

## Customs control over illicit international trade: The impact of different forms of illegality

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**ABSTRACT:** This article examines a process central to the anthropological understanding of the state, how smuggling persists despite diverting a large portion of the revenues critical to the operation of state organizations. Developing the author's prior typology of basic reasons why illegal practices persist, the article argues that there are five distinct types of smuggling, related to factors such as the social legitimacy of the activity. Legitimacy appears to make control much more difficult, but the availability of profits is also a key factor that can operate in the absence of social legitimacy, and which can contribute to the corruption of state officials. The result of intensified enforcement crackdowns also differs between the types, affecting the nature of the organization of smuggling practices. I conclude that the exploration of diversity among smuggling practices demonstrates the advantages of avoiding a treatment of illegality in general terms, and to pluralize the concept to understand the diverse motivations and forms that illegal practices can take.

**KEYWORDS:** ANTHROPOLOGY OF THE STATE, SMUGGLING, CUSTOMS, ILLEGALITIES, LEGITIMACY.

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### *Introduction*

Why is it so hard to prevent smuggling? While apparently a rather mundane, or purely practical, question I will suggest that an exploration of this issue will offer some key insights into the anthropological understanding of the state. States, by which I mean a polity with authoritative leadership and at least a rudimentary bureaucracy, cannot operate without revenues. For many states, a major part of their revenues derive from the collection of custom payments for the movement of goods across borders (particularly national/imperial borders but often also including internal boundaries between different territories within the polity). The failure to stem smuggling, then, would seem to tell us something important about how states operate, and the conditions under which they may fail to achieve some of their core interests. While this paper was prepared for a conference on informality organized by the World Customs Organization, my concerns here are not with improving the efficacy of border surveillance, but rather with drawing out what smuggling has to tell us about actually existing states and their practices.

In earlier work (Smart, 1999), I developed a typology of the basic reasons why illegal activities persist. Here, I apply this typology to the processes by which Customs authorities attempt to control cross-border movement of illegal products. While drawing in part on my research on the Hong Kong/China border, I draw on the work of other scholars to explore how the different kinds of illegalities affect Customs enforcement. This is perhaps not the most conventional approach for an anthropologist, who is usually expected to be able to rely on their own fieldwork to provide remarkably apt or apposite examples for any key issue they feel is worth addressing. Whether this expectation is reasonable for our discipline or not, it creates major challenges for comparative or synthetic projects, and particularly so for work on the anthropology of the intersection between the state and illegality. Gaining access to frank and useful ethnographic accounts from either government officials or illegal practitioners requires time and patience, and obtaining the right kind of information in the wide range of situations that I want to be able to compare in this article would take considerable investment of both. Instead, I have “outsourced” the collection of data, drawing on the best studies of the various kinds of smuggling that I could find.

A second way in which this synthetic examination of smuggling can be seen as anthropological, if not ethnographic, is that it shifts emphasis from the formal accounts of what the state does, and redirects it towards to what people do and how they do something other than what states want them to do. When people (sometimes

including Customs officials) think that a product is socially or informally legitimate despite being illegal (a situation I refer to as ambiguous persistence), is it harder to control than when the product is both illegal and illicit but trade continues due to the high profits available (market persistence)? For example, screening of border-crossers often involves selecting those who appear nervous or afraid. If smugglers (of banned religious texts, for example, or traditional food products) feel justified in their actions, do they tend to show fewer visible signs of guilt and fear? Behavioral analysis, screening for characteristics that may fit a smuggler profile, is an important part of the customs enforcement process (Newsome, 2003), but much of the nuance remains to be carefully examined in the academic literature. Erving Goffman (1959) distinguished between the impressions that people try to give, and those that they unconsciously “give off”. Whether signs that are given off and point to a guilty person can be identified independently of the social/psychological processes of feeling guilty is a key question here.

In contexts where restrictions on imports and exports are maintained in part to create the potential for extortion or other benefits to the state or agents of the state (managed persistence), another set of dynamics will apply. In such cases, it is common that informal ideas of social legitimacy may also be operating, complicating the situation, since multiple forms of illegal persistence can co-exist, and when they do, the difficulties of eradication are multiplied. The final two forms of illegal persistence, rebellious and subversive, respectively supported by internal and external political opposition, are illustrated here primarily through historical research, particularly Peter Andreas’ *Smuggler Nation* (2013). These latter two varieties may still have particular importance in certain Customs contexts, particularly in an era of war on terrorism, as well as civil war within “failed states” (for a critique of the notion of failed states, see Kabamba, 2010).

My purpose in this paper is not to elaborate on my conceptual framework further, but rather to explore whether it might be useful in thinking about some challenges of Customs enforcement and thereby make some contributions to the anthropology of the state, a rapidly developing field of study (Heyman, 1995). The challenges vary, I suggest, depending on which of the varieties of persistence are operating in a particular context. In the next section, I discuss studies of Customs Services which could suggest that the typology could be useful for understanding administrative experience. Following that, I briefly describe my conceptual framework, how the types vary, and the nature of the consequences. The rest of the paper considers how each type varies through informal practices. They may increase the difficulty to accomplish formal Customs procedures in conformity with legal and administrative rules, although that might not be the intention. Studies show that it is even more difficult than it looks.

### *Customs enforcement and illegal practices*

At any busy border crossing or port of entry there are conflicts between careful scrutiny of mobile goods and people, and the need to reduce the delay and cost of such scrutiny. Technology can reduce, but not negate, such conflicts. Ultimately, there are trade-offs to be made between enforcement and speed of processing, and this results in the use of both formal and informal processes to identify situations where more careful scrutiny should be applied. Another issue that complicates things is that sometimes the formal rules are seen as illegitimate or foolish by the general public, and even by the enforcement officers, so that strict enforcement may undermine goodwill towards the Service or Government generally. When popular opinion sees bringing certain kinds of items as legitimate rather than illegal smuggling, high rates of infraction may make stringent enforcement impossible.

At the El Paso entry to the United States from Mexico, primary screening for Immigration and Customs purposes takes an average of less than thirty seconds: within this time a decision is made to send a person or vehicle to secondary screening or not. Josiah Heyman (2009: 369) argues that we “must be attentive to discretionary non-actions and the reasons for them” not just the actions taken by those responsible for border enforcement. He concludes that in addition to formal procedures and training, informal processes of trust are central to these dynamics. Discretion is a crucial part of such rapid processing. An interaction can be formally analyzed in accordance with screening procedures and protocols put in place, yet the assumption about who can be trusted or not “is so common and so completely unstated that it is almost completely unmarked within officers’ decision-making process” (*ibidem*: 383). Similarly, in Brenda Chalfin’s (2010: 209) study of Ghana’s Customs Service, the adoption of a new risk management system based on security, facilitation, and selectivity (the replacement term for “profiling”) was modified through its implementation in which the selection was centered on the traveler’s profession. An officer told her that:

‘You can’t treat all passengers the same. The question of discretion comes up all the time [...] [take a] lawyer, medical officer [who] [...] goes out of the country once in two years, buys three pairs of shoes and twelve shirts. You don’t treat him/her the same as someone who travels once a month and has a boutique’. Another officer reiterated, ‘If a man who lists his occupation as the executive director of a company has a suitcase full of twelve three-piece suits, he is likely to get away without paying duty on them. On the other hand, a woman or man listing her or his occupation as a farmer who has these same items in her or his suitcase will be asked to pay tax on them’ (Chalfin, 2010: 211).

While many decisions are based on formalized criteria and risk-assessment procedures, Heyman found that formalization does not remove discretion from the border-control system. Usually it is only displaced. One result of the use of discretion in contexts of selective trust is that in a survey of border crossers in El Paso, only 24% of Spanish speakers saw the inspection process as fair, compared to 65% of English language respondents. Racial profiling is most often discussed in the academic literature, but of comparable importance are behavioral characteristics such as visible nervousness (Dudley Ward *et al.* 2008). Questioning by Border Patrol officers is often drawn by “tense expressions and body stances, avoiding looking at the officer, looking too often and too much at the officer, halting speech or too much speech, and so on” (Heyman, 2009: 386).

The Customs Service 1997 Personal Search Handbook listed over 40 criteria that inspectors should use to decide which airline passengers to subject to personal searches. Quite a few of these fall under the category of “behavioral analysis” and Newsome (2003: 46) argues that:

criteria may single out African American women because of cultural practices. [...] Walking styles and attire are greatly influenced by culture. Ethnocentric Customs inspectors may perceive the distinctive gaits of some African Americans as abnormal and indicative of hidden contraband carried on or inside the traveler's body. In addition, wearing long-sleeved outfits is normative for some African Americans whose religious tenets hold that covering one's extremities reflects sexual modesty among women.

Robert Kraut and Donald Poe tested the ability of Customs inspectors and laymen to detect people lying about carrying contraband in a mock customs inspection at an airport. The role of smuggler was randomly assigned. Participants were monetarily rewarded for successful lying. Surprisingly, both Customs inspectors and laymen were less suspicious of those who carried the contraband than those who didn't. They raise the question of whether the mock inspection, even though undertaken at a real Customs post and with real officers, might not have felt the nervousness that would be associated with real smuggling. As well, since the officers knew that the assignment of contraband was random, they couldn't rely on their usual demographic indicators. However, the authors provide evidence that those inspected were nervous and inspectors followed their usual practices of screening. The other crucial finding of the study was that although the identification of lying flyers was poor, there was a high degree of consensus among the judges, both Customs officers and laymen. Three out of 21 variables measured accounted for 49% of the variance in judges' search decisions: apparent nervousness, postural shifting, and length of answers (Kraut, Poe, 1980: 791). They found that demographic characteristics did correlate to a degree with suspicion, but that characteristics like age and social status

“influenced custom inspectors’ and laymen’s decisions to search them by influencing the travelers’ comportment in the interview, rather than by directly triggering the judges’ stereotypes. Judges were “likely to search travelers who appeared nervous” (*ibidem*: 792). It should be noted that this is an old study, and training procedures and technology may have improved the ability to pick out lying smugglers. More central to my issues here is the question I raised earlier: does a belief in the legitimacy of bringing illicit goods across borders reduce behaviors like nervousness and postural shifting? The black and white distinctions between smugglers and non-smugglers may differ greatly from social legitimations, and it would be useful to incorporate more nuance into models of behavioral profiling. I have been unable to locate studies that undertake this kind of analysis.

Customs enforcement has very large impacts on illegal practices, but they are not always the consequences that the agencies would desire. Unintended consequences are endemic in this field, particularly when success undermines itself (Andreas, 2013, Yang, 2009), or provides the resources to corrupt the agents in charge of the enforcement efforts. Ultimately, the attractions of illegality undermine many efforts to curb them, but the source of the attraction varies, ranging from profit to indignant feelings of legitimation. Untangling these complex mixtures was one of the goals I wanted to address with my typology. So far, I have alluded to the varieties of illegal persistence. The next section explains what I mean by these terms. Then, I explore their utility, using detailed ethnographies and histories to interrogate how enforcement is influenced by the different types of persistence.

### *Persistence of illegal economic practices and customs (non)enforcement*

Illegals, like poverty, are ubiquitous, and some kinds of illegal practices persist even when massive amounts of state resources are devoted to preventing them, such as illegal migration to the United States. One dimension of my doctoral work explored the operation of the property market in squatter dwellings in Hong Kong, where most of the 800,000 squatters in 1982 had bought their homes, despite the Government’s insistence that no one could have legal rights to illegal dwellings. In explaining this anomalous real estate market, I concluded that we had to acknowledge the division between formal legality and informal legitimacy, and that social processes legitimated and supported such property transactions despite denial by the Government.

I later compared the squatter property market to organized crime, where I engaged with the literature then emerging on economic analysis of illegal economies (Smart, 1988). Economists argued that emphases on the “visible hand” of violence among mafias could benefit from more attention to Adam Smith’s invisible hand, market forces. Rather than concentrating on the reasons for deviance as sociologists

tend to do, political economists applied a rational choice model in which the existence of demand for illegal goods and services created incentives which attracted entrepreneurs, made the enhanced risks of illegal enterprises worthwhile, and served to undermine governmental efforts at suppression. Critical political economists emphasized the ways in which organised crime is inextricably linked to capitalism (Block, Chambliss, 1981: 7) and stressed that it is “that part of the business system operative in the illicit segment of American life” (Ianni, Ianni, 1972: 67). The general conclusion is that there is an “iron law of capitalism” that “where there is a demand there will be a supplier if the profit is high enough” (Block, Chambliss, 1981: 32). I criticized this argument, which I labeled the *extensionist hypothesis*, the assumption that somehow a market can be conjured out of nothing. If there were no legal supports, there had to be adequate social supports for transactions. How such support is accomplished varies from one situation to another. There is no guarantee that regulatory regimes affording successful interaction on a sustainable basis will emerge. They may emerge if profits or plunder are large enough, but rely on the actions of groups and networks cooperating and contending.

While seeing illegal economies as *economies* and not just as deviance was a crucial step forward, I concluded that this only took us partway to understanding how and why illegal practices persist, even when states strenuously attempt to eradicate them, which they don't always do (Smart, 1988). Even where the volume of potential profits would seem to provide sufficient reason for persistent production and distribution of illegal goods, much more is involved. As Tullis (1995: 2) says in response to the question of how people are able to produce and traffic illegal drugs:

one might suppose that the large amount of money made in servicing consumer demand is solely responsible. Surely, money and the power that goes with it account for trafficking and much production. But other answers must be found in society. These relate to how a society is structured, how political power is accrued and wielded within it, how economic policy is applied, how the economy performs, and how resistant the cultural fabric is to the use of public office for private gain.

Demand for illegal goods and services creates opportunities for extremely high profits. Whether and how such opportunities are exploited vary (Heyman, Smart, 1999). Market analyses offer important insights, but without an accompanying theory of the state, and of the political and social processes which may substitute for the legal basis of conventional market relations, we inevitably miss much about the dynamics of concrete situations.

Rulers, by which Levi means the executive authority, whether king, president or Cabinet, try to maximize their revenue. This can be productive if they do so by increasing the pie rather than just increasing their share of it. Rulers need chains of support to do any governing. They have more bargaining power to the extent that

they monopolize strategic coercive, economic, and political resources. When others control resources that the ruler needs, their bargaining power increases and deals or contracts may be made with these groups (Levi, 1988: 12). This can lead to tacit tolerance of the wealthy criminal entrepreneurs in illegal arms or drugs trades who support election campaigns or guerrilla suppression efforts. The more decentralized activities are, the higher the transaction costs tend to be, which encourages rulers to collude in offering tacit monopolies to certain groups in exchange for keeping the illegal trade under control. What Levi (1988: 13) refers to as “quasi-voluntary compliance” can reduce the costs of monitoring and enforcing government revenues. Conversely, though, if such compliance is eroded, as when taxpayers doubt the fairness of the system and feel justified in evading taxes or customs duties, transaction costs soar. The lack of quasi-voluntary compliance, or legitimacy, with excise duties can lead to very high rates of smuggling (MacGaffey, 1991).

Possible profits are only one explanation of the persistence of illegal practices, although it is certainly an extremely important one. When I searched for a conceptual framework that could identify not just one, but *all* the possible general reasons for illegal persistence, I found that it did not exist, and set out to develop one (Smart, 1999). Briefly, I have only been able to find five, which I called “varieties of illegal persistence”. It’s important to recognize, though, that these basic explanations are not mutually exclusive, and that multiple reasons can coexist, which makes control even more difficult.

The first, and best known, reason for illegal economies to survive is what I call *market persistence*, that is cases where the continued demand for supply of a good or service create economic incentives that undermine state efforts to control the market. Persistence occurs despite efforts to eradicate the activity. The Prohibition of alcohol in the United States is one example, contraband drugs another (Woodiwiss, 1988). Widespread acceptability of the good or service, despite its illegality, produces some overlap with the second type. Market forces allow persistence even when the vast majority of the population disapproves of the activity. Legitimacy of the activity may make control harder, but is not a precondition for market persistence, as suggested by reviled trades such as slavery and animal poaching.

*Ambiguous persistence* is particularly important for the question of informality. It includes cases where an activity is illegal, but tolerated, or only occasionally and situationally repressed. There is a significant degree of informal legitimacy of the activity, despite formal illegality. Such practices can have large costs for states in lost revenue, including duties, income taxes, property taxes, and the loss of control over government land. We can see this with the large informal sector in postcolonial cities. The capacity of squatters to resist clearance can cause a variety of inconveniences for the state, sometimes including international disapproval. Where squatters



present easily purchased blocks of voters, and marginal votes are valued, they may also be able to bargain for some collective benefits like water and electricity supplies (upon which profits can be made). Some authors have argued that governments profit from tolerating squatter communities by reducing pressure for government expenditure on housing, and by cheaply reproducing labour power. But direct benefits are more characteristic of the third variety of persistence: *managed persistence*.

*Managed persistence* refers to cases where despite formal illegality, the state benefits substantially from the activity and makes at most token or perhaps deliberately self-defeating efforts to achieve control. The leakiness of illegal migration from Mexico to the United States has been suggested as an example of this (Heyman, 1995). It has also been suggested that in a variety of states, bureaucracies profit from the proliferation of costly red tape by using the regulations to extract bribes and other concessions from economic agents (Blundo, 2006.). When managed persistence operates, bad policies and practices may make perfectly good sense to actors engaged in the processes. There are good reasons for bad policies. Such activities can be tacitly, or explicitly, sponsored by rulers in pursuit of increased revenues. The important requirements are conditions that make it desirable to keep these activities illegal.

Political dynamics also structure the last two varieties. Both involve limits to state control over their own territories. I distinguish two variants, but in empirical cases, both are more often than not found entangled. The first of these is what I call *rebellious persistence*, where internal political actors, such as guerilla groups or rebellious localities, protect illegal practices despite opposition from the ruler to their persistence. There must be spaces within the ruler's territory with relatively autonomous actors who control local politics, and choose to benefit from illegal practices such as the FARC in Colombia and some splinter groups of the former IRA. Illegal economies are nurtured for revenues or for its value as a nuisance or threat to their enemies. It is important to distinguish this reason for the persistence of illegal practices from the accretion of means of violence by illegal entrepreneurs such as the Medellin cocaine cartel. Illegal practices are a *means* to the political ends held by rebels, whereas achieving significant means of violence and command over local areas are a means to the *end* of profits in the market persistence type. Resistance from subordinate agents within nation-states obviously overlaps with rebellious persistence, since local officials or provinces may start by adapting central rules in ways that are disadvantageous to the ruler, but may end in rebellion or revolution.

*Subversive persistence* refers to cases where support for illegal practices comes from agents outside the state, particularly to undermine political control. Support by the American government for drug trafficking by the Kuomintang, the former rulers of China, in Burma is a good example (McCoy, 1999). Unlike managed persistence,

the benefits are going to the rulers of another state, rather than the one in which the activities are taking place. Admittedly, things become even more complex when the practices cross national borders .

Empirical cases almost always combine characteristics of two or more of the varieties. For the purposes of this paper, I will not focus on case studies, but rather draw on a number of them to explore how illegal practices underpinned by different informal supports affect Customs enforcement.

### *Market persistence*

Dominating discussion of illicit markets and economies is the idea that the potential for high profits explains why such markets emerge and survive despite attempts at repression. While not the whole story, it is certainly an important, perhaps the most important part of the circumstances that make the eradication of smuggling and related illegal industries so difficult. While profits play an important role in almost all illegal industries, we are considering purer forms of market persistence when governments genuinely would like to see the trade controlled or eradicated. In this case, the constraints on eradication are of the greatest importance. Generally, key constraints include high transaction costs for monitoring and controlling decentralized portions of illegal networks, and the ways in which the high profits undermine control efforts, both through the ability to suborn control agents and the resources to purchase sophisticated technology to evade interdiction. Communication and transportation technologies are rapidly incorporated into contraband industries, particularly those that involve smuggling over national boundaries. In the case of the US war on drugs, it seems to have led to a technology race between smugglers and enforcement officials, which raises the costs of doing business, and hence the barriers to entry for new operators. The result of technology in this case seems to be to encourage a greater centralization of the industry.

Smuggling in the past was primarily, but not exclusively, about evading customs duties. The liberalization of trade “has sharply reduced incentives to engage in smuggling practices designed to evade taxes and tariffs, which were historically a driving force of illicit commerce. With the lowering of trade barriers as part of the process of globalization, smuggling is increasingly about evading prohibitions and bans rather than import duties” (Andreas, 2013: 334). Supporting the first part of this claim empirically, Mishra *et al.* (2008) document a very substantial drop in customs evasion after tariff liberalization. The central problem of enforcing prohibitions is that if demand for the product continues, then success in interdiction tends to produce higher prices, enticing entrepreneurs to enter the business to capture the profits, even at the expense of greater risk. High profits mean increased capacity to corrupt enforcement officials. For example, in colonial America:

Customs officials, for their part, went through the ritualistic motions of inspecting ships and collecting modest amounts of duties (while routinely lining their pockets with payments to look the other way). Institutionalized corruption had a pacifying effect; informal financial accommodation meant that violence between smugglers and customs inspectors was rare. For the most part, bribing trumped bullying, producing a win-win situation for the smuggler and the customs agent – even if not for imperial coffers. Corruption was in fact competitive: colonial ports competed with each other to attract shipping business, and those ports that offered the most laxity in inspections and most bribable customs houses enjoyed a competitive advantage (Andreas, 2012: 17).

If corruption can be justified as contributing to economic growth or other goals that are seen as socially desirable, it is more likely to be implicated in what I discuss below as ambiguous persistence. If legitimation is unimportant to the process, either for enforcement agents or the smugglers, and profits rather than political goals are foremost, then the situation fits best what I have called market persistence.

#### *Ambiguous persistence*

Informality is particularly central to the category of ambiguous persistence, an illegal activity continuing because people, sometimes including those tasked with interdicting it. Social legitimacy has a crucial but complex effect on formal illegality, with official responses varying from insisting that “rules are rules” to using the infringements as a source of income to “look the other way” since “no one is really getting hurt”, to more or less formal versions of toleration without legalization, to intermittent enforcement intended only to reduce the extent of infringement. The last pattern resembles the occasional checks for passenger tickets on public transit that relies on an “honour system”. Whenever people start using phrases like “well, technically ...” or “everybody knows what is really going on”, there is almost certainly a gap between formal rules and widespread informal practices, which are often indispensable in actually accomplishing the goals of the institution and implementing those formal rules (Blundo, 2006).

In van Schendel and Abraham’s *Illicit Flows and Criminal Things* (2005), they argue that we need to resist “seeing like a state” and that the “definitional problems associated with international crime show how important it is to relativize the state as ‘just’ another form of modern political authority so as to avoid using the state’s own dominant categories for our analysis” (*ibidem*: 6). Tracing illicit flows highlights the contingency of illegality. What “determines legality and illegality at different points of the commodity chain is the particular regulatory scale the object finds itself in. [...] we find it useful to distinguish between political (legal and illegal) and social (licit and illicit) origins of regulatory authority” (*ibidem*: 17). Commodities, such as *qat* or coca leaves, and practices, such as sex work, can be legal but illicit on one

side of a national border while illegal and licit on the other. Social boundaries can have comparable effects. Informal working rules are often critical in resolving such conflicts, as Brenda Chalfin's account of how Ghana's Customs Service dealt with reforms, required by the Uruguay Round Agreement of the World Trade Organization, to their established working practices. Tariffs were reduced, but a variety of new fees, including a 1% inspection fee, were added to make up for lost revenue. Dealing with these new fees, and their consequences, generated a "newfound solidarity among Customs officers, importers, and borderlanders" (Chalfin, 2010: 210). As it became apparent to Customs officers that:

the strict application of the new duty and tax schedule would force nearly every trader to smuggle goods through the bush tax-free or give up trade entirely, a system of discounts emerged. These concessions kept traders and Customs officers in business and fueled a shared sense of resentment of those in the Ministry of Finance responsible for the new charges (Chalfin, 2010: 110).

She provides fascinating ethnographic detail on how the new circumstances were managed and manipulated by different actors within the Government and among traders. Since the new system made it impossible to waive taxes and fees, the discretion remaining to frontline Customs officers in the realm of classification codes and valuations was utilized instead. While obtaining modest "tips" was a significant motivation (suggesting market persistence), there was also a sense of sympathy, especially for small traders for whom the fees could jeopardize their means of livelihood. She concludes that such strategies "are premised on a shared alliance with travelers and traders from elsewhere in the country that is in many respects nationalist in orientation. Built on common disdain for the unreasonable exactions of Customs and other executive authorities, Aflao Customs personnel use their official positions and knowledge to partake in and cultivate a form of popular sovereignty" (Chalfin, 2010: 127). Frontline officers might collude with citizens "bending some rules", feeling more in common with them than with the central Government which imposed a new system seen as more in the interest of powerful global agencies, and of their bosses who were most likely to obtain benefit from ensuring its implementation.

Anecdotal evidence from a variety of conversations provides another example of a degree of toleration in the realm of prohibited foodstuffs, particularly when these foodstuffs have sentimental or cultural significance. For example, a graduate student in England told us that when a search revealed Chinese mooncakes (ceremonially associated with the mid-autumn festival), the officer allowed him to keep them despite the prohibition on imports of goods with eggs from China. Others had theirs confiscated, but without any penalty imposed. In other cases of home-made cheeses or sausages, we heard that officers allowed the contraband goods to be kept, but told

the offender not to do it again. A degree of sympathy to the rule-breakers, and perhaps a degree of antipathy to petty restrictions, seems apparent in this kind of case, and represents another example of ambiguous persistence.

### *Managed persistence*

When and why might governments help to support the persistence of smuggling in order to further their own interests? This is a particularly key issue for Customs enforcement, since in many countries, particularly less-developed ones, duties can be a very large part of total government revenues. For example, “in the West African subregion alone, in 2000 Customs accounted for 40 percent of government revenue in Senegal, 46 percent in Benin and 60 percent in Niger, with strikes of Customs officers in Niger threatening to bring down the whole state apparatus” (Chalfin, 2010: 246). In 1995, import duties accounted for an average of 23% of central-government tax revenue for developing countries (Yang, 2009: 2). Brenda Chalfin (2010: 1) says that in many postcolonial states, including Ghana where she conducted her study, “bureaucratic orders such as Customs have long served as the ‘effective sovereign’ [...] providing the bulk of state revenue, guarding territorial boundaries, and covering the whole of the nation with a highly visible administrative web”. Throughout the colonial era, Customs collected over half of Ghana’s government income. Before the beginning of heavy reliance on income taxes in the twentieth century, customs duties, or internal equivalents, were quite widely the mainstay of government finances.

The category of managed persistence is focused more on the actions of “rulers”, in Margaret Levi’s (1988) term: central authorities such as the president, cabinet or governing party. When the persistence of smuggling is related to the actions only of front-line officials unsupported by those close to the center of power (see for example Cantens, 2012), we are usually discussing cases that are closer to market persistence (the bribes from smugglers corrupt the officers) or ambiguous persistence (the officers sympathize with the smugglers of particular kinds of goods). Managed persistence pertains when those who control policies or the allocation of resources to enforcement ensure that illegalities persist in order to obtain certain personal or governmental benefits, whether the extortion of bribes that funnel up the hierarchy, political advantages, or that for various reasons may be to the advantage of government revenues.

One reason why a government might collude in allowing smuggling is because the duties or prohibitions are adopted due to outside pressures when they might actually benefit in its occurrence. Good examples can be found in Hong Kong history. The first example is one with global significance. The beginning of the Korean War on June 25, 1950, which lasted until 27 July 1953, devastated Hong Kong’s prewar

economic role as a hub for trade between China and the rest of the world. Chinese entry into the war on behalf of North Korea resulted in American comprehensive trade controls imposed in December 1950, followed by a United Nations embargo on May 18, 1951. On 2 July, 1955, Governor Grantham wrote to the Secretary of State for the Colonies that since 1950 Hong Kong had been called upon to “cut off, at its own expense, a major part of its own livelihood” and asked how anyone could expect “this dying city” to survive with its “swollen population and with a great part of its normal trade sacrificed for the good, should the China embargo continue to handicap Hong Kong’s much needed trade expansion in the region?” (quoted in Zhang, 2001: 133). Hong Kong’s exports to China dropped from HK\$234.8 million in Jan. 1951 to HK\$88.9 million in Sept 1951 (Zhang, 2001: 43). The total volume of trade dropped by 13% in 1952, and China’s share of trade dropped from 56% in 1950 to 34% in 1952. By early 1955, trade with China was only 15% of Hong Kong’s total (*ibidem*: 133). Despite this, Hong Kong was the People’s Republic’s most important trading partner in Asia and was particularly crucial as a place where the embargo could be circumvented through smuggling. Chinese trade officials felt that as long as the Western embargo continued Hong Kong would be a “primary base” to offset the pressure of economic sanctions. During this period, smuggling provided one of China’s key ways to obtain foreign currency and scarce goods, but it continued afterward for other purposes and other consequences. It is clear, at a minimum, that Hong Kong tried to expend as few resources as possible in stopping this illegal trade, which was of great utility to the colony, both economically and in terms of demonstrating its utility to China. Without Hong Kong’s role in these difficult early years for China, Chinese policies might have taken quite different forms out of necessity. Hong Kong’s role in smuggling goods in and out of China has not always been seen so positively by China, however, such as its central role in facilitating illegal art exports (Vagg, 1992: 312).

It is not only in this case that colonial Hong Kong has been seen to tolerate, if not facilitate, smuggling, while benefitting from its persistence. Leo Goodstadt has carefully documented that the “colonial administration tolerated gold and currency smuggling” (Goodstadt, 2007: 7). He says that archival records reveal that:

high-level decisions were made in both Hong Kong and London to facilitate illegal shipments of gold to the colony by restricting police and customs service surveillance of smuggling activities. Officials knew that narcotics dealers would be able to take advantage of the tolerance shown towards the illegal movement of gold (*ibidem*: 14).

Hong Kong became “the centre for gold smuggling in Asia. Official tolerance of this illegal activity highlighted the conflicting attitudes towards financial regulation. In the 1940s, exchange controls and the restrictions on gold dealing were still enforced. Customs officials showed some zeal in pursuing illegal movements of cur-

rency and gold, despite the bribes on offer for cooperating with the smugglers” (*ibidem*: 85). The illegal trade maintained its importance until the 1968 lifting of the IMF’s ban on free markets in gold. The evidence for tolerance is quite clear in the records, as is the potential consequences in other sectors. For example:

In 1966, the official in charge of exchange controls discovered accidentally that banks were selling gold illegally in Hong Kong and asked for clarification of policy. He was told that ‘on the question of gold returning from Macao [...] the [Hong Kong authorities] had always turned a blind eye to it and intended to continue to do so’. [...] The gold trade was not simply a matter of technical breaches of exchange controls and similar regulations, or of offshore illegality. It created the danger of widespread criminal contamination within the colony’s financial system. It is difficult, for example, to see how the banks involved could have kept full and accurate accounts of the business. Even if the gold transactions themselves were recorded openly, creative book-keeping would be necessary to cover the incidental but illicit payments for the smuggling operations. Once bank owners and executives had embarked on accounting practices to conceal one category of transactions from external scrutiny, there was nothing to prevent these practices from contaminating the entire accounting system and enveloping the whole bank in a web of deceit to conceal fraud, as events were to demonstrate dramatically between 1975 and 1984 (Goodstadt, 2007: 133-134).

The “criminal contamination” also spread to the police and Customs officers, since the resources denied them to protect gold smuggling “reduced the ability of these agencies to capture drug consignments. Furthermore, narcotics were a major source of corruption within the police. Consequently, an unintended but alarming consequence of the gold trade with Macao was that Hong Kong operated as “one of the most drug-ridden places in the world [...] [and] the major centre for transshipment of and financing of the narcotics business in the Far East” (Goodstadt, 2007: 134).

As this example suggests, the impact of managed persistence may not only be to allow the tolerated, or collusive, continuation of illegal trades, but may produce important spillover effects where government involvement in sheltering one desired illicit industry can contribute to the protection of other, less favored, illegal industries.

### *Rebellious persistence*

Governments are never more likely to be threatened by illicit imports or exports than when they serve the purposes of groups dedicated to revolution or secession. When the illegal trade is in armaments to rebels, this is obviously the case, but in many cases, other contraband goods, such as cocaine, opium or bootleg alcohol, have become a key part of the economic basis for rebellion. Coca production for the FARC in Colombia is one significant example, the role of opium in supporting Shan minority independence movements in the “golden triangle” of Burma is another

(McCoy, 1999).

There is a long history of such rebellious support for illegal trades, and Peter Andreas (2013) provides a particularly striking example in his examination of the role of smuggling in the United States' War of Independence. He notes that:

it is striking how much of colonial outrage toward the British crown was directed at customs agents and their crackdown on illicit trade. The enforcement of trade laws was the most concrete, visible manifestation of imperial presence in the colonies. And the violation of these laws and the increasingly hostile reaction to their enforcement were the most concrete expressions of colonial opposition to imperial rule. Growing resentment toward the king's customs became a unifying cause in the otherwise fragmented and loosely connected American colonies (Andreas, 2013: 29).

The rallying cry of "freedom" for many meant "freedom to smuggle – or at least freedom from harassment by overzealous customs inspectors. It was not so much Britain's burdensome trade and tax rules that provoked such outrage in the colonies. Rather it was the attempt for the first time to strictly enforce the rules – and thus threaten long-established smuggling activities" (*ibidem*: 30). Efforts to build effective customs capacity in the colonies "provoked an intense backlash and ultimately backfired. [...] When the empire suddenly tried to tighten the grip – putting a squeeze on illicit trade and alienating colonists with heavy-handed enforcement tactics – Britain lost it entirely" (*ibidem*: 30).

There were unsuccessful attempts by colonial leaders to convince London that "it was in its own self-interest to tolerate smuggling and return to the status quo ante. Such candid pleas were an open admission of colonial reliance on illicit trade" (*ibidem*: 39). The most important smuggling industry was molasses for the production of rum. William Cooper wrote in 1768 that "You know what has been called an illicit trade has been wink'd at by all former Administrations, it being eventually more profitable to Britain than the Colonies" (quoted in Andreas, 2013: 36). The crackdown failed in part because of ambiguous persistence: people felt that what they were doing was perfectly legitimate, but it also helped to transform the situation into one of rebellious persistence. The head of customs in Philadelphia commented that "In short, the truth of the matter is, the hands of Government are not strong enough to oppose the numerous body of people who wish well to the cause of smuggling [...] What can a Governor do, without the assistance of the Governed? What can the Magistrates do, unless they are supported by their fellow Citizens? What can the King's officers do, if they make themselves obnoxious to the people amongst whom they reside?" (*ibidem*: 39). This quote illustrates what Thomas Cantens (2012) refers to as the "law of numbers", when practices that infringe certain laws relating to Customs enforcement, "normality" is a matter of statistics as well as legislation, particularly when the law is subject to popular symbolic weak-



ness. Pressure from outside authorities such as the WTO or IMF can create a situation of resentment against formal rules shared by enforcement agents and people. Hardnosed enforcement in the face of beliefs in the informal legitimacy of practices can create resentment that in certain conditions can flare up dramatically. The Boston Tea Party, recently reinvigorated as a political symbol of opposition to oppressive government, was at its heart an action against Customs enforcement (Andreas, 2013: 41). Revolutionary leaders included many prominent smugglers, including John Hancock, the first signer of the Declaration of Independence. Once the War of Independence began:

illicit trade not only contributed to the outbreak of the American Revolution; it also played a decisive role in the conduct and outcome. While at times subverting the Revolution by prioritizing profits over patriotism, illicit traders defying Britain's wartime embargo ultimately proved to be essential to its success. Colonial smugglers put their clandestine transportation methods, skills, and networks to good use supplying the insurgency. Part of this simply involved building on previously well-established illicit trading relationships, such as in the West Indies. But it also involved fostering new commercial connections directly with Northern Europe, such as France and Sweden (Andreas, 2013: 45).

Since the smuggled military supplies had to come from somewhere, we can also see some elements of our next and final category, subversive persistence, in this case. Governments that had reason to wish ill to the British Empire had more than monetary reasons to facilitate smuggling to the rebellious colonies. While rebellious persistence is not always paired with external subversion, it seems to be reasonably common.

### *Subversive persistence*

In my own research, I discovered the potential impact of external political pressure on the persistence of illegalities. The ability of the colonial Hong Kong Government to eradicate widespread illegal squatting, which peaked at a population of 800,000 in the early 1980s and occupied expensive and urgently needed land for development, was fundamentally constrained by the tendency of the People's Republic of China to exert pressure when squatters were treated too harshly. One of the tactics was to send "comfort missions" to provide material assistance to the victims of oppressive British imperialism, a practice that caused great irritation to Governor Grantham in the 1950s. When he ordered one comfort mission turned back at the border, it resulted in a protest that turned into a riot. Such confrontations threatened to destabilize a delicate geopolitical situation, and the constraints ultimately resulted in a squatter resettlement program that transformed into one of the largest public housing programs in the world. This case has nothing to do with smuggling or Cus-

toms enforcement, even though it involves attempts to prevent relief goods from crossing the colonial border, so I need to turn elsewhere for an apt example.

Smuggling has long played a role in subversion and rebellion. While armaments are clearly important, we should also keep in mind the idea that the pen is mightier than the sword. Smuggling of dissident literature has a long tradition, going back at least to the contribution of the printing press to the Protestant Reformation and how it made available cheaper versions of radical texts which could not be presented in public. More recent examples include the contribution of smuggled audio cassettes by exiled Iranian imams like Khomeini that were played in mosques, allowing access even to those who were illiterate. The fax machine was important for the protesting Tiananmen students to maintain contact with the outside world. The internet and social media are of course the current favorite distribution methods for dissident literature, but responses such as the Great Chinese Firewall have been more effective at controlling the flow of outside information and perspectives than many had expected.

For a more detailed case study of the subversive persistence form of smuggling, I turn to the Iran-Contra affair because of how well it has been documented. The complicated situation emerged initially out of CIA concerns about the role of Nicaragua, after the Sandinista Revolution, in “exporting revolution” to El Salvador, particularly through smuggling arms to support a leftist uprising (Woodward, 1987: 175). While diplomatic channels were used, moderately successfully, to try and curb this arms flow, success was dependent on American aid to Nicaragua, which was counter to dominant beliefs within the Reagan Administration. On this basis, there developed an American effort to support paramilitary actions based in Honduras against the Sandinistas, the “contras”. This initiative would build on a pre-existing destabilization effort coordinated by the Argentine government, concerned about Nicaraguan support for an insurgency in Argentina. This was justified to the Congressional Intelligence Committee as involving the training of 500 contras “to interdict the arms flow from Nicaragua to El Salvador” (Woodward, 1987: 187). By 1982, the numbers had grown to 4000 contras, resulting in an amendment to the Intelligence Authorization Act prohibiting the use of funds to overthrow the Nicaraguan government, although funding was still available for other covert actions by the contras (Woodward, 1987: 226). In October 1984, all funding was ended, after an inquiry into the mining of a Nicaraguan harbor. This financing problem created the situation in which I diagnose subversive persistence, because the CIA broke a number of prohibitions on arms trades and engaged in other illegal activities to fund the operations. A secret team was assembled, including CIA agents who had earlier financed in part another secret war in Laos through opium smuggling. Initially, third country funding was obtained, with expectations of future quid pro quos, from

Saudi Arabia, Israel, Taiwan and South Korea, but was inadequate to needs. A secret scheme developed in which American arms, including missiles, would be traded to Iran in exchange for the release of hostages, with the payments being transferred to the contras. The intelligence oversight committees were kept in the dark about these operations for eight months, until leaks made them undeniable (Woodward, 1987). Fourteen Administration officials were indicted, and eleven of them convicted. There are also claims that the “secret team”, “along with other military and CIA officials, cooperated with narcotics smuggling in Latin America in order to fund the Contras” (Chambliss, 1989: 193).

In his discussion of this case, William Chambliss (1989: 195) asked “Why would government officials from the NSC, the Defense Department, the State Department, and the CIA become involved in smuggling arms and narcotics, money laundering, assassinations, and other criminal activities”. His answer points to the “structural contradictions that inhere in nation-states”. Specifically for my purposes here, he notes that smuggling poses threats to “personal security and interests that makes laws prohibiting smuggling essential. Under some circumstances, however, such laws contradict other interests of the state. This contradiction prepares the ground for state-organized crime as a solution” to the pursuit of contradictory goals (Chambliss, 1989: 196). The overriding goal in this case was to fight the spread of communism, and if necessary to subvert governments that aligned themselves with the Soviet Union, the People’s Republic of China, and Cuba. Thus, the desire to subvert “hostile” governments in Central America and elsewhere, combined with political constraints on doing so such as prohibitions on spending money to overthrow the Nicaraguan government, induced a coalition of political agents to engage in, support, or turn a blind eye to a variety of criminal activities, including arms and drug smuggling. In a long tradition of similar efforts in the past tracing back at least to the 19<sup>th</sup> century Opium Wars, once such illegal networks are established, they take on a life of their own that is very difficult to effectively control, as the contemporary opium trade from Afghanistan suggests.

### *Conclusions*

This paper drew upon my previously developed typology of fundamental reasons why illegal practices persist. It used this model to consider some problems faced by Customs interdiction of smuggling. After exploring some of the distinctive features and uses of my typology, I used case studies to consider enforcement issues for each of the five different types of illegal persistence. The examination of each variety of persistence drew out implications for Customs enforcement, considering processes that apply particularly to that variety, as well as those such as corruption that may be involved in all five. While I hope that these discussions are of some interest, it would

seem desirable in this conclusion to try and take the analysis some steps farther. In particular, what can we learn by comparing the dynamics of the different varieties of persistence of smuggling?

First, a key lesson seems to be that the degree of social legitimacy, or seen from the opposite side, the degree of stigma, of a particular kind of smuggling has influences on all dimensions of the process, from how many people are willing to attempt it, to the extent of the penalties, the willingness of Customs officers to tolerate the practice (or simply confiscate the contraband without imposing other penalties), and the possibility of loss of credibility for Customs agencies when they enforce the rules strictly. Socially legitimate but formally illegal practices of “smuggling” are less likely to generate feelings of guilt in citizens, less likely to invoke anger or feelings of justification for harsh treatment by frontline Customs officers, and may not worry their supervisors. Senior Customs officials have limited resources to deploy and would prefer that they be devoted to “important” or clear-cut kinds of smuggling, and may not want to undermine public support for their activities. Dangerous pharmaceuticals or weapons are likely to generate completely opposite reactions at all levels. Smuggling that only has profits for motivation, without the buttress of informal legitimacy among the general population, and which is propelled by the dynamic that heightened enforcement leads to greater investment by smugglers in the tools of violence and corruption, is likely to produce the most stigmatized cases, followed by subversively motivated illegal trade without substantive domestic support. Rebellious persistence starts to have greater legitimacy among at least parts of the population, but may be the most threatening for the government, so that divergence of perspectives may be most apparent in this type. Smuggling under the auspices of ambiguous persistence is likely to have the least stigma, and thus the highest rates of infraction and lowest effort put into enforcement, although high prevalence may result in many cases of interdiction.

Second, the results of intensified enforcement crackdowns would seem to differ between the types. For market persistence, intense repression is most likely to result in the driving out of amateurs and the concentration of the illicit industry in the hands of organized crime, with loose, informal networks replaced by more hierarchical organization, or cell structures as in the case of revolutionary parties so that members cannot reveal the names of more than one or two individuals outside their cell (Smart, 1988). Crackdowns on smuggling of informally legitimate goods, on the other hand, may result in increased public resentment against the agents and the government (Chalfin, 2004), or even encourage stronger anti-government activism, as Peter Andreas argues for colonial America. Under certain conditions, it is possible that crackdowns against ambiguous persistence can lead to rebellious persistence.

The last point leads to the third general consideration, that there are situations where one type can be transformed into another. The interaction between smugglers and enforcement agencies can lead to changes in the main reason why the smuggling persists. If enforcement is done in such a way as to undermine the legitimacy of government agents while increasing the legitimacy of those who break the rules, one possible result, as Andreas shows, is a shift from ambiguous persistence towards rebellious persistence. On the other hand, informal legitimacy of illicit goods may be reduced when illegal entrepreneurs act in ways seen as unacceptable, for example as independent sex work becomes replaced by sex slavery and human trafficking, or as cocaine becomes more hazardous when converted into “crack”, or as fights over lucrative markets become violent and affect “innocent bystanders”.

The most general conclusion is that there are both theoretical and practical advantages in avoiding a treatment of illegality in general terms, and to pluralize the concept to understand the diverse motivations and forms that it can take. Illegality in the singular accepts seeing like the state in black and white. Illegalities in the plural form bring the dynamics out of the black letter of legal codes and court decisions, and bring back people into the analysis of the processes that result in illegality being both interminable and diversely variable in its informal realities (Smart, Zerilli, 2014).

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