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Porous Borders
The Study of Illegal Markets from a Sociological Perspective

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Abstract

State concerns about crime and security issues have strongly affected conceptions of economic action outside the law, a traditional field of research in sociology. This increasing encroachment by policy-related concerns on the intellectual framework of the discipline has led, on one hand, to an almost exclusive focus on criminal organizations in the analyses of illegal economic activity. On the other hand, it has led to the downplaying of the importance of classic topics of sociological reflection, such as the embeddedness of action, the moral dimension of illegal products, or the relationship between social change and the spread of illegal exchanges. This short paper problematizes economic action outside the law by taking legal definitions and their effects seriously. It begins with the problem of naturalizing state definitions. This is followed by a discussion of the illegality of illegal markets, which illustrates sociological contributions. Finally, three dimensions of the study of illegal markets are suggested. Overall, the paper lays out a research program for this field of sociological inquiry.

Zusammenfassung

Das staatliche Interesse an Kriminalitäts- und Sicherheitsfragen wirkt sich massiv auf das Verständnis von illegalen ökonomischen Handlungen aus, einem klassischen soziologischen Forschungsgebiet. Der zunehmende Eingriff in die intellektuelle Struktur der Disziplin hat zur Folge, dass der Fokus fast ausschließlich auf die Analyse illegalen Markttauschs gerichtet ist und die Bedeutung klassischer soziologischer Themenfelder – wie die Einbettung wirtschaftlichen Handelns, die moralische Dimension illegaler Güter oder die Verbindung zwischen sozialem Wandel und der Verbreitung illegaler Märkte – heruntergespielt wird. Dieses kurze Paper diskutiert illegale ökonomische Handlungen, indem es Legaldefinitionen und ihre Auswirkungen ernst nimmt. In einem ersten Schritt beschreibt es das Problem naturalisierender staatlicher Definitionen. In einem zweiten Schritt diskutiert das Papier die Illegalität illegaler Märkte, womit soziologische Beiträge illustriert werden. Schließlich werden drei Dimensionen für die Analyse illegaler Märkte vorgestellt. Insgesamt skizziert das Paper ein Forschungsprogramm für diesen Bereich soziologischer Analyse.

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1 Introduction

In his classic book *The Other Side: Perspectives on Deviance,* Howard Becker wrote:

> The sociological study of deviance had an auspicious beginning, rooted in the central concerns of sociological theory. Problems of deviance were problems of general sociology. […] Unfortunately, the study of deviance lost its connection with the mainstream of sociological theory and research. It became a practical pursuit, devoted to helping society deal with those it found troublesome. (Becker 1964: 1)

Today, in the context of increasing specialization, it is difficult to accurately appraise the situation in this area of sociological inquiry. However, it does appear that state concerns regarding crime and security issues are increasingly encroaching on the intellectual framework of sociology (Savelsberg/Sampson 2002; Short 2002). State definitions of what constitutes a crime and research agendas stemming from policymakers' concerns about security are very much present in this subfield of sociology.

The aim of this paper is to present in renewed form the connection between the problem of acting outside the law with classic sociological concerns. With the purpose of positioning illegal markets as a significant field of research within economic sociology, three relevant areas of research have been identified: social externalities that emerge as a by-product of market activities; the phenomenon of informal institutions facilitating market exchanges; and social expectations as propelling forces behind economic agreements in markets.

Although they are doubtless relevant, criminal organizations are not at at the center of this approach, but rather human action, which is socially and culturally embedded. Informal economic institutions, externalities of exchange, and expectations are all key dimensions of the analysis not only of criminal organizations, but also of consumers and their culturally embedded valuations, cognitive frames, and visions of the future. In this perspective the focus is on the social meaning of the illegalization of economic life, the political uses of illegal exchanges, and the connections between economic crises and the spread of illegal markets. Here, it is important to stress that the word "illegal" is not used in any moral sense. Instead, it is part and parcel of the fundamental point

This paper was presented at the semi-plenary session "Dark Networks" at the 12th Conference of the European Sociological Association that took place in Prag in July 2015. I would like to thank Sérgio Costa, Paolo Campana, and Jens Beckert for their comments on this paper. I am, of course, responsible for the remaining errors.

addressed in this paper that legality/illegality matters: by defining markets as "illegal" acknowledges state intervention in economic life and therefore permits investigation into the consequences and effects of prohibitions.

The main body of this paper is divided into three sections, beginning with an overview of the role of the state in legality and including an allusion to a remarkable phenomenon that tends to fly under the radar: the naturalization of state definitions. This leads to a discussion on the illegality of illegal markets and how illegal markets may be viewed from a sociological perspective. Using this perspective as a starting point, the third section outlines three dimensions suggested for the study of illegal markets. A conclusion follows.

2 The naturalization of state definitions

When we conduct any kind of transaction in a market, whether buying or selling, planning transactions or terminating contracts, we do it by following norms. The same is true when reflecting upon markets and the transactions taking place within them: regardless of the theory taken as a starting point for the analysis, transactions among actors are simply assumed to be governed by a set of rules. The existence of a central instance called "the state" that aims to regulate economic life means that a significant portion of the norms governing transactions have the state as a point of reference. This basic assumption is independent of Adam Smith's assertion that market exchanges emerge due to the "propensity to truck, barter, and exchange one thing for another" (Smith [1776]1982: Chapter 2). Capitalist economies are known to be structured by the hand of the state: investment in industrial facilities, the creation of organizations, investment in social, legal or physical infrastructure, hiring employees, the consumption of goods, competition, the procedures regulating contracts, and so on are all structured by state regulations. In other words, markets in modern capitalism are structured by state law (Fligstein 2001) and, with the state playing such a central role in defining legality, the historical and social backgrounds of markets must be taken into account. Thus, illegal markets should be explained not only in relation to a definition of legality, but also in relation to the history of the state that makes certain goods or services illegal.

To those born and raised in this environment, the presence of the state is something more or less natural, described by Pierre Bourdieu as "a well-founded collective fiction" (Bourdieu 2014: 4). It is something natural also in practical terms but primarily as a category of thought, and it is this naturalization of legality that can be seen in traditional reflections about markets, where it is assumed that the word "market" does not need to be qualified with the adjective "legal." Terms such as "the legal housing market" do not exist, even in economic and sociological literature, because markets tend to be referred to under a blanket assumption of their legality. A good example of

this can be seen in economic sociology, a field of research in which markets are unanimously and tacitly considered to be legal devices (Beckert/Wehinger 2013; Zelizer 2007; Sørensen 2003). The consequence of this blind spot is a division of labor: today, the problem of economic action in spheres outside the law is disconnected from the traditional questions of sociological theory. Action in spheres illegalized by the state has instead been treated as a problem that primarily concerns other fields such as criminology or the economic approach to illegality.

3 The illegality of illegal markets

The concept of the illegal market underlying the research program put forward here refers to a state action that may be termed "illegalization." Illegal markets are, in this sense, "illegalized markets." This illegalization is an outcome of moral debates or demands concerning the consequences – proven or not – of the production, exchange or consumption of certain goods and services. In the case of markets, the qualifier "illegal" refers explicitly to a legal definition whose purpose is the control of economic transactions. One of many examples is the case of cocaine, the history of which is marked by different stages, commencing with the thrill of discovery and hope for its potential medical uses, through to the long, politically-motivated journey towards worldwide prohibition.

A clear reference to illegality brings to the fore something seemingly evident but not always addressed: the social construction of the legal and the illegal. Different sectors of economic life are continuously subject to processes of both legalization and illegalization, both of which (but especially the latter) give rise to new scenarios characterized by an adjustment of social expectations. Every time an economic sector is illegalized, certain effects – in terms of both new organizations trying to break the law and also moral transformation – should be expected. Today, a good example of this interplay between legal definitions and changing moral perceptions is the legalization of marijuana, which is a political, medical, and also a social issue. In general, illegalization leads actors to adopt one of two attitudes: compliance or noncompliance with prohibitions. Illegalization thus gives rise to attitudes that consider prohibitions to be legitimate or illegitimate. In the following section it will be argued that the study of illegal markets from a sociological point of view is, in fact, the study of this social dimension.

In observing the way sociology has tackled deviance, it is apparent that the dimension legal/illegal has not played an important role in most empirical subfields of sociology, with the exception of the sociology of law. In general terms, when dealing with social norms the focus has been on compliance or noncompliance with the law and on appropriate or inappropriate behaviors. This is clear, for example, in the case of the Chicago School of sociology and criminology. Studies including *The Polish Peasant in Europe*

and America (Thomas/Znaniecki [1918]1958), *The Unadjusted Girl* (Thomas 1967) or *The Hobo* (Anderson 1961) refer to religious, familiar or group controls. In the context of these studies, deviance alludes to the breakdown of these controls provoked by rapid urbanization and modernization processes in the context of mass immigration to America (Beirne 2006: Introduction). A similar perspective can be found in the body of research referencing the work of Howard Becker (1963, 1964): this is the so-called "labelling" approach, which encompasses more than just cases of "illegality." Here, deviance is understood as a social construction that is not entirely independent of legal norms, but certainly goes beyond them. More recently, the broad strand of research that does consider the dimension legal/illegal is the investigation of organized crime. However, as Letizia Paoli recently stated, the evolution of the concept of organized crime has been strongly influenced by policymaking processes (2014: 13). This has led to a focus on criminal acts rather than on social acceptance, tolerance or refusal of unlawful exchanges.

Overall, it is possible to contend that the dimension legal/illegal, revealing the way the state intervenes in society, and the dimension legitimate/illegitimate, revealing the extent to which prohibitions and regulations are accepted, have not been systematically related. This oversight may be characteristic of a discipline that first developed in societies such as those we find in Europe, where what is legal is at the same time overwhelmingly also considered to be appropriate. There is a need within this field for a type of research on illegal markets based on theoretical dispositions that are also sensitive to the development of the state outside Europe and North America.

The research on illegal markets shows an awareness of the presence of the state as a key actor, which leads to an emphasis on looking at illegalization and the related social effects as a fruitful field of research. These effects are shared interpretations, judgments, and valuations: the phenomena emerging around bans and interventions that become decisive frames for economic decisions. The market for rhino horn that connects South Africa with China and Vietnam may be taken as an example. The commonly held belief in Chinese and Vietnamese society that rhino horn possesses aphrodisiac and cancer-healing properties is essential in explaining its value chain, while the tradition of the trade in rhino horn is essential in explaining the social legitimacy of market practices. At the same time, this thriving market cannot be explained without reference to the illegalization carried out by the government, national parks, international NGOs, and other institutions. Indeed, the tradition of hunting rhino was reinterpreted in light of this illegalization (Hübschle 2015).

To summarize, the research on illegal markets does not assume that formal rules are morally superior and that they therefore deserve compliance. It can only be assumed that state interventions making use of the law affect reality, that illegalization produces something in the social world. Hence, the research on illegal markets considers that the investigation of production, supply, and consumption – and moral phenomena in general – reveal the extent to which illegalization is accepted or refused. By focusing

on these kinds of phenomena, sociology can contribute to an explanation of coordination and innovation processes in markets, and the focus may be shifted from economic spaces in which the key actor is organized crime to illegal markets in which the actions of organizations and consumers are culturally and socially entrenched.

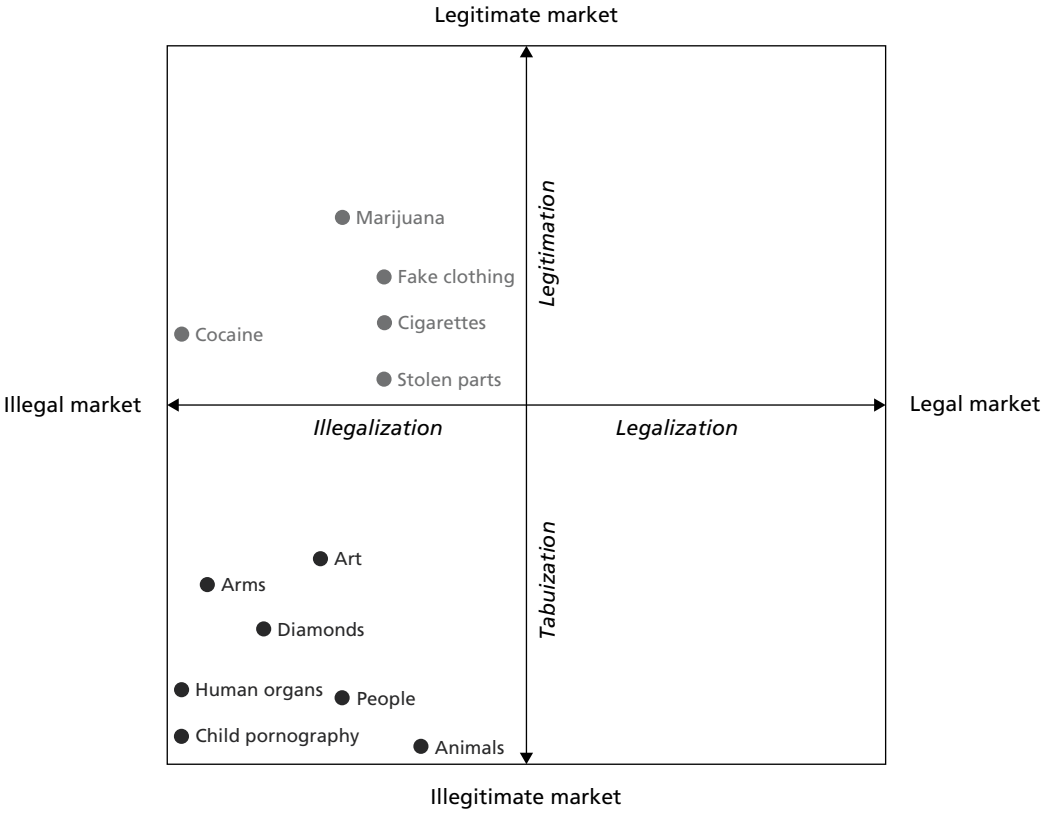
4 Dimensions for the study of illegal markets

In the following section, three dimensions will be described that form the basis for the study of illegal markets. As already mentioned, a sociological analysis of illegal markets may take formal prohibitions as a starting point in order to further analyze their social effects. As such, the dimensions outlined below allude to co-effects directly linked to laws banning economic activities.

Overall, moral phenomena – including shared interpretations, judgments, and valuations – are to be found behind all three dimensions, which are closely related to the illegalization of commodities and services. The interplay between the dimensions legal/illegal and legitimate/illegitimate is visualized in Figure 1.

Externalities: The first dimension refers to externalities that emerge as a by-product of the functioning of illegal markets. These externalities may be understood as indirect effects of market activities and may be positive or negative. Among the negative consequences are such well-known issues as violence, interpersonal distrust, predation of natural resources, and human rights violations, and there is a vast body of literature accounting for the undoubtedly negative effects brought about by criminal groups and mafias. However, the adoption of a perspective informed by the notion of a market changes the landscape somewhat. In this new landscape, an actor rarely given much consideration appears – the consumer – and, more generally, their moral considerations regarding the nature of the products they purchase. Here, reference is made to valuations of illegal products, to tolerance and rejection, or to the social consideration of the moral meaning of the exchanges. In classic sociological terms, this is defined as the legitimacy of products. For example, there are products whose exchange provokes instant moral rejection, such as child pornography, human trafficking, or the trades in hard drugs and wild animals. In contrast, there are also goods or services that provoke a far from unanimous rejection and may even be met with tolerance. These products, because of their very nature, because they are embedded in tradition, or because they are considered vital for life, are tolerated or even accepted by certain sectors of society. It is exactly these moral considerations that connect legality and illegality. Good examples of markets experiencing some degree of tolerance are those for counterfeit garments or music, smuggled cigarettes, stolen products, certain soft drugs and, in some cases,

Figure 1 Dimensions of the legal/illegal and the legitimate/illegitimate



for historical artefacts. Of course, rejection and tolerance do not arise with the same intensity across society as a whole – there are several degrees of tolerance, acceptance, and rejection.

An interesting aspect that comes to light on adopting this perspective is the observation that moral considerations around the exchange of formally illegal goods quickly become political resources. Here again the case of the rhino horn may be taken as an example, in which horn is poached in South Africa and transported to China. In this case, moralization is used for political purposes: for bolstering the institutions charged with fighting the illegal trade in rhino horn. It is accepted that political elections can be won by striking fear into the population and suggesting the need for new security policies; the same process may be observed when the commercialization of a certain product is socially tolerated. Examples of these cases include counterfeit garments, garbage, stolen foodstuffs, cigarettes, and alcohol (Radaev 2015; Dewey 2012, 2014; Misse 2007; Aguiar 2012). In looking at centers of illegal garment production, such as Prato, Italy, or Buenos Aires in Argentina, the products are not only shown to be perceived as harmless, but the market exchange of faked and illegally-produced garments has been shown to

facilitate the creation of informal jobs and to foster consumption. In these cases, political interest is not a distant phenomenon because some illegal markets may provide solutions to specific political problems.

Political tolerance, often expressed at a local level and in an informal fashion, plays a pivotal role in providing political stability and the means for the continuing success of the market (Misse 2007; Dewey 2011). In either case, it is important to recognize that the distinction between both dimensions, legal/illegal and legitimate/illegitimate, allows the capture of both the externalities that emerge from illegal markets and their role as subjects of political interest. The introduction of security policies, the arming of security forces, the promotion of consumption, and the creation of informal jobs may all be seen as political means of taking advantage of the externalities of illegal markets. In other words, the recording of these phenomena is a vital part of the analysis needed to explain the functioning of such arenas of exchange.

Informal economic institutions: The second dimension is closely related to the first and refers to informal social arrangements. These are defined as socially shared rules, usually unwritten, that are created, communicated, and enforced outside officially sanctioned channels (Helmke/Levitsky 2006: 5). It has already been mentioned that shifting moral considerations from the illegalization of exchanges may spark political interest. An additional subject for consideration is the economically relevant informal institutions acting as an interface between legality and illegality, and facilitating the coordination of market exchanges. In this regard, to compare economic sociology with political science is to be confronted with a challenge: political science offers a large body of research addressing phenomena that play a crucial role in modeling formal politics, such as clientelism or patrimonialism (Helmke/Levitsky 2006; Erdmann/Engel 2007; Brinks 2003; O'Donnell 1993; Della Porta/Vannucci 1999; Lauth 2000), but there is not the same well of information when it comes to the informal institutions that give shape to the formal economic architecture. Indeed, sociology has spent a great deal of time reflecting on the informal economy, the economy off the books, but it needs to take a much closer look at informal economic institutions.

Considerable advances have been made by scholars researching extra-legal governance, especially around the sale of protection as the main business of mafia groups (Gambetta 1993; Volkov 2002; Varese 2004; Campana 2011). For the most part, however, economic sociology has simply assumed that the institutions shaping capitalism are legal and formal in nature. There is no denying that making clear distinctions between political and economic institutions is complicated, but this does not preclude the possibility of investigating the illegal and informal institutions that facilitate the financing of criminal groups, the conventions and cultural scripts that influence the production of faked products, the informal norms that regulate competition among suppliers of illegal goods, and the logic behind the commodification and innovation of new illegal products and services. This may be summarized as the architecture of illegal markets, which is not to be found on paper but that nevertheless effectively influences market exchanges.

At the same time, looking at economically relevant informal institutions is a way of challenging the common assumption in economic approaches that illegal markets work in a similar way to legal ones. In other words, one could investigate the informal institutions, conventions, scripts, and general frames that shape illegal markets but do not have equivalents in legal ones. Current studies, for example, show the significant role played by legal mechanisms that intentionally shroud criminal practices in secrecy (Kedron 2015). Such rules and legal mechanisms protecting the identity of account holders in tax havens definitively help provide secrecy around what usually functions as the banking system of some illegal markets (Palan 2006; Palan et al. 2013; Böttcher 2015). As an example, secrecy as an institutionalized social mechanism has been shown to play a significant role in the market for human organs. Research on this market in France shows, for instance, that citizens with a second passport (from Afghanistan, for example) can go abroad, get a transplant, and return to treatment in France without any obligation to declare the operation (Steiner 2010). This case makes plain that legal devices facilitate secrecy around illegal trade. Other studies, however, show the important role played by deviance-normalizing and neutralization practices, which refer to subjective methods used to silence the urge to follow moral obligations (Sykes/Matza 1957). These are justifications that allow moral responsibility to be avoided (Wiegratz 2012; Whyte/Wiegratz 2016) and are to be found in the market for antiquities looted in underdeveloped countries for transport to Italy and eventual sale in prestigious galleries. The entry of these antiquities into exclusive circuits of trade is possible due in part to such neutralization practices: dealers and buyers go to great lengths to provide justification for violating norms, the result of which is that criminal acts are camouflaged and the workings of the illegal market are maintained (Mackenzie 2005, 2013).

Finally, the relevance of local politics and informal political institutions in facilitating the coordination of markets must be addressed. In studies on the trade of illegal goods and services, a great deal of participation from informal politics can be observed. This dimension – the interface between legality and illegality – is anything but new and has been studied from the perspective of corruption by Rose-Ackerman (1978) and Della Porta (Della Porta/Vannucci 1999), among others. However, many of these studies focus on corruption and have not been integrated into the study of illegal markets. The study of informal institutions in the context of illegal markets does not end in the study of corrupt relationships among organized criminal groups, local politicians, and the police. Instead, it must be taken into account that the exchange and circulation of products depend not only on agreements that neutralize the law but also on multiple mechanisms that legitimate actions, provide capital, mask transactions, and reduce violence.

Expectations: The third dimension is the meaning of expectations of the future in regard to illegal markets. In today's world, the meaning and function of illegal markets have gained new momentum, propelled by such situations as continuous economic crisis, forced displacements, migrations, marginalized populations, extreme poverty, or persistent inequality, which have transformed some illegal markets into mechanisms that provide access to essential goods and services. Indeed, illegal markets, especially those

enjoying social legitimacy, have become devices for access to a certain level of economic citizenship. The trade of, for example, faked or stolen products, illegally looted antiquities, certain drugs, diamonds, or rhino horn should be analyzed in close connection with the structural configuration of the societies in which the exchanges take place. In these social contexts, as pointed out by Diane Davis, the fragmentation of state sovereignty has given rise to the emergence of armed non-state actors who do not necessarily operate against state authority (Davis 2010; Clunan/Trinkunas 2010; Nordstrom 2000). On the contrary, they often seek to secure the supply of resources and the functioning of illegal markets. The state's loss of some of its influence as a sovereign power represents a shift to a constellation in which sovereignty and alliances between private and public actors are reformulated (Hibou 2004; Reno 1995; Arias 2006), a new scenario in which illegal markets play a significant role in fostering new forms of membership of social groups. The fact that illegal markets expand, therefore, is not a situation external to either the fragmentation of state authority or the subjective possibilities that these economies can offer.

From a micro-social perspective, participation in these economies and access to goods, services, and a certain lifestyle mean that some illegal markets have become mechanisms that increase people's experiences (Appadurai 2013: 115; see also Beckert 2012; Bronk 2009). Especially in the case of marginalized populations, they expand the individual's capacity to aspire and ability to expect future events. The market as a coordination mechanism of interests opens a door to the experience of striving to achieve; it is something that allows actors to monitor their capacity to affect change in the world.

To mention the future, aspiration and hope in the context of an analysis of illegal markets may come across as unusual. However, to include the future in an analysis on this topic helps to make sense of the propelling force behind the expansion of illegal economies and to determine the motivation of the many people throughout the world who risk participation in these arenas of exchange. Motivations such as the promise of access to goods, inclusion in reciprocity networks, economic citizenship, or simply a certain level of economic stability are often more relevant than the problem of illegality.

5 Conclusion

To conclude we must make reference to the ever-present tension in research on human action outside the law that arises from the view that crime is either a phenomenon to be understood and explained, or a problem to be solved. Although in practice there is crossover between them, the two approaches are fundamentally different. This paper strongly advocates the first option and has shown that investigating valuations, expectations, and the state power regulating economic life allows the researcher to obtain a qualified perspective of the arena of exchange called the market. In this arena,

consumers may be found making valuations; states are seen creating, enforcing, and relaxing regulation; and politicians may be observed acting in their own interests, all under the influence of local traditions, institutions, history, and culture.

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