

Smuggling

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Smuggling is a form of deviance that has received relatively little attention from criminologists. However, many of the issues that are involved with smuggling have been discussed in a diverse and wide-ranging literature, including scholarly accounts as well as popular sources.

Definition and Types

Smuggling can be defined as the clandestine importation of goods from one jurisdiction to another. The clandestine operation can involve the importation or exportation of prohibited goods (e.g., drugs) or the evasion of customs duties on legal goods that are liable to duty (e.g., diamonds, cigarettes). Price disparities and differential customs duties between jurisdictions or across different periods in time determine the likelihood of smuggling.

Most typically, smuggling occurs between the jurisdictions of different national states. Revenue laws and customs duties are precisely proclaimed to protect the economic strength of states. Hence, smuggling goes hand in hand with taxation systems and can be observed to take place wherever revenue duties are imposed. Among the classic examples of smuggled goods are highly-taxed products, such as diamonds, spirits, and tobacco. Smuggling, then, is an economic-political reality that cannot be dissociated from the development of national states and laws on taxation.

Different types of smuggling can be distinguished. In terms of the goods smuggled, a distinction can be made on the basis of the transported commodity (e.g., gold smuggling, cigarette smuggling) or the manner and amount of goods smuggled. In the latter case, smuggling can involve; 1) goods that can be transported by a single individual (e.g., precious stones); 2) bulkier trades or large-sized products (e.g., industrial machines); and 3) the 'underinvoicing' of goods, whereby fewer goods are declared than actually present or less monetary value is reported than the actual worth (Dominguez 1975).

In terms of the level of social organization involved, commercial smuggling is distinguished from petty smuggling (Wiegand 1993). Commercial smuggling involves the transportation of large quantities to be sold for profit abroad. Petty smuggling applies to individual people crossing a border to purchase goods at a cheaper price. Research has consistently shown that petty smuggling is a widespread problem.

History

Smuggling may be counted among the oldest forms of deviance (Jütte 1994). Legislation on smuggling dates back to at least 14th-century England, when the Statute of Treasons of 1351 made it a crime to import counterfeit money. From then on, smuggling laws were gradually expanded to cover many other goods. But as remarkable as the historical development and expansion of smuggling legislation is, smuggling has always been practiced. It is estimated, for instance, that in the 18th century one-third of all tea consumed in the British Isles was illegally imported.

Economic and political realities have historically influenced the control of smuggling. Free-market economists, such as Adam Smith, were against any form of state control on the burgeoning capitalist economy and approved of smugglers as rational free-market entrepreneurs. However, the legal reality was such that strict laws and harsh penalties were proclaimed against smugglers. Clearly betraying the strong economic motives of national states in seeking revenues, the typical punishment for smuggling was that the smuggled goods were liable to forfeiture and a fine was imposed on the smuggler. Also relevant from the historical viewpoint is that penalties were not only harsh, but also ineffective, as smuggling was practiced widely.

Theories and Explanations

Among the theories to explain the nature and patterns of smuggling, there exist a well-developed

economics literature that analyzes smuggling in terms of market principles as well as a less elaborate criminological scholarship on smuggling. Economic theories view of smuggling as a crime of opportunity that is enabled by differential tariffs or price disparities between markets (Norton 1988). Economists emphasize that smuggling is motivated by risk-taking strategies prompted by a desire to avoid paying taxes or to make money from the sale of clandestinely imported goods. The risks involved in smuggling are influenced by a variety of factors, such as anticipated monetary gain, and adjusted accordingly, for instance by cutting back on the amount of goods smuggled in order to reduce the chance of detection by customs officials (Sheikh 1989). Supplementing the view that economic conditions influence smuggling, economic theorists also argue that smuggling has an effect on price disparity and other aspects of the economy.

Studies in the area of crime and deviance have focussed on selected aspects of smuggling, such as its enforcement, regulation, and problematic impact in selected settings, but has focused much less on smuggling activities. Implicit in most criminological studies is a perspective of smuggling as a crime of opportunity, a viewpoint that is based on the fact that smuggling is by definition oriented toward profit. Based on this concept of smuggling, Paulus and Simpson's (1981) research of petty smuggling at the U.S.-Canadian border adopted an opportunity perspective because, the authors argued, border crossers are made explicitly aware of the illegality of smuggling each time a customs official asks if they have anything to declare. Each time someone passes the border, smugglers must therefore actively decide to not claim goods and break the law. The authors found that many border-crossers are engaged in smuggling and that half of all respondents believed that it was appropriate to smuggle intentionally. Results of this study also showed that structural determinants of opportunity and benefit were related positively to smuggling behavior.

Legal Regulation

As legal systems differ from one nation to another, so do laws on taxation, customs, and smuggling vary between nations. But all countries have some regulations in place that outlaw smuggling by criminalizing the importation and/or exportation of certain goods or by imposing restrictions on the transportation of legal products.

In the United States, the oldest regulation of smuggling is the U.S. Supreme Court decision of *Keck v. United States* (1899). In this case, a woman travelling on a ship attempted to bring diamonds into the Port of Philadelphia, although the ship's captain had not listed the diamonds for importation. The woman

was caught by customs officials during a search aboard ship. The legal question was whether the woman had imported the diamonds with the intent to defraud the United States. The court decided that the woman did not smuggle because she still had the opportunity to claim the items after she would have left the boat. The smuggling act is not complete, the court argued, until the point after duties have to be reported.

The *Keck* case has set the contours of most smuggling regulations in the United States since the late 19th century, specifically by focusing not only on the smuggling activity but also the rights and limitations of those who enforce smuggling laws. Bilateral treaties between the U.S. and a number of countries during the Prohibition era (1920-1933), for instance, specified that the contracting states would allow the boarding of private vessels outside the limits of the United States' territorial waters to be questioned by U.S. customs officials. In 1935, the U.S. government passed an Anti-Smuggling Act, which specified, amongst other issues, a 'customs enforcement area' to be determined by the U.S. President based on information supplied by customs officials.

At present, smuggling in the United States is regulated under Title 19, Chapter 5 of the federal U.S. Code, which retains the provision of the Anti-Smuggling Act of 1935 in declaring that the President has the power to determine the customs-enforcement area. Among the enforcement powers in these areas, customs officials may board any vessel and examine the vessel and any merchandise or person on board. Vessels may be brought into a port and investigated for compliance with regulations specified by the Secretary of the Treasury. Vessels that have been found to be involved in smuggling can be confiscated to be sold or destroyed.

Law Enforcement

The enforcement of anti-smuggling laws has often been argued to be the most important aspect of the control of smuggling (Nadelmann 1993). The centrality of enforcement relates first of all to the specific strategies employed in anti-smuggling operations. In smuggling cases, law enforcement agencies typically rely on insider information obtained through informants and/or covert operations. As such, anti-smuggling law enforcement is intimately related to the rise of undercover police tactics. The significance of anti-smuggling law enforcement also relates to the fact that national states have a strong interest in protecting their economic revenues. Without effective police methods, the state's regulations against smuggling would remain inconsequential. Therefore, law enforcement has traditionally focused less on punishing smugglers and more on ways to recoup the monetary losses.

In the United States, smuggling is the main responsibility of the U.S. Customs Service, which was created in 1789. Additional efforts against smuggling is carried out by U.S. Border Patrol, a federal enforcement agency which is charged with the control of illegal aliens and foreigners with criminal records. Because of the inter-jurisdictional nature of smuggling, relevant law enforcement duties have been among the first to be organized internationally. As early as the late 19th century, for instance, U.S. customs inspectors traveled to Europe to investigate foreign smuggling rings. From the end of World War II to the present, U.S. police agencies have increased participation in international police work, including matters of smuggling. By 1979, the U.S. Customs Service had eight foreign offices located throughout the world. One of the most recent developments in the policing of smuggling is an intensification of international assistance and cooperation. Among the organizational arrangements to structure the international control of smuggling is the International Criminal Police Organization, better known as 'Interpol,' as well as various unilateral and bilateral cooperation initiatives.

Current and Future Conditions

In most recent years there has been a renewed interest in smuggling as an important issue of crime and deviance. Smuggling has undergone important transformations, especially in terms of qualitative changes in the goods that are smuggled. There also has been a diversification of products subject to smuggling. Smuggling as before involves the transportation of such goods as coffee, tobacco, and fire arms, but to the list have now been added furs, antiques, nuclear materials, high-tech equipment, toxic waste materials, pornographic items, and exotic animals. Together with the illicit transportation of nuclear materials, the smuggling of people, such as illegal immigrants and prostitutes, has tragically moved to the foreground in the current state of smuggling (Wiltfang and Cochran 1994; Ruggiero 1997; Williams 1999).

Although there have always been many international dimensions involved in the organization of smuggling, cross-cultural aspects of smuggling are clearly more acute today (Gillespie and McBride 1996; Lee 1998). Ever since there were nationally driven economic markets, smuggling has posited less developed nations against the more developed parts of the world and today these international dynamics have intensified (Grahn 1997). This relates to increased conditions of globalization, an evermore complicated

interlinking of states in political, economic, and cultural respects, and processes of modernization and the global spread of capitalism. Even more than before, the unequal distribution of wealth across the world places some countries in a position of dependency. Such countries develop as major centers of international smuggling, while other countries serve as intermediate centers that provide channels to the less developed countries; still other countries emerge as the true beneficiaries of a world-wide smuggling market.

National and international regulations have clearly been ineffective in stemming the global problem of smuggling (Nadelmann 1993). As societies continue to increase in complexity in economic, political, and cultural respects, traditional models of legal regulation and law enforcement may become obsolete. And as smuggling activities will continue to take advantage of new-found opportunities in the global market, criminologists should be more than ever prepared to analyze smuggling as a significant social problem.

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