1 Smuggling: a view from the territory

The act of smuggling is recognized as being one capable of moving very large amounts of goods, even if it is always a challenge to get a precise measurement of the scale involved. The World Customs Organization estimates the market value of merchandise smuggled in 2012 at 650 billion dollars. The value rises to 2 trillion dollars, if financial transactions are included (WCO, 2013). It is estimated that only two percent of the 420 million containers circulating around the world are inspected (UNODC, 2014), and at ports, borders and airports, between one-third and more than two-thirds of cargo inspected is found to be illegal in some way (Nordstrom, 2007). Although little studied, smuggling is pervasive.

The academic discussion of smuggling usually takes into account economic policies, social practices and the legal framework (Cantens, 2012). We believe that this debate benefits from a consideration of the power of international illicit trade agents and their territorialization, including their relations within the political–institutional framework of each state. An international commercial operation is considered to be smuggling (or not) depending on its legality. But what is the law regarding territorial terms? Establishing formal laws is a prerogative of the territorialized sovereign state and of the international organizations that it recognizes. The country’s laws are supposed to represent the entire nation, but the territory is too large, the population is very diverse, and there are various conflicts of interests, so that, in reality,
the legal framework is not a pact between all the citizens but rather an expression of the interests of certain social groups: those that have more power and better representation at the state level. The feasibility of commercial operations, regardless of their legality, depends on the legitimacy of these transactions and the authority of those involved, as well as on the knowledge of desires, networks and possible passageways in borderlands and across international limits.

Regarding smuggling, the most common justification to be found in scholarly literature invokes the cultural diversity of the population: smuggling is related to the specificity of the border as a point of contact between distinct national populations (César, 1978; Colvero, 2004). International literature highlights legendary characters such as Robin Hood, Louis Mandrin and the social bandit in general, who legitimately fights authoritarian international limits that divide ethnicities at borderlands. At Brazil’s borders, for example, it is common to hear that some smuggling operations are ‘illegal, but legitimate’, as if two regulatory regimes existed side by side, one being central (the state law) and the other peripheral (the legitimate ‘law’ of the community). This assertion holds that legality and legitimacy do not always go together, and that certain practices make sense locally, even though they are banned by national law: it would appear that these practices make sense because the history of the place presents them as a tradition or because these places are so devoid of other possibilities that it becomes legitimate to look for ‘quick fixes’ to meet the basic needs of the population.

Other explanations for smuggling draw on a combination of economic interests, the size of the territory and the difficulty that the state has in controlling its limits. Space becomes a justification: smuggling is facilitated by the dry border (allowing many passageways in trails and back roads) or by the existence of a river (employing clandestine ports) or a bridge (facilitating transportation), dense settlement (in the complex economy of the bazaar) or sparse settlement (hindering the control of empty spaces). The border dwellers have, in fact, many resources and knowledge to bypass controls and use border differentials.

But that does not explain all the kinds of unlawful practices in international trade, since there are many operations that are not supported by the traditions of a community. These large-scale operations involve long distances, bulky volumes of goods and huge amounts of money, and they have little to do with the needs of a population forgotten by the central power. Smuggling, though illegal, can be carried out by those who are well placed in the state and in the formal economy, defying easy judgments that distinguish between legal and illegal.