

Illegal but licit: transnational flows and permissive polities in Asia

Some transnational practices are considered acceptable (licit) by participants while they are illegal in a formal sense. A new research programme focusses on flows of poor people and goods across international borders in Asia - movements that are not allowed by states but are not 'organised crime' either. States declare these practices illegal and yet states themselves are often involved.

Willem van Schendel

The programme argues that methodologically the social sciences have been more adept at studying fixity than movement and it seeks to develop new tools to understand transnational movements. Taking a comparative perspective, the programme is built around four projects examining transnational flows across Asia (Bangladesh, India, Pakistan, Afghanistan, China, Israel and Dubai), focusing on participants' identities and notions of (il)legality and (il)licitness. It seeks to develop a comparative and interdisciplinary approach and to produce new methods for studying transnational practices.

Globalization and transnationalism, although certainly not new phenomena, have become more prominent over the past few decades, resulting in worldwide movements of capital, goods and people. Most studies of these international flows have been framed in the conceptual and material context of the modern nation state. Consciously and unconsciously, most social science focuses on state territories as its natural units of study, and we are accustomed to academic specializations such as the sociology of India or the history of China. It is no surprise that the field of knowledge that seeks to understand the world beyond the state, international relations, nonetheless focuses on the state as its foundational unit of analysis. By highlighting the importance of movement across state boundaries in understanding transnational flows, we are alerted to the gap between our reliance on analytical categories that presuppose social fixity and the mobile practices and phenomena we are observing.

This research programme explores the limitations of 'seeing like a state'. It adopts a perspective that privileges participants in international activities, leading us to different understandings of transnational movement. It focuses especially on a theme rarely highlighted in the study of transnational practices: the interface of legality and illegality. In the absence of a global sovereign authority it is impossible to distinguish, in an objective and timeless way, between the illegal and the legal in flows of people and commodities across international borders. What passes for 'international crime' is so closely intertwined with the domestic-legal that for analytical purposes 'criminal' and 'not-criminal' systems form a coherent whole - sometimes legal, sometimes illegal. Determining thresholds of distinction between the legal and illegal will always come by appeal either to powerful state interests or international social mores rather than by an ability to 'know' in some objective fashion where the dividing line between the two lies.

Furthermore, it is important in a discussion of 'legal' and 'illegal' to introduce the distinction between 'licit' and

'illicit'.¹ Since there is no legitimate and sovereign legal authority at the global level, the law almost always refers to the domestic sphere: to states. But when we shift our nomenclature to the distinction between 'licit' and 'illicit', we refer less to state law than to social perceptions of activities defined as criminal. It is this confrontation between perspectives that forms the core of the research programme: multiple legal perspectives interact with various perceptions of licitness in all transnational practices. Rather than merely positing the complexity of such confrontations, this research programme explores them empirically in order to develop new methodologies for studying movement. The aim is to contribute to a more sophisticated historical sociology and anthropology of the transnational.

Collective scholarly understanding of the nature, pattern, scale, forms and meanings of illicit transnational activities remains far from adequate. Among the reasons are the difficulty of conducting research on individuals and groups who pay a premium to keep their affairs from attracting public attention, and that scholars of smuggling, trafficking and money laundering have no common forum to share their insights. In addition, there is a problem endemic to the social sciences: the difficulty of thinking outside the conceptual grasp of the modern state. What we are particularly concerned with is the question of movement across state borders and how movement is considered in the social sciences. This is in turn linked to the relation of states to territory, borders and frontiers. As David Ludden puts it: 'Modernity consigned human mobility to the dusty dark corners of archives that document the hegemonic space of national territorialism. As a result, we imagine that mobility is border crossing, as though borders came first and mobility second'.² In general, movement is difficult for the social sciences to fully understand, for reasons of both evidence and conception. The evidence question has to do with the comparative weights of the archives of the sedentary and the archives of movement. As for conception, moving people are typically categorized in relation to fixed social formations. The fact that mobile people are less visible to social scientists guarantees that they often appear in social theory as obscure, fleeting figures, as peripheral social actors with a lowly status in the world order, and as faceless outsiders who fit imperfectly into professionals' neat representations of social reality. In general, mobile groups are of interest primarily as moving between the units that count. As such, they are often perceived as defiant, dangerous and out of control.

Today, policy makers are deeply concerned about certain aspects of transnational networking. When globalization is seen as dismantling barriers of protection around nations and states, when

it promotes the free flow of threats to human security, from terrorists to drugs to contagious diseases, a nationalist backlash is common and inevitable. To many policy makers, such deadly understandings of the contemporary world leave only one option: to make their polities less permissive, to develop more intrusive, authoritarian and muscular forms of law enforcement that at their worst become forms of pre-emptive international violence. Many policy makers, law enforcement officials, media personnel and average citizens of industrialized countries see their darkest fears confirmed: the intersection of the power of globalization with the threat of international crime, an alarmist interpretation of the current phase of global transactions, which, luckily, is flawed. This research programme focuses on new ways of understanding transnational flows of people and goods that are illegal but licit and their relationship with policy-making and states.

Four cases

The projects within the research programme share a regional focus on Asia, home to most of humanity and a long history of complex transnational connectivity. Building on academic contacts of long standing between colleagues in the Netherlands, South Asia, West Asia and China, they bring together a team of researchers whose four case studies allow for purposeful comparison.

Unauthorized mass migration from Bangladesh to India.

According to Indian state officials, more than 20 million Bangladeshis are now living illegally in India. This huge diaspora of mostly extremely poor labour migrants has created political problems (anti-foreigner movements and pogroms, mass deportations, conflicts between India and Bangladesh) as well as economic benefits for both the Indian and Bangladeshi economies. In fact, it is hard to speak of national economies when there is a constant movement of people and remittances across open borders. This project looks at the changing patterns of legality and licitness in these flows. Migration was legal until 1952, although India and Bangladesh disregarded illegal migration until 1971. Since then, a discourse has developed in India in which migrants are depicted as infiltrators, even foot soldiers of a 'demographic attack' from Bangladesh. Meanwhile, Bangladesh officials maintain that there are no illegal Bangladeshis in India at all. This legal conflict stands in sharp contrast with a discourse of licitness, in which labour migrants, their Indian employers and many others maintain that a cross-border labour supply is good for development. They hold that de-legitimizing migration is counterproductive and they reject the 'coerced identity' of infiltrators. Co-supervised by Meghna Guhathakurta (Bangladesh), Sanjib Baruah (India) and Willem van Schendel (The Netherlands), this project focuses on networks of poor

Bangladeshi migrants in India, their labour strategies in situations of extreme insecurity, their changing notions of licitness, and the transnational identities they have constructed.

De-legitimizing borderland practices in Pakistan

The border between Afghanistan and Pakistan is notoriously porous because the borderlands are so-called 'tribal areas' where the Pakistani state has delegated much of its authority to 'tribal' institutions. Today international bodies fighting transnational militancy and smuggling consider this porosity a problem because it makes these areas difficult to control. And yet since the Afghan wars of the 1980s the absence of state responsibility has been convenient for many: refugees, Islamic missionary movements, foreign states supporting the Afghan resistance, journalists, relief agencies, labour migrants and entrepreneurs in a war economy based on the illegal trade in arms, drugs, electronics and other commodities. Many of these activities, although 'illegal' according to Pakistani law, have been allowed as licit 'tribal' practices and traditions. In the current situation, however, Pakistan and Afghanistan, as well as international organizations, prefer more efficient state control. Practices that used to be permitted as 'tribal' are now discouraged and/or disputed as illegal. This project is co-supervised by Sarfraz Khan (Pakistan) and Oskar Verkaaik (The Netherlands).

Labour migration between China and Israel: Playing the system

This project, co-supervised by Li Minghuan (China), Yitzhak Shichor (Israel) and Leo Douw (The Netherlands), focuses on Chinese migrants recruited to work in Israel under legal contracts. Upon arrival, migrants often find that the contracts are not adhered to and they are immediately faced with a situation of illegality. Many whose contracts are honored seek to transfer to other employers anyway, as many better-paying illegal jobs are on offer in Israel. Despite their illegal status, they are usually allowed to continue working, even for long periods of time. The main purpose of this project is to find out under which regimes of illegality/licitness the migrants find themselves at various stages of their migration, what dangers and risks these regimes imply, how these regimes are maintained and how the migrants play the system. Our hypothesis is that the migrants as well as their labour brokers, employers and the Israeli and Chinese states benefit from maintaining illegal employment, and that it is the permissiveness of Israeli labour policy and Chinese official discourse on labour exports that allow this particular combination of the legal, the illegal and

the licit to persist in transnational state-sponsored labour migration.

Moving between legal systems: South Indian women as domestic workers in Dubai

Domestic workers who cross national boundaries in search of employment form a category of transnational migrants of special interest in the study of (il)legal-(il)licit linkages. They have to deal with sometimes contradictory legal systems and also occupy an ambivalent position as non-family members working in households. Usually they are not covered by labour law, and their identities, labour relations and social insecurity are all framed in highly personal relations in the domestic sphere. Migrant domestic labour is also a sensitive issue as it concerns women whose employment is a source of tension and ambivalence in both sending and receiving countries. Indian women working as domestics in Dubai (United Arab Emirates) deal with multiple legal perspectives and normative perceptions. The project focuses on their trajectory from home to work and back, investigating in particular how they move in and out of legality/illegality, both during their life cycle and over time because India's and Dubai's legislation on labour migration varies; making certain illegal activities legal and vice versa. Research will be conducted in South India (Kerala) and Dubai, which has long-standing trade relations with Kerala. Dubai now has a labour force that is over 90 percent foreign (Indians are the largest group), and Indian domestics work for compatriots, Dubai families and other foreigners. Co-supervised by Rima Sabban (United Arab Emirates), Praveena Kodoth (India), Annelies Moors (The Netherlands) and Mario Rutten (The Netherlands), the project investigates the living strategies of poor Keralite women in transnational movement in order to understand (il)legal-(il)licit linkages in transnational life cycles. <

Notes

- 1 Abraham, Cf. Itty and Willem van Schendel. 2005. 'Introduction: The Making of Illicitness,' in: Willem van Schendel and Itty Abraham, eds. *Illicit Flows and Criminal Things: States, Borders, and the Other Side of Globalization*. Bloomington: University of Indiana Press.
- 2 Ludden David. 2003. 'Presidential Address: Maps in the Mind and the Mobility of Asia'. *The Journal of Asian Studies* 62-4: 1057-1078, at 1062.

Willem van Schendel is Professor in Modern Asian History at the University of Amsterdam and at the International Institute of Social History. He has done extensive research in Bangladesh, Northeast India and Burma. For more information on the programme 'Illegal but Licit': h.w.vanschendel@uva.nl

The programme was initiated by Li Minghuan (Xiamen University) and Willem van Schendel (University of Amsterdam). Supported by IIAS and the Amsterdam School of Social Science Research (ASSR), the four-year programme has secured funding from the Netherlands Foundation for the Advancement of Tropical Research (WOTRO).