Illegal but licit: transnational flows and permissive polities in Asia

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Fashioning licitness

Millions of mobile people live their lives in the dim interface between legality and illegality. Rather than seeing this as a failure of the state system to assert itself, we advance that the ‘failure’ is systemic because it is part of ongoing practical negotiations to establish social order. State categories and rules are never straightforward, let alone set in stone. States make many rules only to break (or forget) these, either routinely or in specific circumstances. Examples from states as unique as Israel, Pakistan and India show that we must conceptualise states as habitually straddling the legal-illegal divide – a divide of their own making.

Our case studies highlight how transnational flows generate zones of licitness that are located between the realms of state authority (legal vs. illegitimate) and social regulation (licit vs. illicit behaviour). Their creation – not as exceptions or surreptitious hideaways, but as everyday spaces – is predicated on political negotiations for which the state is one partner among others, resulting in state agents being routinely and profitably embedded in wide-ranging networks of informal transnational brokerage. States are often important partners in these networks and active players in the ensuing politics of licitness.

Political organisations such as states and inter-state associations need categories and rules. They cannot govern without abstracting the representations of lived realities to create these categories. As our findings show, however, state categories often fail to capture the very phenomena they manifestly aim to order. For example, in both Israel and the Gulf States the category of ‘guest workers’, which is supposed to describe a secure relationship of employment under standardised working and living conditions during an agreed period, turns out to be something else entirely. In practice it describes a relationship in which employers enslave workers and which does not provide even basic legal protection against employer violations of signed contracts. For these migrants, paradoxically, legality turns into a liability. Indian domestic workers in Dubai, and Chinese construction workers in Tel Aviv, who deliberately opt to become ‘runaway’ workers or undocumented labourers, find themselves in a surprising position. They are better off than their ‘legal’ counterparts who are tied to bonding contracts, excessive exploitation and extreme social isolation. Under these circumstances absconding or fleeing a legal contract becomes a means of ‘countering subjugation’ rather than ‘subjugation itself’.

Permissive borders

Geographic proximity and trade links generate further transnational regimes of licitness. For example, in the border between India and Bangladesh, customary pathways and historic trade routes may persist in spite of more recently erected state borders. The habitual practices of inhabitants in borderlands lead them to perceive the crossing of state borders, on a daily basis and without formal permits, as unproblematic. State officials, on the other hand, may well consider such practices to be a dangerous subversion of state sovereignty, economic insubordination, or a potential security threat. But formal rules and stereotypical images may be negotiable, for example when state actors become deeply involved in facilitating unauthorised cross-border trade, or when they legalise ‘smuggling’.

Our studies advance that borderlands accommodate a vast range of informal flows, for example, in the Bangladesh-India borderland, the gendered nature of the local regime of permissiveness is pronounced. Here women traders and commuters easily navigate the high-security borderland amidst the construction of a new fence and increased patrolling, while men have to purchase a passage. State agents do not consider women traders, and the small quantities of goods that they carry, as a risk to either state. The presence of these women as permissible foreigners, illustrates how certain categories of mobile people may partially escape territorial and exclusionist discourses.

Finally, to people engaged in transnational flows in borderlands and beyond, authority does not radiate outwards from centres of power: strong at the centre and weakening towards the periphery. The findings of our contributors do not support that view. It shows that to mobile people, authority is embedded in persons and objects and therefore is malleable. Authority is not restricted to a particular territory and may materialise in unexpected places. For example, there is no necessary link between being territorially peripheral or geographically isolated and being free from state regulation (or, put differently, being excluded from the state). To people who are mobile, regulatory authority appears as a fluid property that can move about, expand and retract.

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