

Title: Researching the Politics of Illegal Activities

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More details/abstract:

Researching illegal activities, while an object of increasing interest, generates a range of methodological challenges for political scientists. Rather than an exhaustive discussion, this article provides a simple framework that structures these challenges. It highlights that illegality itself is an insufficient guide to method development and needs to be supplemented by an analysis of three further dimensions: enforcement, normalisation and ethics. The article notes that beyond providing insights into the feasibility and challenges of different methodologies, examining these dimensions also directly point researchers to key political science questions about illegal activities themselves.

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Researching the Politics of Illegal Activities

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Abstract: Researching illegal activities, while an object of increasing interest, generates a range of methodological challenges for political scientists. Rather than an exhaustive discussion, this article provides a simple framework that structures these challenges. It highlights that illegality itself is an insufficient guide to method development and needs to be supplemented by an analysis of three further dimensions: enforcement, normalisation and ethics. The article notes that beyond providing insights into the feasibility and challenges of different methodologies, examining these dimensions also directly point researchers to key political science questions about illegal activities themselves.

Introduction

Although traditionally regarded as a niche area within the discipline, illegal activities are of clear empirical and theoretical relevance to political science. They stand at the heart of billion-dollar industries from narcotics to prostitution, and relate to key conceptual concerns from state capacity to the distributive politics of law enforcement. Recent years have seen these connections highlighted in a range of scholarship on activities ranging from smuggling (Andreas 2014; Ahmad 2017; Gallien 2019) to prison gangs (Skarbek 2014; Lessing 2017), and from sex work (Majic 2014) to street vending (Holland 2017). Literatures on corruption and state crime have been a part of the field for even longer.

In the process, these authors have provided practical methodological examples of the study of illegal activities in political science. However, there has so far been no wider methodological discussion or mapping within political science as to how the methodological challenges in studying illegal activities relate to the discipline. This is perhaps unsurprising as relevant methodological debates are ongoing in neighbouring disciplines such as economics or criminology.² As this article seeks to show, however,

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² Noaks and Wincup 2004; Gadd, Karstedt, and Messner 2012

there is value in mapping these methodological challenges and exploring how they connect to the interests of political science scholars and students more explicitly.

Given the diversity of illegal activities and their political contexts, the methodological challenges in studying them are extremely varied - this article does not aim to exhaustively map these challenges and is not divided along their typical categorisation.³ Instead, its purpose is twofold. First, it seeks to provide a simple framework that helps delineate and map key methodological challenges in studying illegal activities. While the illegality of an activity is what situates it in this field of study, it alone provides insufficient guidance on the methodological challenges involved. Instead, this paper suggests a mapping of four relevant dimensions: *legality*, *enforcement*, *normalisation* and *ethics*. Second, the paper seeks to show that analysing these dimensions not merely help structure methodological challenges, but that they also help frame and point to research opportunities, as each of these dimensions also directly relates to thematic political science interests in illegal activities.

Legality

Activities are made illegal by their incongruity with legislation.⁴ The first defining feature of the study of illegal activities is that as a field, its boundaries are defined by laws. Consequently, it is relational, and context-specific. Its boundaries are localised in time and space – what is illegal in the present-day Netherlands and Antebellum Louisiana naturally differs. When illegal markets cross borders, global dynamics complicate the picture: while cannabis cultivation in Morocco is illegal, it is legal in parts of the United States, with both legal and illegal producers competing on the same global market. In activities that involves multiple people, laws may distinguish between roles – for example in the case of ‘sex buyer laws’ which make paying for sex illegal, but not selling it.

The illegality of an activity provides a natural starting point for identifying challenges in studying it.

This is because incongruity with legislation itself can trigger direct methodological consequences like

³ Separate literatures have developed on these challenges, though not always explicitly connected to the study of illegal activities. Relevant recent publications on fieldwork in complex environments demonstrate this well, see for example Grimm et al. 2020; MacGinty, Brett, and Vogel 2020.

⁴ Furthermore, laws can create distinctions between illegal activities, for example between misdemeanours and felonies.

formal research clearance procedures such as government-administered research permits or security clearances. Similarly, it can trigger different formal ethics or insurance procedures. However, as the sections below highlight, the vast majority of methodological challenges in studying illegal activities are not mere unconditional consequences of illegality itself – but are instead consequences of a law’s enforcement, normalisation and ethics.

None of this makes legality itself irrelevant. Unpacking the legal status of activities not only provides a starting point to method development but directly engages a project with their politics. It provides a reminder that the illegality of an activity is not primarily a feature of the activity, but a relationship with a legal framework, which is the product of a political process. Criminalisation is in itself a productive processes, producing economic and political opportunities and asymmetries for state- and non-state actors (Andreas and Nadelmann 2008). Consequently, an analysis of the politics of the legalisation and criminalisation provides not only a starting point to methodological development, but also for a political analysis of illegal activities. As such it is a necessary starting point, but not a sufficient one.

Enforcement

The illegality of an activity does not necessarily imply that the laws against it are enforced: this could be prevented by low state capacity, corruption or ‘forbearance’ (Holland 2016). Enforcement here describes the mechanisms through which laws are enforced, the likelihood and predictability of detection and the actors involved. If enforcement was merely down to the capacity of police or customs officers, the likelihood of detection could be purely probabilistic. However, scholarship on informal arrangements and moral economies has highlighted that at times the non-enforcement of laws is structured and predictable, resulting from local agreements, norms or established practices of bribery (Titeca and Flynn 2014; Gallien and Weigand forthcoming).

If the legality of an act itself has limited direct consequences for research methodology, the enforcement of these laws is substantially more consequential. For example, enforcement has critical implications for the risks that exchanges of information imply for researchers and participants. In a

context of predictable non-enforcement, information that researchers learn from participants is less likely to put participants at risk of law enforcement operations.⁵ This facilitates learning between researchers and participants, and decreases security risks for researchers both with respect to enforcement agencies and those involved in the activities themselves.

For example, understanding where the boundaries of enforcement ran was a key element of developing my research methodology when I interviewed smugglers in North Africa. Here, some networks trading selected goods had to make substantive efforts to evade law enforcement while others were broadly tolerated. Understanding who was who informed the questions I could ask without changing the tone of an interview and helped to build trusting relationships. This was critical to both my ethics and security strategy: given high law enforcement presence in the bordertown, and a necessity to interact with them, it was imperative for me not to gain information that made these interactions a risk for smugglers, and thereby make my presence unwelcome. Explicit conversations with smugglers about the enforcement environment deepened their ability to give informed consent to our interactions, and contributed to my security.

Given the role of enforcement in structuring methodological challenges, it is unsurprising that much research on illegal activities has been conducted in contexts where enforcement is limited or completed, from a rich literature on street-vending to historical studies of organised crime. But understanding the enforcement environment can also help study activities that have laws against them stringently enforced. Methodologies can seek to learn from more tolerated variants of an activity about the structures, logics and features of its less tolerated variants. Alternatively, scholars can devise research strategies based on information that relates to such activities but does not in itself aid enforcement against them. This can involve studying activities that have already seen enforcement happen – such as completed court cases against gang leaders. Alternatively, it can involve systematically limiting information in a way that makes it less conducive to enforcement, and limits suspicions of researchers' cooperation with enforcement. In some of my work, this included focusing

⁵ One important caveat here is of course that the presence of researchers themselves can affect enforcement environments.

questions exclusively on institutions and regularities in illegal interactions rather than individuals involved in them.

Like legality, enforcement itself is political. Consequently, analysing enforcement environments is not only methodologically necessary, but part of a political analysis. Much of this relates to the well-established spurious relationship between data based on enforcement and the actual prevalence of illegal activities: an increase in arrests for heroin consumption for example can just as easily reflect an increase in consumption as an increase in enforcement – or just its reporting – due to political priorities or elite conflicts. While researchers need to study enforcement to understand how it relates to their findings about illegality, it also presents opportunities for novel research questions, as scholarship on the distributive politics of enforcement for example has demonstrated (Holland 2017; Tandler 2002).

Normalisation

If both legality and enforcement primarily describe the relationship between illegal activities and the state, normalisation describes the relationship between illegal activities and communities. As such, it spans two issues – the normative evaluation of activities (mirroring legality) and the consequences of these evaluations (mirroring enforcement). While the latter can mirror state enforcement action through organisations such as neighbourhood watch groups or informal justice systems, it can also be more subtly reflected in social hierarchies. Notably, the position of illegal activities within normative perceptions is not necessarily uniform: as scholars of legal pluralism and hybrid governance have highlighted, multiple perceptions and norms typically coexist within a social space (Reyntjens 2016; Cleaver 2015).

Like enforcement, the normalisation of illegal activities directly influences the risks involved in information sharing. Methodologically, it is critical to consider that if illegal activities are tolerated by state enforcement but not socially normalised, those speaking openly about them may still be exposed to sanction within their communities. Consequently, understanding the normalisation of an activity presents another step in understanding what precautions are needed to limit risks to participants.

Again, understanding these structures can also help develop methods that study more normalised activities in order to understand less normalised ones.

In addition to outlining the limits and risks of methodologies, however, understanding the normalisation of illegal activities can also inform research more directly. It can highlight the language in which activities are embedded: frequently, different terms exist for illegal activities, some of which may be associated with shame or evasion, while others may be associated with ingenuity and survival – the ‘hustle’ in ‘project living’ presents a well-documented example (Venkatesh 2002). Analysing language is critical for methodologies that rely on conversations with community members. In her work on mobility across the US-Mexico border, Sanchez (2014, 13) highlights how much easier conversations around illegal activities become when they are locally normalised and embedded in a discourse of ‘things that can be spoken about’. In my own research, even if smugglers recognised their activity as illegal, language around ‘business’ and ‘trade’ provided a better vocabulary for interviews, building on normalised discourses that didn’t imply judgement. This point is not limited to ethnographies or interviews – surveys for example similarly require a precise understanding of the vocabulary used locally in order to generate meaningful questions and understand responses.

Once more, understanding normalisation both supports method development and suggests questions into the politics of these activities themselves. Understanding social norms around illegal activities, as critical work on hybrid governance has highlighted, points to their embeddedness in historical processes and social hierarchies of power (Meagher, Titeca, and De Herdt 2014; Cleaver 2015). Understanding the politics of normalisation also allows researchers to side-step common clichés: the notions that because an activity is normalised, it is not ‘actually illegal’ or that ‘the boundaries of legality are blurred’ are common misinterpretations of the respective regulatory role of formal and informal norms that can be circumvented by an analysis of the power relationships that sustain them. Neither toleration nor normalisation erases all power relationships created through an activity’s illegality, but provide a starting point for their analysis.

Ethics

Finally, what I have termed ‘ethics’ here connects an illegal activity to its normative evaluation not by the community in which it is embedded, but by the community that studies it.⁶ This includes the rules about what constitutes correct behaviour and research practice as formulated by Institutional Review Boards (IRB), as well as the personal normative beliefs of the researcher(s) and the wider community of scholars in a field.

Critically, these do not necessarily share one set of evaluations. A well-established difficulty in studying illegal activities is the need to adjust methodologies to fulfil the requirements of IRB and insurance procedures. However, this is only part of a more fundamental challenge: the management of divisions between different normative evaluations by researchers and institutional frameworks. As researchers are witnessing illegal activities, their respective responsibility towards legal frameworks, participants, their universities and their own wellbeing can be placed in conflict with each other.

Formal risk procedures for example may forbid a debriefing with participants that a researchers’ own beliefs deem essential; a researchers’ position on ideologically controversial illegal activities such as prostitution or proselytism may put them at odds with their professional community.

I will not review these dynamics at length – a productive literature has increasingly developed around them⁷ - but note that separating ethics from illegality, and situating it in the context of normalisation and enforcement helps to highlight two points. First, ethical challenges also do not follow only from illegality, but from a wider context, on which there are substantial informational asymmetries between researchers and institutions. And second, as ethical challenges translate into methodological challenges, they are dependent on the norms of researchers, in addition to and beyond any formal ethical procedures and positions of their institutions. In an age of the increasing bureaucratisation of research ethics, work on illegal activities provides a reminder that the ethical challenges of research are not only anchored in law but in the positionality of the researchers.

⁶ I focus here on the norms of people and organisations and their relationships – a discussion of the objective morality of these activities or evaluation by the schools of moral philosophy lies beyond the scope of this article.

⁷ For example, Stark (2012), Fisher (2021)

Once more, exploring these dynamics brings into focus an additional aspect of the politics of illegal activities. It points to the research community and their normative positions as a set of involved rather than a wholly detached actors. Furthermore, it asks who the relevant moral entity is within the context of modern academic work. For example, if junior researchers conducting fieldwork, local research assistants and senior project PIs disagree on the ethics of a given intervention, the result will not just depend on the studied activities, but on the perspective and incentives of the researchers and power structures within research institutions.

Illegal Activities and Political Science Research

The methodological challenges in researching illegal activities do not follow only from illegality itself. This article has highlighted four different aspects that structure them: legality, enforcement, normalisation and ethics. It has argued that these, albeit frequently conflated, can provide a simple framework to support methodological development on the study of illegal activities. Furthermore, this framework also highlights how method development and analysis are intertwined, pointing researchers to the relationship between the contexts that shape their methods and central political science questions about illegal activities.

While the focus of this article has been the segmentation of these aspects of illegal activities, it is worth highlighting that they are still interconnected, both in their politics and methodological challenges. Key areas of study are clustered where enforcement is low and normalisation high and where there are hence less risks in information transmission, such as street vending and informal manufacturing, and where the reverse combination is true, such as narcotics trafficking. And yet as this paper has highlighted, overlooking or conflating these aspects can lead projects to misunderstand the challenges involved – for example, judging from toleration by state officials that an activity is also socially accepted can lead a project to overlook serious risks for participants.

From these discussions follow two observations. The first notes that a key theme throughout this paper has been the importance of context. Situating illegal activities within legality, enforcement, normalisation and ethics in order to develop effective methodologies requires a preliminary analysis

that frames activities within their context and examines the dynamics that have shaped it. This highlights the utility of methodologies that prioritise more holistic analyses, such as political ethnography (Schatz 2009; Forrest 2017). Ethnographies provide a rich toolbox to study the normative environment of illegal activities and understand patterns of behaviour and regulation that are unwritten and embedded in everyday practice. Wedeen (1999) has argued that ethnography can be useful to fill in gaps between official demonstrations of obedience and ordinary experiences of resistance. In studying illegal activities, ethnography can do the same trick in reverse: it can trace structures of regulation in the seemingly disobedient. Ethnography is particularly suited to problematise dominant categorisations – like legality – and examine the power structures that create and maintain them. Finally, as Schatz (2017) has noted, ethnographic thinking involves a critical approach to data and its relationship to the researcher. In the context of illegal activities, where data availability and access are frayed with difficulties, keeping these questions front and centre can point to blind spots in political science scholarship on illegal activities, highlight limitations of data, and point to the politics involved in the data collection process.

The importance of preliminary context analysis in developing methods to study illegal activities is not limited to ethnographies. Survey studies of illegal activities for example require a precise understanding of normalisation and enforcement in order to understand the vocabulary through which participants frame these issues. Quantitative work that draws on observable effects of illegal activities such as arrests or prices require deep analysis of the enforcement context to draw causal inferences. This highlights the potential, in the study of illegal activities in political science, for more collaboration across approaches and work that draws on multiple methodologies. This can include preliminary stages of in-depth qualitative or interpretative work prior to larger data collection efforts, collaborative projects where different methodological approaches are sequenced, or quantitative work within sub-fields where there is existing ethnographic work to draw on. In each case, the framework discussed here should be relevant across methodological approaches.

A second observation notes that despite the existence of parallel discussions in neighbouring fields, political science scholarship may benefit from more discussions within the discipline on the

challenges in studying illegal activities, and be able to make valuable contributions to ongoing cross-disciplinary discussions. This article intended to further and structure discussions around these challenges and opportunities between researchers, supervisors and students, and the discipline more widely.

Works Cited

- Ahmad, Aisha. 2017. *Jihad & Co.: Black Markets and Islamist Power*. Oxford, New York: Oxford University Press.
- Andreas, Peter. 2014. *Smuggler Nation: How Illicit Trade Made America*. Oxford: Oxford University Press.
- Andreas, Peter, and Ethan Nadelmann. 2008. *Policing the Globe: Criminalization and Crime Control in International Relations*. Oxford, New York: Oxford University Press.
- Cleaver, Frances. 2015. "In Pursuit of Arrangements That Work: Bricolage, Practical Norms and Everyday Water Governance." In *Real Governance and Practical Norms in Africa: The Game of the Rules*, by Tom De Herdt and Jean-Pierre Oliver de Sardan. London: Routledge.
- Fisher, Jonathan. 2021. "How I Dealt with My Ethics Committee, and Survived." In *The Companion to Peace and Conflict Fieldwork*, edited by Roger Mac Ginty, Roddy Brett, and Birte Vogel, 17–33. Cham: Springer International Publishing. https://doi.org/10.1007/978-3-030-46433-2_2.
- Forrest, M. David. 2017. "Engaging and Disrupting Power: The Public Value of Political Ethnography." *PS: Political Science & Politics* 50 (1): 109–13. <https://doi.org/10.1017/S1049096516002250>.
- Gadd, David, Susanne Karstedt, and Steven Messner. 2012. *The SAGE Handbook of Criminological Research Methods*. 1 Oliver's Yard, 55 City Road, London EC1Y 1SP United Kingdom: SAGE Publications Ltd. <https://doi.org/10.4135/9781446268285>.
- Gallien, Max. 2019. "Informal Institutions and the Regulation of Smuggling in North Africa." *Perspectives on Politics*. <https://www.cambridge.org/core/journals/perspectives-on-politics>.
- Gallien, Max, and Florian Weigand. forthcoming. "Channeling Contraband - How States Shape International Smuggling Routes." *Security Studies*. <https://www.tandfonline.com/toc/fsst20/current>.
- Grimm, Jannis, Kevin Koehler, Ellen Lust, Ilyas Saliba, and Isabell Schierenbeck. 2020. *Safer Field Research in the Social Sciences: A Guide to Human and Digital Security in Hostile Environments*. 1st ed. Thousand Oaks: SAGE Publishing.
- Holland, Alisha C. 2016. "Forbearance." *American Political Science Review* 110 (2): 232–46. <https://doi.org/10.1017/S0003055416000083>.
- . 2017. *Forbearance as Redistribution: The Politics of Informal Welfare in Latin America*. First published. Cambridge Studies in Comparative Politics. Cambridge, UK New York, NY: Cambridge University Press.
- Lessing, Benjamin. 2017. "Counterproductive Punishment: How Prison Gangs Undermine State Authority." *Rationality and Society* 29 (3): 257–97. <https://doi.org/10.1177/1043463117701132>.
- MacGinty, Roger, Roddy Brett, and Birte Vogel. 2020. *Companion to Peace and Conflict Fieldwork*. Place of publication not identified: SPRINGER NATURE.
- Majic, Samantha. 2014. *Sex Work Politics: From Protest to Service Provision*. American Governance: Politics, Policy, and Public Law. Philadelphia: University of Pennsylvania Press.
- Meagher, Kate, Kristof Titeca, and Tom De Herdt. 2014. "Unravelling Public Authority: Paths of Hybrid Governance in Africa." 10. Justice and Security Research Programme Policy Brief.
- Noaks, Lesley, and Emma Wincup. 2004. *Criminological Research*. 1 Oliver's Yard, 55 City Road, London England EC1Y 1SP United Kingdom: SAGE Publications Ltd. <https://doi.org/10.4135/9781849208789>.
- Reyntjens, Filip. 2016. "Legal Pluralism and Hybrid Governance: Bridging Two Research Lines." *Development and Change* 47 (2): 346–66. <https://doi.org/10.1111/dech.12221>.
- Sanchez, Gabriella. 2014. *Human Smuggling and Border Crossings*.
- Schatz, Edward. 2009. *Political Ethnography*. Chicago: University Of Chicago Press. <https://www.press.uchicago.edu/ucp/books/book/chicago/P/bo7995019.html>.
- . 2017. "Disciplines That Forget: Political Science and Ethnography." *PS: Political Science & Politics* 50 (1): 135–38. <https://doi.org/10.1017/S1049096516002304>.

- Skarbek, David. 2014. *The Social Order of the Underworld: How Prison Gangs Govern the American Penal System*. Oxford University Press.
- Stark, Laura. 2012. *Behind Closed Doors: IRBs and the Making of Ethical Research*. Illustrated Edition. Chicago ; London: University of Chicago Press.
- Tendler, Judith. 2002. "Small Firms, the Informal Sector, and the Devil's Deal." *IDS Bulletin* 33 (3): 1–15. <https://doi.org/10.1111/j.1759-5436.2002.tb00035.x>.
- Titeca, Kristof, and Rachel Flynn. 2014. "'Hybrid Governance,' Legitimacy, and (Il)legality in the Informal Cross-Border Trade in Panyimur, Northwest Uganda." *African Studies Review* 57 (01): 71–91. <https://doi.org/10.1017/asr.2014.6>.
- Venkatesh, Sudhir. 2002. "'Doin' the Hustle': Constructing the Ethnographer in the American Ghetto." *Ethnography* 3 (1): 91–111. <https://doi.org/10.1177/1466138102003001004>.
- Wedeen, Lisa. 1999. *Ambiguities of Domination: Politics, Rhetoric, and Symbols in Contemporary Syria*. 2nd First Edition, Enlarged ed. edition. Chicago: University of Chicago Press.