Consistent inconsistency

New reflections on migrants, the state, and the contingencies of law

Georgina Ramsay

Tobias G. Eule, Lisa Marie Borrelli, Annika Lindberg and Anny Wyss (2019), *Migrants Before the Law: Contested Migration Control in Europe* (London: Palgrave Macmillan)

Tatjana Thelen, Larissa Vetter and Keebet von Benda-Beckman (eds) (2018), *Stategraphy: Towards a Relational Anthropology of the State* (Oxford: Berghahn Books)

The 'state' has long been a contested area of anthropological scholarship. What is widely agreed upon, however, is the idea that the state does not exist as a bounded, cohesive and static entity. Indeed, since the 1990s, anthropologists have drawn attention to the inherent messiness of state-making processes (cf. Aretxaga 2000; Das and Poole 2004; Gupta 1995; Herzfeld 1992; Nugent 2010), and shown how the presumed distinction between civil society and the state is not natural. Rather, such assumptions are an outcome of contested power relations that are continuously in flux in relation to other social, cultural, political and economic factors (Sharma and Gupta 2006: 9). Contributing to this scholarship, the volumes under review provide ethnographic and theoretical insights that challenge us to think critically about both the transnational and localised ways in which the state both shapes, and is shaped by, various actors within everyday contexts of policy and law implementation. *Migrants Before the Law: Contested Migration Control in Europe*, by Tobias G. Eule, Lisa Marie Borrelli, Annika Lindberg and Anny Wyss, show us the inconsistency that characterises the space between policy and implementation in regards to migration, thereby nuancing our understandings of the role and the reach of the state into the lives of migrants; while *Stategraphy: Towards a Relational Anthropology of the State*, edited by Tatjana Thelen, Larissa Vetter and Keebet von Benda-Beckman, urges us to think beyond representational accounts of

This article is available open access under a CC BY 4.0 license as part of Berghahn Open Anthro, a subscribe-to-open model for APC-free open access made possible by the journal's subscribers.

the state and to instead locate the state within the relational practices that occur between various actors within local contexts. As such, both volumes guide us towards an analysis of the state from the margins, meaning the everyday encounters through which the state is produced, enacted and figured as a normative entity.

Migrants Before the Law takes us into the contested spaces of migration law and policy implementation in eight different European nations: Italy, Switzerland, Germany, Austria, Latvia, Lithuania, Denmark and Sweden. Their analysis hones in on the ways that migration control in Europe has shifted throughout the years before and following the 2015 'long summer of migration' (Kasperek 2016), and is one of the few works that brings us detailed ethnographic insight into the encounters between migrants and migration law officials during this period in which laws relating to migration have been subject to intense change and public scrutiny. The result is a compelling compilation of accounts that show how the European migration regime encompasses various spaces of asymmetrical negotiation, in which different actors use discretion to act on personal values and interests within migration law encounters, thereby shaping the migration regime itself. Also focusing on Europe – although not on migrant-state interactions specifically – *Stategraphy* similarly challenges the idea of the state as an all-powerful entity that exerts control over a single, legible, population. The chapters included in this edited volume include research from France, Bosnia and Herzegovina, Russia, Britain, the Czech Republic, Serbia, Romania and Hungary, giving ample scope to show how, despite dissimilar post-socialist and post-welfare national contexts, the state is similarly constituted through everyday encounters.

Methodologically, both *Migrants Before the Law* and *Stategraphy* follow a 'street level bureaucracy' (Lipsky 1980) approach to explore how the state both shapes and is enacted through everyday encounters between actors who represent the state, and subjects of state intervention. While everyday encounters in bureaucratic spaces are not a new entry point to analysing state practices (c.f. Auyero 2012), what both of these volumes achieve is critical insight into the experiences of a variety of actors within state encounters. Focusing not on isolated populations but on the dynamic interplay of various actors that constitute the 'street level' of bureaucratic life, both volumes are strong contributions to legal anthropology scholarship.

Migrants Before the Law aims to use ethnography to explore encounters within the gap between policy and implementation, and in this they certainly succeed. The key strength of this volume truly lies in the

scope and depth of ethnographic data. As cases throughout the volume are pondered by migration law officials and strategised by migrants of various (ir)regularised statuses, the reader is drawn into those discretionary decision-making processes and shown how contingent migration law is in practice, even if in theory it is imagined as objective. The reader feels vividly that they are observing detention officials contort legal parameters in order to make their work reflect government directives – or their own personal values. We sit beside officials in Germany who ‘tinker’ with cases for their personal convenience. We despair with migrants who are trying to make sense of the arbitrary nature of their detainment. At the same time, we empathise with officials who enforce these sites of waiting, often in companionship with their wards, their prisoners.

Such a focus on migration law in practice is not new in legal anthropology (cf. Cabot 2012, 2013), but certainly Eule and colleagues provide new insights. Cleverly, the structure of the book reflects its theoretical approach, because rather than base each chapter on a specific nation/site, the authors eschew an explicitly comparative framework to instead develop a more open optic of analysing European migration law through ‘collective ethnography’. They show what they term ‘the consistency of inconsistency’ (pp. 10–11) that permeates all of these sites by focusing each chapter on a specific basis of contingency that shapes how migration law and policy is put into practice. While bringing attention to the ways that the migration regime is both structured by, and in the process of structuring, migration law in practice (chapter 2), the authors also provide insight into decision making and the contingent role of the law within those processes (chapter 3), the uses and perils of illegibility in the migration regime (chapter 4), time as a strategy of both opportunity and punishment (chapter 5) and the constant deflection of responsibility that the complexity of the migration regime, with its many actors, enables (chapter 6). This structure guides the reader towards a clear understanding of what is a complex and contradictory regime of migration law and policy.

The primary limitation here is that, in taking us through these various aspects of contingent law in practice, there are times when the necessary cross-referencing becomes repetitive. There are also opportunities to push the theoretical implications further, such as when the authors refer to the concept of a ‘moral economy’ throughout but do not use the unique specificities of the data they present us with to push our theoretical understandings of deservingness and exchange. Nonetheless, *Migrants Before the Law* should be commended for its

deliberate attention to the ethics of conducting research in these kinds of contested spaces. While there can be no definitive answers on the best ways to conduct ethical research in such situations in which the power dynamic between researcher and researched is so hierarchical, the authors are at least explicit about their attempts to do so. Their work therefore contributes to a building corpus of literature – most recently stemming out of the 2015 migration ‘crisis’ in Europe – which asks us to rethink ethical considerations in migration research (Andersson 2018; Cabot 2019; Kalir et al. 2019; Rozakou 2019).

The aim of *Stategraphy* is to explore the practical dimensions of state constitution, and particularly the ways in which state processes are formed through relational modalities: an approach that the authors term ‘stategraphy’. As such, *Stategraphy* takes a bold theoretical approach to the study of the state, which will have broad implications for scholars beyond those in the European context. The editors are responding to what they suggest is a significant gap in anthropological literature about the state, specifically that scholarship has generally emphasised discursive representations of the state with less focus on the actual practices of state formation. While I feel that the authors perhaps overstate this gap (cf. Mathews 2008; Reeves 2011), *Stategraphy* nonetheless contributes immensely to anthropological literature of the state by providing a distinct theoretical framework from which to analyse the ways in which states form in practice, not just in representational terms.

The authors put forward a three-pronged theoretical approach to the study of the state, drawing attention to the ways that *relational modalities* shape different readings and discretionary applications of state policy; the *embeddedness* of various state officials shifts how state policy is developed and implemented; and the contested *boundary work* that goes into the production of the state, in terms of not only the differentiation between state and civil society (which, as the various chapters in the volume point out, often overlaps), but also boundaries between formality and informality, rigor and strategic laxness, among others. Each chapter deftly takes up this relational mode of analysis, suggesting widespread applicability of the theoretical approach.

Like *Migrants Before the Law*, a key strength of *Stategraphy* is the in-depth ethnographic data that is the basis of each chapter. The shifting policy reforms of the post-socialist and post-welfare states that are under study here are made intelligible not just through descriptions of policy, but by attention to everyday life. Chapter 2 shows how post-welfare reform has solidified control over populations deemed undeserving, emphasising how vagueness in policy implementation produces its own

form of governance. In chapter 3, we witness the blurring of boundaries between state and civil society when it is revealed that state officials and local actors are often one in the same, and that people across all points of this spectrum draw on relational capital to strategise policy outcomes. In chapter 4, we see how complex new social security systems create confusion, which leaves those in advisory positions ample opportunity to not only provide information about the law and policy but also shape it. Chapter 5 provides a refreshing emphasis on renegotiated understandings of ‘care’ in a post-socialist setting, while chapter 6 shows how post-socialist welfare reforms are often based on transnational influences but are always produced in relation to localised norms, with the case of an elder care ‘foster’ program providing a fascinating example of this process. Also relating to transnational influences, chapter 7 describes how the distribution of international aid does not follow objective criterion at local scales but instead becomes a way for state officials – who are also local actors – to gain symbolic capital. Finally, chapter 8 shows how contested notions of the state lead to disparate outcomes for civil populations, despite centralised governance. Overall, these chapters do well at speaking across each other and reflecting shared theoretical aims, but the volume is missing a conclusion, which would have done well to explicitly reflect on how these chapters, when read together, guide us towards a renewed understanding of the state.

Migrants Before the Law and *Stategraphy* are important contributions to legal anthropology. Each guides us to think critically about the ways in which seemingly normative applications of law and policy in everyday encounters actually reveal the contingent production of the state in practice. Most significantly, in recognising the discretionary vagueness of policy and law in practice, our attention is drawn to the ways in which such contingencies can create opportunities to rework the state in ways that benefit the least powerful in a society but more often serve to produce less visible, but nonetheless violent, mechanisms of governance and control.

Georgina Ramsay is Assistant Professor in the Department of Anthropology at the University of Delaware, and Honorary Lecturer in the Department of Anthropology at Macquarie University. Her work focuses on questions of displacement, broadly conceived. She is the author of *Impossible Refuge: The Control and Constraint of Refugee Futures* (2017) and several articles in various journals.

References

- Andersson, R. (2018), 'The price of impact: Reflections on academic outreach amid the "refugee crisis"', *Social Anthropology* 26, no. 2: 222–237.
- Aretxaga, B. (2000), 'Playing terrorist: Ghastly plots and the ghostly state', *Journal of Spanish Cultural Studies* 1, no. 1: 43–58.
- Auyero, J. (2012), *Patients of the State: The Politics of Waiting in Argentina* (Durham, NC: Duke University Press).
- Cabot, H. (2012), 'The governance of things: Documenting limbo in the Greek asylum procedure', *Political and Legal Anthropology Review* 35, no. 1: 11–29.
- Cabot, H. (2013), 'The social aesthetics of eligibility: NGO aid and indeterminacy in the Greek asylum process', *American Ethnologist* 40, no. 3: 452–466.
- Cabot, H. (2019), 'The business of anthropology and the European refugee regime', *American Ethnologist* 46, no. 3: 261–275.
- Das, V. and D. Poole (eds) (2004), *Anthropology in the Margins of the State* (Santa Fe, NM: School of American Research).
- Gupta, A. (1995), 'Blurred boundaries: The discourse of corruption, the culture of politics, and the imagined state', *American Ethnologist* 22, no. 2: 375–402.
- Herzfeld, M. (1992), *The Social Production of Indifference* (Chicago: University of Chicago Press).
- Kalir, B., C. Achermann and D. Rosset (2019), 'Re-searching access: What do attempts at studying migration control tell us about the state?' *Social Anthropology* 27, no. S1: 5–16.
- Kasperek, B. (2016), 'Routes, corridors, and spaces of exception: Governing migration and Europe', *Near Futures Online* 1: <http://nearfuturesonline.org/routes-corridors-and-spaces-of-exception-governing-migration-and-europe>.
- Lipsky, M. (1980), *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation).
- Mathews, A. (2008), 'State making, knowledge, and ignorance: Translation and concealment in Mexican forestry institutions', *American Anthropologist* 110, no. 4: 484–494.
- Nugent, D. (2010), 'States, secrecy, subversives: APRA and political fantasy in mid-20th-century Peru', *American Ethnologist* 37, no. 4: 681–702.
- Reeves, M. (2011), 'Fixing the Border: On the Affective Life of the State in Southern Kyrgyzstan', *Environment and Planning D: Society and Space* 29(5): 905–923.
- Rozakou, K. (2019), '"How did you get in?" Research access and sovereign power during the "migration crisis" in Greece', *Social Anthropology* 27, no. S1: 68–83.
- Sharma, A. and A. Gupta (2006), *The Anthropology of the State: A Reader* (Oxford: Blackwell).