The borderlands of legality
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Theme intro

Defining what is illegal is no easy task. No global legal authority exists to define it, so the law almost always refers to states. And what is legal in one state may be illegal in another, just as what a state considers illegal today may become legal tomorrow. It is therefore impossible to objectively distinguish between the illegal and the legal when it comes to flows of people and commodities crisscrossing international borders. What makes matters more confusing is that those who violate laws are not necessarily outside state structures; state personnel regularly – some would argue structurally – engage in illegal practices. For example, ‘reasons of state’ may impel them to tap ‘their fellow citizens’ phones, get rid of embarrassing documents, or undermine a neighbouring government. In addition, bent cops, corrupt officials, smuggling border guards and vote-selling parliamentarians are familiar characters who use their positions within states for personal gain. In short, what customarily passes for ‘international crime’ is a coherent whole whose parts are sometimes legal, sometimes illegal.

Discussions of ‘legal’ and ‘illegal’ can be furthered by introducing the distinction between ‘licit’ and ‘illict’. These latter terms refer less to state law than to social perceptions of activities defined as right or wrong. Thus you may feel entitled to reside in a certain state’s territory, even though the laws of the land make you an unauthorised immigrant. You may have no qualms about using illegally copied software, wearing fake designer clothes or smoking that cheap smuggled cigarette. And you may happily employ a house cleaner who is an illegal resident. In all these cases you may know that you are doing something acceptable, or licit, and are likely to be in continual dialogue about what is licit and what is illicit.

What social groups define as licit behaviour may well coincide with the rules that states set down. In that case what is licit is also legal. In this issue, however, we look at cases where there is a poor match between the two points of view. These cases show that we need to consider multiple legal perspectives as well as perceptions of licit and illicit, otherwise we will be in continual dialogue about what is licit and what is illicit.

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