space enclosed by my skin. If I want to eat beetroot, or MDMA, its nobody else’s business, and there are no victims. The same goes for whatever people choose to do in the privacy of their own bedroom. I break the drug laws, in quite a spectacular way. But otherwise, I’m quite law-obiding [sic]. If carders want to do financial fraud, that’s up to them. but as far as I’m concerned, it rules them out of being trusted with my bitcoin.* (vendor LEJ, ‘Subreddit Darknetmarkets’, accessed 13 November 2015)

Similar to vendors, platform administrators also question the moral justification of trading drugs versus selling credit card data. While some cryptomarkets allow the trade of stolen credit card information (e.g., ‘AlphaBay’), others prohibit the selling of fraud:

*Direct means of access to privately owned accounts containing private value or property (monetary or otherwise) which has been obtained by the seller without the original owner’s explicit consent with the primary intent of stealing the said value or property held in the account. This includes (among other things) stolen credit/debit cards, credit/debit card dumps, Paypal (or other similar services) accounts, bank accounts.* (‘AlphaBay’ terms of sale, accessed 30 April 2015)

Another strand of the libertarian ethos is related to the limited right of the state to interfere (3). According to vendors on anonymous online drug markets, it is not the task of a state to decide what a person can or cannot consume. When a vendor was asked about his/her motivation to sell drugs on cryptomarkets, he/she replied:

*Some beliefs play into it somewhat – being that my livelihood has been made off of things the state has generally frowned upon i’m kind of an anti-statist. I still think about the cops as an enemy because they frown on my lifestyle and they don’t have my interests at heart. Give people the product for money and eliminate the middleman.* (Meehan 2014)

The state’s right to intervene is interrelated with the individual freedom of the customers, and both are relevant on cryptomarkets. The libertarian ideologies expressed by users of anonymous drug markets and associated forums are illustrations of informal practices of resistance, and they all have in common the rejection of current prohibition-oriented drug control models.

### DISCUSSING ETHNOGRAPHIC EVIDENCE: A SUBVERSIVE POTENTIAL?

This concluding section asks if the two main groups of actors predominantly affected by the unintended consequences of the international drug control regime—drug producers and consumers—can benefit from advantages of the subversive potential of darknet drug markets. Based on



the exposition of both, the potential of cryptomarkets to undermine prohibition-based drug policies are discussed.

Cryptomarkets are online platforms facilitating the trade of, among other products and services, illicit drugs. To enable, in theory, a global drug trade, they rely on encryption software to mask information with which its users can be identified by law enforcement agencies. Consequently, governments and state agencies are limited in their possibilities to comply with prohibitive drug control policies other than taking down individual marketplaces and incarcerating their administrators, vendors and customers. In spite of the enforcement efforts, to date, the system of cryptomarkets has not been eliminated, and the race for freedom of communication versus state control on the net is expected to continue. All actions, transactions and practices on anonymous marketplaces on the Internet infringe drug control laws and are by definition not subject to any formal control and consequently remain outside of state control. Referring to Buxton (2006), cryptomarkets are a 'weak link' in the universal model of drug control as they systematically undermine the efforts of governments to restrict public access to drugs. As such, anonymous drug markets challenge drug prohibition and enforcement and question governance by the state and its institutions. In particular, users of cryptomarkets and associated forums express informal resistance by libertarian political motives, which promote liberty rights of individuals, justify the restriction of individual freedom of action when vulnerable people are harmed and favour limited rights of the state to protect individuals from themselves. It is argued that informal practices of resistance on cryptomarkets have a subversive potential for drug control policies.

To answer the question which groups (of actors) can and cannot benefit from the subversive potential of darknet drug markets, I discuss socio-economic characteristics of cryptomarket users. On the customer side, buyers are at present predominantly male (more than 80%), technologically skilled, well educated and mostly recreational drug users between 20 and 40 years of age (Bancroft and Scott Reid 2016; Barratt et al. 2016a, b; Van Hout and Bingham 2013a, b, 2014). In addition, customers are concentrated in North America, Europe and Australia (Tzanetakis 2018). Moreover, Barratt et al. (2016b) and Tzanetakis (2018) found that one-quarter of people who reported obtaining drugs through cryptomarkets supplied to others. However, it is unclear how many friends, acquaintances or strangers they are supplying for profit, to finance consumption or without profit (Coomber et al. 2016; Reuter

1983; Taylor and Potter 2013). In terms of those buying directly from cryptomarkets, most customers are described as recreational and ‘party’ drug users who tend to consume illicit substances at the weekend (Barratt et al. 2016b; Van Hout and Bingham 2013b). Consequently, people with problematic and/or dependent drug use trajectories, especially those lacking social privilege, are for the most part not, at least not directly, using cryptomarkets to buy illicit drugs. Thus, impoverished and marginalised drug users lack the financial and technical resources as well as the digital literacy needed to make drug transactions on cryptomarkets. The order would then have to be delivered to a postal address, which some dependent users cannot provide as they lack a permanent address. At the same time, structurally disadvantaged drug users are to a considerable degree affected negatively by the unintended consequences of drug prohibition and enforcement (Fountain et al. 2003; Moore and Fraser 2006; Valentine and Fraser 2008). Thus, I argue that people with problematic drug use patterns are structurally excluded from accessing cryptomarkets, and they remain outside of the scope of harm reduction approaches on anonymous online drug markets. This is particularly the case for female drug users who seem to play a minor role on cryptomarkets. Further research should address the questions why and under which conditions exclusion is taking place.

The second group of actors affected by the unintended consequences of the international drug control framework are those on the production side. Vendors are, in the current state of cryptomarkets, predominantly educated and digitally literate males from European countries, North America and Australia (Tzanetakis 2018). Hence, cryptomarkets are mainly from and for Western industrialised countries. According to a measurement analysis, more than 57% of vendors on ‘AlphaBay’ generated revenues of less than 10,000 USD within 12 months, indicating that drug distribution seems to be an additional, rather than their sole or primary, source of income (Tzanetakis 2018). By contrast, less than 1% of vendors managed to sell more than 1 million USD (Soska and Christin 2015). Moreover, self-reported information on countries of origin indicates that vendors on cryptomarkets are only very rarely found in producing countries of the Global South (Tzanetakis 2019). Therefore, none of the traditional cultivation countries had a relevant share as a country of origin or destination. Hence, the drug trade via cryptomarkets neither facilitates the international drug trade on offline drug markets nor interferes with the traditional transportation routes. It can rather be characterised as supply networks within the same region of the Global North. At the same time,

no research has been conducted so far on how vendors source the drugs they distribute on anonymous drug marketplaces. Further research should be undertaken on the sources and countries of origin of the drugs offered for sale by vendors on cryptomarkets, which would also have implications for the study of the impact of darknet markets on the retail chain of drugs on material drug markets.

In addition, an increase in corruption and violence related to cultivating, producing and trafficking heroin and/or cocaine are important components of the drug problems in many politically unstable countries of the Global South, which mainly produce for and traffic to the Global North (Reuter 2009). Some of these issues are inherent in drug prohibition, and others are the consequence of the tough enforcement of drug legislation (Reuter 2009). In their comprehensive study, Reuter and Trautmann (2009) found no evidence that the global drug problem was reduced between 1998 and 2007 when taking into account interventions against both production and trafficking, as well as demand reduction initiatives. I argue that opium- and coca-producing countries, which are particularly affected by unintended negative consequences of drug control and enforcement, are from today's perspective systematically excluded from participating on cryptomarkets, which might have the potential to challenge international drug control policies.

To conclude, this chapter has demonstrated that self-proclaimed libertarian political ideologies expressed on cryptomarkets have a subversive potential to resist the universal model of drug control. Although darknet drug markets have the potential to reduce harmful consequences of drug use, two groups of actors are systematically excluded. These are socially marginalised people who use drugs in problematic or harmful ways and small farmers in producer countries of the Global South. However, both groups are affected by the negative consequences of drug criminalisation. Finally, I argue that those voiceless groups of people lack access to an approach that challenges the universal drug prohibition paradigm. Once more, social inequalities seem to be reproduced by a phenomenon that gives hope to those looking to challenge and change the control model that has not achieved what it intended to achieve. Hence, the aim of this chapter was to call attention to marginalised users and farmers when it comes to the emancipatory potential of cryptomarkets, which need holistic approaches.

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