

Governance Beyond the Law: The Immoral, The Illegal, The Criminal



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Book review by PREDRAG BEJAKOVIĆ*
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The literature on the informal or illegal economy is relatively abundant, but mostly it is dedicated to one country (or a smaller group of similar countries) or to methodologies for measuring the phenomenon. Furthermore, more attention is directed to the description of the informal economy than to the understanding of its causes and social consequences. The new book published by Palgrave Macmillan entitled *Governance Beyond the Law: The Immoral, The Illegal, The Criminal* edited by Polese, Russo and Strazzari sheds light on the main causes and effects of the immoral, illegal and/or criminal behaviour of citizens in many countries around the world, often caused by inappropriate actions by the state. Without any intention of defending the perpetrators of illegal activities, the authors and the editors in the book try to find out what the main causes of such behaviours are and provide a deeper understanding of their economic and social roles. Briefly, the main message in many situations could be summed up in a single statement: “The system forced me do it: it was the only strategy of survival for my family”.

The editors in *the Introduction* paraphrasing a masterclass in the movie “The Good, the Bad and the Ugly”, provide a broad perspective on the outlawed activities. The “informal sector” has been for a long time defined as either unregulated forms of labour directed at providing subsistence and survival in an illegal environment or as actual unlawful activities ranging from unofficial earning strategies and unregistered business to handling contraband and corruption. While seeing informality as part of the survival and coping strategies developed by participants and institutions whose status and positioning regarding the formal law and institutions may vary, this publication tries to avoid the prevailing explanation of informal politics and social practices as obligatory consequences of an underdeveloped economy and weak institutions. The contributions assembled in the book clearly show that the relationship among formal and informal institutions and elements contains significant dissimilarities in various contexts. Formal and informal traits are actually strongly intertwined along processes of economic development and social modernization. Informal activities are undertaken quite often by citizens who perceive certain activities of the state as insufficient or inadequate because there is tacit comprehension that people should take care of things themselves. Therefore the authors and editors in the book try to analyse “the fields of the illegal, illicit, informal and criminal as multiply traversed by overlapping regulatory spaces, governed by routines and rules that organize mobility, borders, actors’ inclusion and exclusion... as well as the production and distribution of goods and commodities across societies” (pages 12-13). They very successfully shed new light on actions and processes that happen beyond and against the law that have been recently rediscovered as important factors in shaping different types of governance.

Part I of the book entitled *The Social Morality of Crime* contains eight various contributions. The first, by Giovanni Zanoletti, is dedicated to the criminalization of everyday life and state formation in Mali. The author examines the concept of the criminalization of ordinary life as a mode of existence rather than a systemic dysfunction that enables successful socio-economic development. The aforemen-

tioned negative characteristics are mostly caused by the erratic process of power concentration in the political elite, which demonstrates that the state in Mali is weak, without clear roles and responsibilities, inclined to corruption while its representatives (primarily the police force) resort to violence and the extortion of rents. Therefore, it should be no surprise that citizens do not trust the government and have a relatively benevolent attitude towards the immoral or illegal behaviour of their peers. Consequently, breaking the law is not stigmatized a priori; but people do blame those who do not share what they have appropriated in a legal or illegal way. Handling fraud and dealing with intermediaries in various illegal activities became the unavoidable way to social success and respect. It should not be a surprise that the criminalization of everyday life appears to be an inescapable and a central element in the formation of the national state in Mali.

The unclear role and ambivalent duties of the state are also present in the contribution by Giulia Prelz Oltramonti and Mihnea Tanasescu on the informal practices of residents of the Danube Delta in Romania. The state treats this region as the end of the known world, providing almost no social services or protection. Fishing as the most important occupation for local population is currently regulated by a completely unclear and conflict legal framework that causes legal insecurity, and stimulates disrespect for the law. Moreover, various state agencies, without the needed collaboration and cooperation among them, are responsible for the different business and transport activities that also contribute to the lawlessness in the region. The situation has deteriorated additionally with a recent strong transition from resource exploitation toward environmental protection that also limits the possibilities of the local population to earn their living. The state approves the locals' right to traditional economic activities, but such activities are not clearly defined. There is a huge difference between what the local population deem traditional activity and what the state bodies regulate, de-legitimize, and/or treat as criminal deeds. Consequently, the state is often blamed by the locals for its use of arbitrary power that without any reason demonizes traditional economic activities and forces them to behave illegally.

Gulzat Botoeva, focusing on the process of legitimizing illegal hashish production in a northern Kyrgyz village, further develops the ideas of criminality and criminalization. During the former Soviet Union era, the local population was mostly working in agriculture on the state farms, growing various husbandry products. The collapse of the Soviet Union and the demise of the economy caused mass unemployment so the population was almost forced into hashish harvesting as one of the only ways in which it could earn some money. What is interesting is the self-perception by local population because they do not see themselves as criminals but as honest workers. However, they are fully aware that production and selling of drugs are related to criminal activities. In such a process, they blur the borders between legal and illegal activities and apply various terms that explain such activities. Hence, they form a "grey space" in which multiple different legal and ethical interpretations of hashish production are used. In such a mode, they

enforce strategies to overcome the feelings of guilt caused by earning hashish money. Calling hashish harvesting work was important as the work ethic was accepted in the culture of farmers who were judged according to how well they took care of their land and livestock. This also enables self-reliance in coping with various problems and not waiting for help to be provided by neighbours or state. Comparing the work done by older generations during the former state and the current activities of hashish production contributes to adoption of the latter as ethical, and therefore the question about its illegality is posed.

Luis Rivera Vélez investigates the narratives employed by mothers of sick children to propose cannabis as an alternative medicine to ineffective treatments. Their children suffer from a rare disease, such as refractory epilepsy, which also provokes extreme situations of handicap, very low quality of life, and practically no life expectancy without adequate medical support. In the present condition of unaffordable medical treatment, cannabis is an astonishingly successful aid both to the children and to the mothers. The medicinal cannabis boom in Latin America is the result of the collapse of medical institutions and health services. Despite their deep fear of cannabis, related to the narcotic nature of the substance and its illegality, they use the drug in healing of their children, because they have nothing left to lose. Having discovered the potential positive effects of the substance, they began to argue that even if cannabis could be deemed a psychoactive drug, this does not nullify its positive effects as medicine. The author shows how the mothers organize illicit secret networks to ensure the access to cannabis. They have also been very influential in demanding a more effective approach to drug policy in a recent discussion throughout Latin America and successful in altering the moral conception of the substance. The change in the moral perception of the substance led to a modification in public policy and partially legitimization of the cannabis market in some Latin societies.

Anna Markovska and Yuliya Zabyelina study the impact of the 2009 ban on gambling in Ukraine and its effects. After the ban, the once legal gambling industry moved into the underground and informal sectors. This led to the development of mutually beneficial relations between power holders and banned service providers in ensuring illicit profits. The owners and the management of the gambling club wanted to conduct business legally, but it was not possible. Their business relationships with the state officials, particularly tax inspectors, are very complex. As they operate in various parts of the cities, they have to collaborate with different officials and inspectors. Particularly annoying to them are constant requests for contributions to charity. Therefore, when the tax inspection office is under reconstruction, the owners of the gambling club are usually asked to cover the cost of the refurbishing. The tax administration offices state that they have no financial sources for renovation so they are contrived to seek “sponsors”. The illegal behaviour of many state officials is part of the inheritance from the Soviet period that manifested itself in the concepts of flexible legality. During this period, citizens often conducted unsanctioned illegal transactions in order to survive or achieve a

better quality of life. The establishment of the rule of law in Ukraine is a demanding task that cannot be achieved in a short period.

Levenets, Stepurko, Pavlova and Groot analyse the importance and effects of bribes, gifts, donations and personal connections in the Ukrainian health sector. Informal payments and informal practices have become deeply rooted and widespread coping strategies of many citizens in circumstances of inadequate or inaccessible provision of public services. Coping strategies mostly consist of active coping, transformational problem-focused coping, withdrawal, and denial ... as well as problem- and emotion-focused coping, that is, seeking instrumental social support, behavioural or mental disengagement, praying, and so on (page 128). The distinctive characteristic of coping strategies is that multiple tools, such as bribes, presents, and social relationships, can be applied simultaneously in handling the obstacles in the provision of services. Although such strategies can be useful and help patients receive the needed services, in the long run they can endanger future health care reforms aimed at improving access to services and the quality of services provided as well as the more efficient use of resources. This is particularly threatening having in mind that the health care system of Ukraine is not at all transformed and that there is almost not attempt to improve the efficiency of service provision and quality of health care. Finally, coping strategies can impede patients' trust in both medical professionals and the state.

Regine Schönenberg in her contribution examines the collateral damage caused by global governance at the local level in the Brazilian Amazon. The author shows how rapid social transformation strongly affects all informal survival strategies. Global governance has not achieved regulatory force, primarily due to the weak impact of global policies on the local situation and non-presence of affected social stakeholders that have been expelled from their local environments. Schönenberg underlines two key deficits and gaps. The first one is the institutional or implementation gap: the increase of diffuse governance initiatives has led to unclear roles and responsibilities. There are many good project ideas but they must be realized at various policy levels, where the necessary institutions and required framework conditions often do not exist. The second deficit is the participation gap, which denotes the fact that in governmental policy decision making processes, civil society groups are either frequently not included or else have negligible impact. Instead of current bottom-down initiatives on many governance initiatives, there is a real need to perform global governance from a bottom-up perspective. Since the 1990s, the interests of local populations have become increasingly interwoven with different global interests, like the protection of indigenous populations; the search for acreage to use for agro-industrial production; biodiversity and climate change and so on. Due to new communication technologies and the globalization of financial transactions, illegal operations can with the bribing and the help of local political elites can easily obtain the needed licence and/or exemptions. In such circumstances, they can seriously endanger the social fabric while the existence and security of local inhabitants are often neglected.

The second part of the book studies the antagonism between “us” (the people) versus “them” (the elites, formally representing the state). The authors of six contributions scrutinize the romantic image that tends to be that, by way of revenge against an oppressive and unjust government, a population will often affix to criminals and outlaws. Joseph Nicholson in a very interesting text evaluates the concept of informality in the Russian revolutionary state during the period 1917-1920. Bolshevik revolutionaries conceptualized a new kind of society in which the state and the legal framework would become mere tools for liberating people from oppression, and finally when population achieved life in communist harmony, they would disappear. Revolutionists accepted and implemented radical measures freeing society from the existing state. As the Soviet model of the distribution proved to be disastrously ineffective, the majority of the population was forced to participate in illegal activities and/or to buy contraband goods on the black market for the sake of survival. Although the state organized secret police to arrest and prosecute speculators, its success was limited because informal commerce was accepted and practiced by almost the entire population. The main aim of the Bolsheviks was to eliminate bureaucratisation of the society, but just the opposite happened, society became more and more bureaucratized. Slight traces of the previous nascent rule of law from the former system were systematically ruined, and were replaced with a chaotic world of inconsistency, arbitrariness and *flexible and correctible* law (meaning, very unpredictable).

The Balkan Peninsula is an excellent example for researching various forms of opposition against intruded legal frameworks and administrative organization. Régis Darques recalls that during history local national heroes were often a combination of smugglers, bandits and resistance fighters whom contributed to the huge disbelief in the government. Therefore, even today, many ordinary people show strong distrust towards any form of higher authority. Such a distrust has often been presented as an indication of underdevelopment in contrast to the modernity accepted in rich Western countries. The author analyses the district of Gjirokaštër, a Southern Albanian municipality well known as the birthplace of the celebrated writer Ismail Kadare. This part of the country experienced a huge depopulation after the demise of the communist system. However, the small remote village community of Lazarat is blooming as Europe’s biggest producer of illegal drugs. It is Europe’s marijuana capital with almost no electricity, running water or respect for the law. Lazarat became a proud pariah, a state in the state. The national government due to the pressure from the international community and the EU membership application decided to call a halt to its defiance. In summer 2014, special police forces seized the village. Official reports have praised the police forces that have succeeded in keeping the place under control and eliminating the well-structured criminal groups, erasing cannabis farming and bringing Lazarat back to its former anonymity and poverty. However, this success was only partial, because cultivation has been relocated to inaccessible fields on the high mountains. The production model has adjusted to the changing threat and therefore the seeming defeat of the village has fostered the emergence of a nation-wide success.

Fanni Gyurko researches the complexity of informality in the post-socialist Hungarian circumstances using a socio-legal perspective to focus on low-level corruption and informal economic behaviour. Informal economic practices, primarily bribery, are mostly prevalent in the police force and health care and in other daily interactions between state representatives and citizens. Such informal relations can sometimes be perceived quite positively and citizens are grateful to the police officers who demand a small bribe instead of the payment of a huge fine. People are mostly aware of the illegality of such transactions and perceive it as corruption. Furthermore, many citizens are used to small thefts from their offices and factories with the excuse that this is almost their right, because they have very low salaries that are insufficient for a decent life. Citizens also distinguish between their practices and small thefts on one side and government corruption on the other. They categorize their behaviour as less harmful and not real corruption, because they use the obtained resource for something useful, while government misbehaviour constitutes *proper* corruption. Next to the usual inner relations of citizens and their national state regarding informal activities, in the last 20 years there have been many cases of inappropriate use of available and *free* EU funds. People deem such practices as relatively positive and acceptable, because they are on a smaller scale and often their primary goal is not to achieve private gains. In such attitude citizens forget that these resources derive from taxes collected in other EU countries and disregard the opaque consequences of corruption and the private usurpation of public funds.

The governance of trans-Saharan migration and related immorality, informality and illegality caused by cross-border trafficking are the topic of interest of Luca Raineri. Prevailing in the region is the acceptance of a specific morality that reflects the leaky boundaries between trade, smuggling and migration. Fraud and trade are a basis for the Saharan economy and they are often treated as synonyms. There is a specific relation between fraudsters and local communities. Raineri explains, “fraudsters benefit from the assistance and protection of local communities, because they provide them with cheap supplies of basic goods otherwise unavailable, but also because of kinship bonds” (page 231). The assessment of the organization and protection rackets linked to the migration sustain the patronage networks upon which the Nigerien government depends on. Contrary to the expectations, illegalization does not necessary lead to criminalization; while informal protection enables a decrease in prices and improvement in the safety of migration. Niger in the last 20 years experienced serious instabilities, including political crises, insurgences, and civil wars. The possible disruption of the aforementioned patronage networks would have seriously destabilizing national and international consequences, because Niger is currently deemed a loyal ally of the West in the fight against terrorism in Africa.

Ruth Hanau Santini and Stefano Pontiggia analyze informality in Tunisia in the period after the uprisings in 2010-2011. During colonial times, the country was divided into two parts, one directed to the extraction of primary resources and the

second oriented to trade, industry, and commerce. This imbalance was strengthened during the last decades of the Ottoman Empire and the French rule, primarily through modernization of the infrastructures, the expropriation of the land, and the transformation of the country into a market open for the European industrial products. The population in underdeveloped parts of the country felt economic injustice and social marginalization. The lack of equal opportunities and non-recognition of the population in discriminated regions, create powerful motives for social turbulence and violent outbreaks. This can be surprising because riots in Tunisia were not usual since the country is relatively wealthy and stable in comparison to the other countries in the region. Until now, while movements did succeed in changing the Tunisian political structure and supporting the decentralization of the currently much centralized political decision making, they did not alter the state's institutional framework and its political economy. Therefore, as a prevention of future unrests and any stronger alienation of the population from the state, there is an urgent need to cease the negative discrimination against the underdeveloped regions and to enhance the social inclusion of marginalized population.

“The Emerald Triangle” of mountainous areas around 300 kilometres north of San Francisco in the Northern California is the largest region of cannabis production in the USA. Liza Candidi surveys the undercover practices, organizational forms and rules of the various stakeholders involved in illegal cannabis production as well as their strategies for evading law enforcement. The situation is particularly interesting because marijuana currently has a dual legal status: it is illegal under federal law, but it can be legal at the state level because state governments can accept laws for its decriminalization and regulation. In such circumstances, Candidi impressively analyzes how regulatory powers are capable of changing informal communities and examines how self-managed, counter-cultural and marginal practices may become mainstream and an institutional model. For a long period, in the 1950s, the possession of marijuana could be sanctioned with up to life imprisonment. California, the first state in the USA, legalized the medical use of marijuana in 1996, while even the pot producers were against full legalization of their product. They saw it as a threat to their own interests and supported the anti-legalization campaign with the slogan “Keep pot illegal”. However, the complete legalization process could not be deferred and California finally legalized the sale and distribution of cannabis for recreational use in 2016. The clandestine system and its rules, which characterized this district for 50 years, collapsed. Those who a few months ago were criminals now become regular farmers and the price of their product dropped significantly. Therefore, they are forced to orient themselves to other sources for living, which is not always easy or problem-free. Briefly, transition to legality often is very hard and can bring considerable financial losses.

The four chapters in the third part of the book analyse the relation between informal actions and practices, on one side, and the contestation of state structures and institutions, on the other. Resistance against state pressure can achieve various loose forms and can even evolve into a more defined movement with a mutual

ideology. The contribution by Petru Negura contains the result of a study of the first cohort (academic year 1990-1991) of students from the Moldavian and Ukrainian republics, at that time parts of USSR, and their attempts to take advantage of border-crossing liberalization with neighbouring Romania. Once political regimes changed and previous powers and ideologies lost their legitimacy, informal activities very soon attained new social, moral, symbolic, ideological, and identity forms and meanings. Running a small business (in Rumanian *bişnita*), once dishonest if not actually illegal, soon after the transition of 1990, was accepted and respected as an act of innovation and a factor of change. Thus, activities between the formal and the informal economy became very honourable and a generous source of income. Such participation in shadow activities achieved significance that went beyond economics, enabling innovation and profound changes in the lives of people and the society as a whole.

Europe is currently being affected by the immigration tsunami and does not know exactly how to solve this serious problem. The small Italian island of Lampedusa is an entry point for many immigrants in search of a better life in the Old Continent. Annalisa Lendaro after interviews with many stakeholders presents various forms of resistance performed by migrants held in administrative detention located on the island. She explains the emergence of the subtle struggles that lead to the emergence of open protests in public space. Many immigrants refuse the fingerprinting that can hinder their mobility in European countries. Current admission of asylum seekers is based on the non-respect of fundamental human rights, so the concealed protesters nonetheless demonstrate their capacity to act, primarily by refusing to be identified. They also organise open protests and use this disturbance to demand release from the centre. The migrant protests on Lampedusa call the fairness of migration law and related policies into question.

Infrapolitics in political analysis lies beneath (infra) the surface of political struggle and communitarian activism. Infrapolitics is the opposite of grassroots politics and it is a form of anti-political resistance. Infrapolitics is influenced by the state's failure to incorporate large sectors of the population, and the continuity of tradition in the circumstances of modernity's changes. Infrapolitics is illicit, immoral, contrary to prevailing culture and never codified. Applying the infrapolitics approach, Jaime Moreno-Tejada in almost poetic way explains a process of renovating and improving a district (gentrification) in modern Bangkok, where various forms of hidden politics may be found in the dilapidated streets. Here many bike-taxis ride recklessly between the dense traffic and if stopped by the police, a taxi-driver usually gives some small payoff. However, there exists a balance between bribes and leniency, which is integral to the moral economy of the society. Even though Thailand has the appropriate legal framework and a range of institutions to prevent corruption, companies and citizens in most sectors regularly encounter bribery or other corrupt practices. Semi-illicit street food producers and proprietors of various stalls on the pavement in particular have always paid their informal dues to the police. However, to curb the corruption, the

government has announced its intention of banning such economic activities with the goal of turning the traffic-congested city into a walkable space. The powerless and poor segment of the population can only be cynical and mock such intentions and recourse to anti-political resistance.

Meropi Tzanetakis debates informal practices of recently emerged cryptomarkets – buying and selling illegal drugs through Internet – as a subversive form of deprave the state regulation. This technological innovation enables the easy exchange of high-quality illicit products and allows users to hide their identity and location. Therefore, it increases participants' security and lowers the risk of law enforcement. Cryptomarkets may reduce violence related to drug markets. However, such trade usually causes complications for law enforcement bodies. Closures of numerous anonymous online marketplaces already accomplished did lead to an immediate decrease in total sales, but had no long-term effect. Very soon an increase in revenues after such an operation was recorded. What is particularly surprising, however, is that economically disadvantaged (mostly financial limitations), digitally illiterate, socially excluded and marginalised users and drug addicts, as well as drug producers from the poor countries are systematically excluded from participation in cryptomarkets and they are unable to express their informal resistance to prohibition-based drug policies. Contrary to the very strict previous punishment of drug trade and addiction, more lenient measures – primary needle and syringe distribution and exchange, methadone maintenance, injection rooms, medical use of cannabis, safer use of education and drug-testing services – that started in the early 1980s in the Netherlands and the United Kingdom were quite successful at reducing harm to consumers. The further liberalisation of drug using should also reduce all negative consequences of addition and in the longer period contribute to real progress in this field.

Many authors in this interesting book nicely present the ways in which the whole history of many modern societies has been driven by populations who specialized in breaking regulatory frameworks, always playing with rules, with the tacit collusion of the authorities. Illegality and informality have been very often important drivers of economic growth. In many societies, particularly in the Balkan Peninsula, banditry was positively perceived, whereas criminality had a negative connotation. Furthermore, banditry was a way of challenging external ruling powers while the outlaws were often deemed heroes of independence. The example of revolutionary Russia clearly shows how the administrative and bureaucratic machine of the state frequently operates “in the shadow” and/or informally of its own legal framework, procedural rules and codes. Even when the representatives of the state do not directly violate laws, and policy implementation does not result in cases of corruption, civil servants might act in the small interstitial space between what is formalized and institutionalized, and varying degrees of discretion. Organized crime does not happen in a social and political vacuum; at the local level it may not be deemed irregular, being deeply entrenched in social structures and networks. Therefore, it provides an alternative to formal authority and

formal economic structures. In this atmosphere of constant moral ambiguity, the state is not an obstacle to the informal or unofficial economy but a necessary asset to make it prosper. With various contributions from many societies, the authors and editors provide a new, valuable and interesting insight into the framework of a hybrid order and illegal activities, which represent both a challenger to and an integral part of the state. Briefly, this book is an important and distinctive contribution to the recently burgeoning literature on the informal economy.

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