Clandestine migration facilitation and border spectacle: criminalisation, solidarity, contestations

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ABSTRACT
The article analyses a case of prosecution for human smuggling. Three film crew members accompanied a Syrian refugee boy from Greece to Sweden, while recording the journey in a documentary that was screened on Swedish public television in 2015. Despite widespread recognition, they were prosecuted and found guilty of human smuggling by all the levels of the Swedish judiciary. Using a variety of materials – text and visual data, observations and interviews – we follow the case as it moves across different arenas: the media, the court and in activism. The analysis is inspired by and further develops de Genova’s notion of the border as spectacle. What conditions for acting and speaking structure the arenas, and how from which positions can the border spectacle be contested? The motion across these arenas offers an opportunity to disclose the operation of the borders as a regime that controls people’s mobility and solidarity in unequal ways.

Introduction
It is January 2017: the first day of the trial against three members of a film crew is about to start at the Malmö District Court. The crew members are accused of what in legal terms is called ‘human smuggling’ for having accompanied a young Syrian refugee boy from Greece to Sweden in the summer of 2014. They met the boy while shooting the documentary series Fosterland for Swedish public television. He was staying in a one-room apartment with a group of adult Syrian friends. Together they were trying to find a route out of Greece and onwards through Europe. After a failed attempt to cross the sea to Italy, the men were considering jumping onto moving trucks from a bridge over a highway. It was in this context that the boy asked the film crew to take him with them to Sweden, where he could join his uncle and apply for asylum. The crew decided to accompany him and they recorded the journey in the documentary. After the film was screened on national television, the reactions were extremely divided. Many people celebrated the film crew in traditional and social media. The documentary gained recognition and was awarded the national TV award Kristallen. However, others claimed it was a criminal act. A complaint was filed against the three members of the film crew and the prosecutor decided to press charges for alleged human smuggling.

Now, the crowd is growing in the corridor outside the courtroom. When the defendants arrive with their lawyers, they are met with encouraging greetings. Some activists have been standing outside the court that morning with a large ‘Refugees welcome’ banner. A social media mobilisation to attend the trial had been organised under the headline ‘Legalise compassionate human smuggling!’ (‘Legalisera med-människosmuggling!’), and during the lunch break a rally is held outside of...
the court in support of the defendants and against the application of the law to cases of not-for-profit clandestine migration facilitation. Some members of the court audience join the rally. The atmosphere in the court, as well as the tone of large sections of the media coverage of the case, seems to be permeated with support for the film crew and their actions.

In this article, we explore the ways in which accounts of clandestine migration facilitation are structured in three different arenas – of the media, of the court and of activism – and what happens with these accounts when they move between these arenas. We do it through a case study of Fatherland by analysing the documentary and media coverage of the story, the trial against the three members of the film crew, as well as activism around the case. Following critical perspectives on border control, our analysis is inspired by an understanding of the border as spectacle (De Genova 2013, 1181). The concept points to processes of border control as appearance – as spectacle – of order, control and naturally bounded territories. A spectacle which enables the state to obscure the much more complex terrains that migrants are moving through in contemporary border regimes in the global North. The concept suggests that bordering consists of processes through which the state mobilises an appearance of acting around clear boundaries between legal and illegal, while obscuring the social and political contexts of the contemporary border regimes – such as the demand for precarious migrant labour and a racist division between grievable and un grievable lives. We focus on a particular moment of the border spectacle – one that has to do with clandestine migration facilitation. Further, inspired by Gilmore’s (2017) analysis of testimonies in motion, we assume that the meaning of acts and events continue being shaped and changed when the accounts of them move between different arenas. The question explored throughout the analysis is how different conditions for acting and speaking structure the three arenas and how and from which positions the border spectacle can be challenged. Specifically, we want to pay attention to the possible forms of contestation of, resistance to, or critique of the border regime.

The case that we analyse is quite specific due to the visibility of and support for the journalists. While the clandestinity of migration facilitation most often entails invisibility, here the acts were on display. This can be connected to the relatively privileged position of the film crew influencing the ways in which the border spectacle unfolded. Their position and resources offered them a possibility to present the story of the boy’s journey and their role in it in the documentary and in the media. This is especially distinct regarding the programme presenter, who became the main face of the events, with whiteness and status seem to impact both the representation of the clandestine migration facilitation and the media and public support. This contrasts with most clandestine migration facilitators around the world, who remain unknown to the public or are represented as villains in the media (Sanchez 2017, 12). However, despite these elements of privilege at stake, both in the events and the accounts, it is pertinent to note that the film crew ended up convicted for human smuggling by all the levels of the Swedish judiciary. Therefore, rather than dismissing the case as too specific, we find it interesting to explore due to the tension between the privileges and the fact that the state still re-established a boundary between legal and illegal.

The case study builds on several kinds of material: the documentary; news reporting; ethnographic observation in and outside the court during the trials in the district court and in the court of appeal; interviews with one of the activists who mobilised support for the film crew, two of the lawyers, a judge and a prosecutor. We have not interviewed the film crew or the boy in the documentary, but we have included journalistic material where the programme presenter is being interviewed and a couple of published opinion pieces by one of the other crew members.

Theorising the European border regime

While certain elements of the trial against the film crew are specific, the case shares a general context with other cases of clandestine migration facilitation in their complex variation, be they forms where the facilitation is offered against a fee or not, with a profit or not, for reasons of solidarity or even exploitative forms of migration facilitation – or in grey zones between these. That shared context is
the context of the European border regime: the control and securitisation of the mobility of people from the global South to the North, and the ways in which this control and securitisation are embedded in a larger global imbalance in terms of power, resources, safety and exploitation of labour (e.g. Mezzadra and Neilson 2013, 3–7; Sharma 2005, 105–106; Yuval-Davis, Wemyss, and Cassidy 2019, 1–63). The inherent – and often lethal – violence and racism of the European border regime, as well as the way in which it shapes the conditions and possibilities for solidarity, are at the core of the filmed events. We will here outline this context through the theoretical lenses offered by critical and feminist approaches to borders.

The moment registered in the documentary, when the Syrian boy asked the film crew to take him with them, happened in Athens in 2014. The period that would be called ‘the refugee crisis’ did not start until a year later, the summer of 2015, but central elements of the crisis in terms of restrictive border controls and securitisation of migration had already been in place in Europe for decades. Lack of legal routes into Europe for refugees, combined with policing of sea routes pushing irregular journeys towards increasingly dangerous stretches, have resulted in the death of thousands of people en route to Europe (Mountz and Loyd 2014, 178–180). Historical and economic structures that make this violence possible – to the extent that it is no longer named as violence – have been analysed and conceptualised in a range of critical approaches to processes of border and migration control. A number of recurring themes in the field of critical border studies are relevant to outline in relation to our case. First, there is a contradiction between, on the one hand, neoliberal ideals of mobility and free financial flows across the globe, and, on the other, the ways in which the mobility of poor, non-European or racialised groups is subjected to control and categorisation (Sharma 2005, 88–89). Second, this control and categorisation should be understood as management of migration: a control of mobility that does not primarily close the borders, but filters people into different categories of wanted and unwanted – ‘worthy’ and ‘unworthy’ – migrants, producing ‘differentiated inclusion’ or ‘differentiated citizenship’ based on nationality and legal status as well as class, gender and race (Anderson 2010; 2015; Mezzadra 2015). Finally, our case needs to be understood as taking place in the ‘contested politics of mobility’ (Squire 2011, 1–26) – a space delineated by the unstable and constantly shifting boundary as to whose, and which forms of, mobility are controlled, regulated and illegalised. This space is, however, also characterised by migrants’ claims for a right to mobility or asylum, to life, to family and to secure labour. The unstable boundary is shaped through conflict and negotiation between people’s mobility and states’ control of this mobility (Squire 2011, 4–6). Central here is the dual understanding of mobility: as migratory movement and as social mobilisation, including migrants’ agency and social networks, as well as acts of solidarity and migration-rights activist networks as relevant in analyses of these processes (Squire 2011, 4–6).

Practices of clandestine migration facilitation are stakes in this conflict. Regardless of whether these practices are for profit or idealistic, or in the grey zones in between, they all have a complex position in the cartography of the border regime. However, studies of clandestine migration facilitation show that this complexity tends to be obscured by one-dimensional understandings of ‘human smuggling’ around binary divisions of ‘evil smugglers’ and ‘victim refugees’ (except in a few cases when certain acts of migration facilitation are read as ‘heroic’ or ‘good’). The understanding of smugglers as ‘evil’ creates a logic within which the control of mobility can be framed as aiming at protecting clandestine migrants. This is partly an effect of a frequent conflating of human trafficking and human smuggling, legally distinguished by the concept of consent.

This has opened the door for a discourse in which the movement of people across borders without state sanction is, per se, moralized as evil, and the vast and deadly business of preventing free movement legitimated as necessary, or even good. (O’Connell Davidson 2016, 62)

Nandita Sharma points out that this logic reinforces a complicity with restrictive border policies: ‘Regardless of the rhetoric of protecting migrants, the emphasis is on controlling migration’ (2005, 105). This happens in a more general legal context in which the separation between immigration law and criminal law is becoming increasingly diffused.6 In his auto-ethnographic account of border
crossing as a refugee, Khosravi (2010, 21) argues that criminalisation of migration is a political strategy that redefines a social issue into a crime: acts, positions and even human beings are made criminal by the law. This is often discussed in terms of how migrants themselves are illegalised or placed outside the law by the law, but Khosravi’s and Sharma’s arguments suggest that it is also relevant for criminalisation of clandestine migration facilitation. Khosravi’s analysis (2010) displays the crucial role of facilitators and shows, through rich ethnographic accounts, its complexity. The illegality does not lie in the acts themselves – to organise and undertake a trip – but is generated by the law.

**Border spectacle in the media**

It does not seem that the story of the boy’s travel through Europe and the film crew’s role in it had originally been part of the script of the documentary *Fatherland*. Nor did an outspoken critique of the European border regime appear to have been an aim. The documentary’s focus was on the growth of the far right in Europe and the situation of those who are targeted by the far right. It was with the purpose of representing these targeted groups that the crew visited the group of Syrian refugees in the apartment in Athens. From the scenes in the apartment, the audience learns about the struggles of the men to find ways to leave Greece. The men and the boy are initially preparing for a potentially risky boat trip to Italy. The trip is already arranged, but the next day the men and the boy are still in the apartment: the people they had paid to facilitate the journey had never showed up. Now, because they have little money left, the men are considering jumping from a highway bridge down onto a moving truck. Fear and worry can be sensed among the men, especially in relation to the boy. This is the moment when the boy turns to the film crew and asks them, in front of the camera, to take him with them. It is a moment that disrupts the convention of the documentary genre. The back-stage of the film-making suddenly breaks through the screen: we see the interpreter; we see the programme presenter scratching his head and asking the cameraman if he should not turn off the camera, and we hear the answer of the cameraman: ‘I don’t think so.’ The question is thrown into the air as if in a light-hearted way; its seriousness, however, directly makes the atmosphere tense. The boy points at the Swedish-Palestinian interpreter, and says: ‘You can pretend to be my mum.’

This is a moment when something of the world of irregular mobility in Europe, with all its dangers and risks, is revealed; a moment when the documentary begins to register the border spectacle. The following episodes of the documentary show the boy’s journey with the film crew – the visualisation of clandestine border-crossing sheds light on conditions, conflicts and negotiations in relation to mobility, on the workings of the European border regime and on possibilities to resist and contest it. But how the story of borders and of border-crossing can be told in the documentary is conditioned by the arena of media. Here we propose an understanding of the account of the boy’s journey by identifying the workings of some structures, principles and conditions that decide on how the European border regime can be represented and critiqued in mainstream media. The main structuring principles of the arena of media that we analyse are the open journalistic style and the ideal of impartiality. The workings of these two frames shape the story of the boy’s journey and of the film crew’s role in a particular way, and the question of responsibility for his fate is presented in terms of a dilemma at the heart of the journalistic profession: the conflict between documenting and acting. As a result, the documentary becomes a means to witness the journey, and the decision to follow the boy on his way emerges as an act of ‘journalistic humanitarianism’.\(^7\) We claim that the resulting modes of representation are not merely strategies adopted by the film crew when working on the documentary, but are structures inherent to the arena of media – of what can be produced and what is desired to be consumed in this arena – deeply impacting the domain of speakability about the issues at stake.

The style adopted in the documentary stems from the ambition to meet and understand far-right activists and politicians, as expressed in the introduction to the series ‘I want to understand how they all think’ (*Fosterland*, 2015). While opening for a dialogical approach, this approach also entails a non-
confrontational tone. As commented on by the programme presenter during an interview about the documentary on Media Days Gothenburg: 'I am not a confrontational journalist at my core. You can achieve a lot just with ordinary politeness and . . . a nice treatment' (Mediedagarna, Göteborg 2015). These comments referred to the challenges and strategies when interviewing racists; however, the open, non-confrontational style also frames how the story of the violent character of the borders and of the conditions of irregular migration is told in the film: the critique of the European border regime is indirect and subtle – a side-effect of unexpected developments during the film’s shooting. And, even though a connection is suggested between the fate of the refugees trying to get to safety in Europe and the political agenda of the far right, there is no investigation of the actual genealogy of European border control. Thus, the critique of the European border regime is contained in the depiction of the boy’s journey. However, the documentary still registers the border spectacle, and offers a contestation in the form of an act of witnessing – a testimony (Gilmore 2017, 5–17) of its violent nature, the impact it has on the fate of people on the move, and on the possibilities of solidarity. We start to witness the border as a spectacle in the boy’s account of the boat trip over the sea from Turkey to Greece, of his detention and time spent in the detention centre in Greece; but also when following his travel through Europe – in the tense scenes of preparation for the travel, border crossings and while following the boy’s Syrian friends from the apartment during their lorry journey, filmed on their mobiles. All these moments add up to a message conveyed to the audience in Sweden: ‘The travel through Europe, which normally is so smooth for us, suddenly appears impossible’ (SVT, Fosterland). This comment sheds light on the way in which the border regime organises not only who can travel and who cannot, but also who needs to know anything about it and who does not. So, while the documentary is not an outspoken critique of the border regime, documenting the journey becomes a means to challenge epistemic injustice (Fricker 2007, 1, cited in Wikström 2014, 210) and to convey knowledge about the consequences of the border regime in an act of witnessing.

The open journalistic style is in line with a more general ideal constantly shaping the documentary: that of impartiality in journalism. While impartiality in general is one of the main features of how journalistic professionalism is understood, journalists working for Swedish public television are additionally bound by the regulations that specify in detail what impartial journalism means, among other things not taking a side when reporting on controversial topics (The Swedish Press and Broadcasting Authority 2016). When the documentary series was broadcast, the programme presenter was asked time after time whether the act of taking the boy to Sweden had been against the principle of impartiality. His response was:

I don’t think you can treat helping a child as being partial. And in the rest of the programme, the very point of departure is to give voice to those who are nationalists, so (the programme as a whole) must be seen as impartial. (SVT, Gomorron 08.01.2015)

But impartiality can be understood in another way too: as a clear line between documentation and action demarcating the terrain of journalism. On one level, the documentary is about testing and challenging the limits of distanced journalism when the journalist is confronted with suffering. Reflections made by the programme presenter in a video diary accompanying the core material of the documentary provide the audience with a meta-analysis of what they are witnessing and prepare them to interpret the account of the boy’s travel. Already in the first episode, the programme presenter comments: ‘There is something extremely unnatural about our job, to just watch and report’ (Fosterland, 2015). So when the boy’s question comes, the audience has already been given the tools to understand the choices that the crew is to make in terms of a moral dilemma to engage in the lives of less fortunate others, rather than a political choice to act against a certain oppressive system. The representation of the crew’s decision can be encapsulated in the programme presenter’s words: ‘If [the boy] dies, I will never be able to live with myself.’ Expressed in these moral vocabularies, the justification to go beyond the journalist’s role to report can be presented as neutral and non-partial rather than political and subversive. In this way, the account of the journey and the crew’s
role in it could be interpreted as ‘journalistic humanitarianism’, a humanitarianism grounded in the politics of pity that is displayed to appeal to European audiences (cf. Chouliaraki 2012, 16 on ‘celebrity humanitarianism’).

The media coverage of the case seems to have adopted similar interpretative tools: the events are represented as resulting from individual morally informed choices. The programme presenter was singled out as the main character in the film and the trial. His actions, his image and his thoughts were placed at the centre of most media reporting, as indicated by the news titles: ‘It is his conscience speaking to us, although that isn’t the word he is using’ (Sydsvenskan 22.01.2017a) and ‘We need a Lex Önnevalld’ (Sydsvenskan 26.01.2017). This focus on the programme presenter rather than his co-workers in the crew might be explained by his more public role as the face of the film crew, but could also indicate the structural whiteness of the arena of media and its desire for identification with a certain fantasy about a European hero. In this sense the documentary oscillates between contesting the European border regime through an act of witnessing of the border spectacle and reproducing an idea of an innocent white European subject through a frame of individual moral dilemma.

**Border spectacle enters the courtroom**

Back to the first day of the trial. We are sitting in the audience in the crowded courtroom. The prosecutor, the defendants and their lawyers enter and sit down. The arrangement of the space in the courtroom indicates the hierarchies of the judiciary at the same time as it contributes to a sensation of the agonistic nature of a trial. It will be an *agon* between the Swedish state represented by the prosecutor and the film crew accused of violating the law. The accusation is the first and most fundamental element structuring the arena of the court: the trial is about proving guilt or innocence. The interaction between the parties is ordered by this fundamental logic, and all the accounts of the boy’s travel to Sweden and the crew members’ role in it are subjected to it. Two frames of reference are central here: the legal definition of the crime of human smuggling and previous interpretations thereof by the judiciary. Section 8, Article 20 of the Swedish Aliens’ Act 2005 describes the crime of human smuggling as to ‘intentionally assist an alien to unlawfully enter or pass through Sweden’. To cross several borders is an aggravating circumstance (Swedish Aliens’ Act 2005). The very invocation of the law that criminalises human smuggling – one of the central tools for controlling the mobility of people coming from outside the European Union – turns the trial into a border spectacle in which the legal dimension of ‘walling’ of the global North (Brown 2010) manifests itself. The indictment recounts the story as one fitting the legal definition of human smuggling:

[The defendants] together and in agreement some time during the period May–June 2014 intentionally helped an alien to pass from Greece and further through Italy, Austria, Denmark and finally via Öresundsbron, Malmö, to enter Sweden despite the fact that the person was missing a passport or a permit needed to enter these countries. [The defendants’] actions constituted among other things renting a car and transporting the person a part of the way, paying for a part of the journey, planning the itinerary and accompanying the person during the journey. (Indictment quoted in the Judgement, district court)

The prosecutor’s argument in the rest of the trial aims at proving that the crew members intentionally helped the boy and that they did it in an organised, collective and planned manner, which would be evidence of their intention to commit the alleged crime.

The defence is a response to the indictment and to this legal definition of the crime. The three members of the film crew, although having slightly different lines of defence, all build their account around the same main claim: they have not helped the boy. Instead, they use words such as ‘follow’, ‘accompany’, ‘document’ and ‘depict’. This is said explicitly in the trial by one of the lawyers: ‘It is important to see the boundary between depicting something and helping.’ This argument is
supported by a clip from the documentary in which the programme presenter states in his voiceover: ‘He [the boy] has arranged his travel documents; we can, after all, only offer travelling company.’

While the main defence strategy is to prove that the acts did not constitute help in a legal sense, some additional arguments are also presented, such as that the acts should be protected under freedom of the press:

This is not just another case of smuggling. This case is unique – it is a journalistic representation of a refugee’s travel via Europe. […] It is important to have journalists who can do their job. It is important for society. (Defence lawyer, fieldnotes, district court)

The defence also refers to the fact that the boy was a child: ‘[we would ask that] the principle of the best interest of the child shall be taken into consideration in the [court’s] decision’ (defence lawyer, fieldnotes, district court). Finally, the humanitarian exception is evoked several times.

Apart from the legal definition of the crime, case law also plays an important role in the trial. In his concluding speech in the court of appeal, the prosecutor claims that the district court had decided on the crime’s grade and penalty in a way that had not followed the case law to date. In the interview, the prosecutor elaborates on this:

 Normally, when it comes to human smuggling, the most common situation is that it is aliens helping other aliens to come to Sweden, and often it is quite unclear exactly what has happened. And most often no one has an interest in disclosing it. So, then, to have a TV programme in which every step of the way has been documented is unusual. […] So that is why it turned out so interesting to see if the law was going to be applied in a case like this following the case law, a case in which it wasn’t an alien who helped another alien, but a Swedish film crew from public television who did this act while working with a film production. […] This is also why we considered it important for a court of higher instance to assess it. […] Should it be judged differently? And if yes, why? (Interview with the prosecutor)

The arena of the court, deeply structured by the law and its previous interpretations, does not allow for telling stories of the boy’s journey and the film crew’s role in terms other than those of legality or illegality. Hence, possibilities to contest European and Swedish practices of border control are limited by these conditions for addressing the events. The defence strategies focusing on winning the individual case further limit the possibility of staking any political claim against the law. Only sporadically are these strict frames challenged and strategies shifted, such as in a few attempts to bring the political context of the case into the courtroom.

One occasion that illustrates how difficult it is to introduce political contexts is when a lawyer for the defence tries to build an argument for the humanitarian exception. He refers to the official Swedish critique of Greek asylum reception systems which had been expressed through the decision to exempt cases involving Greece from returns within the Dublin Regulation. The lawyer tries to show the larger political context of the boy’s situation and of the decisions by his client, but the judge abruptly questions the relevance of this context: ‘This is a criminal law process. If you refer to migration law, I have to question how that is relevant in this case’ (judge, fieldnotes, district court).

The moral dimension of the choices made by the defendants is also mentioned a couple of times in the court in the intent to challenge the logic of the court arena, in an attempt to make claims grounded in morals. This, however, proves futile, as evident in the concluding speech of the prosecutor, who draws a clear distinction between morals and the law:

Most people can put themselves in the [defendants’] dilemma, but we have a law that regulates this. […] If we look objectively at what happened in the case, the facts are that the defendants have discussed the question, communicated with each other, known about the fraud documents. […] They helped in deciding the route, even if they now diminish their role in this planning, together rented a car, and transported him, […] the objective necessary requirements for the act to classify as a crime are fulfilled. (Fieldnotes, district court)

Moral or political claims are unintelligible in the context of the trial, and the judiciary itself emerges as detached from the domain of morality and politics. It is impossible to critique the workings of the border in the arena of court, because the judiciary – through the law on human smuggling – is part of the European border regime and the trial itself: a border spectacle. There is one moment during the
two trials when an attempt is made to shed light on the court’s responsibility in the system that morally or politically is considered to be unjust. In the court of appeal, one of the lawyers in his concluding speech puts forward his argument for changing the district court’s decision in emotional vocabulary, as expressed in the final outcry: ‘Raoul Wallenberg would have been convicted of human smuggling by the district court!’ This exclamation locates the deed of the defendants in relation to a specific historical context and likens it to Wallenberg’s acts of saving Jews from Nazi-occupied Hungary during World War II.9 The court is here interpellated as an institution that not merely applies laws, but is a part of the border regime in times of a humanitarian crisis. The exclamation derives effectiveness from a warning that the judiciary can always be judged from a historical perspective through a lens of morality rather than legality. But the evocation of Raoul Wallenberg also addresses a tension between widespread narratives of Sweden’s tradition of humanitarianism, solidarity and hospitality and the actual criminalisation of different forms of solidarity by the state instantiated in the trial:

We have certain moral values. We celebrate people [here, he refers to Wallenberg] who were more or less against current legislation and, probably against the legislation of the time as well, acted in a certain way, and we celebrate that person today. But when another person now acts in a similar way, then they are convicted. Then I think there is a contradiction in that, in our moral judgment, which can be perceived as hypocrisy by the citizens. (Interview with a lawyer)

However, this attempt to challenge the court’s role in the border spectacle failed, as evident both in the sentence and in the words of the judge, when asked about this moment of the trial:

If the suggestion in that argument is that we would have sentenced Raoul Wallenberg for arranging forged passports for Jewish families, or Jews, I don’t think we would have done that. It is not … it really is not the same division. […] I think it is to trivialise it a bit, actually. (Interview with a judge)

The courtroom transforms into a stage for a border spectacle as the prosecution of the film crew, their trial and the conviction enact the workings of a system that not only regulates people’s mobility in particular ways but also restricts and punishes the acts that may challenge the border regime. In these enactments, the state ignores framings of the events as a question of larger political contexts or moral engagement and instead attempts to contain them within a clear binary between legal/illegal. In this way, the trial becomes a manifestation of the state’s power over its borders, through criminalisation of some forms of mobility and some practices of solidarity with migrants. Like many other similar trials, this spectacle could have gone unnoticed or noticed merely by some. However, as the documentary has initiated a movement of the story of the boy’s travel, the border spectacle is witnessed by a broader audience, and the story – which now becomes a story of both the travel, its facilitation and the state’s response to these – moves on through the engagement of activists.

**Border spectacle and activism**

Activist groups and individuals had mobilised in social media before the trial and are present outside the district court that morning as well as in the courtroom. They are there to show their solidarity with the defendants and support for the cause.

Similarly to the media and the court, also the arena of activism is shaped by a variety of frames. These include ideologies and strategies for mobilisation and communication. In earlier work, Maja Sager (see Nordling, Sager and Söderman 2017; Sager 2018) has analysed migration-rights activism in Sweden. The movements and networks of migrants and their allies often find themselves navigating between a wish to challenge the inherent violence of legislation regulating borders and the simultaneous urgency to use these laws as tools, resulting in a ‘messy and at times contradictory character’ of their strategies in terms of how protests, critique or demands for change are placed inside or against legal boundaries and institutions (Nordling, Sager, and Emma 2017, 723). In the case here, this ‘contradictory character’ is present in the ways in which activists, on the one hand, point out the broader political context of the European border regime, while, on the other hand,
move inside of the boundaries of this regulation, implicitly accepting their logic, when arguing for exemptions in some cases on the basis of moral or ethical arguments. The latter form of strategy tends to work around clearly delimited and pragmatic responses. Here the demand to ‘legalise compassionate human smuggling’ becomes such a response. But this demand seems to rely on a distinction between human smuggling and humanitarian action, the two defined in relation to an imagined clear-cut division between a presence or absence of profit and fees. Such a distinction is visible in the argument of one of the activists:

I guess one could say that it has been rather easy to get accused of human smuggling, because we meet people in vulnerable situations in our work, people who need help to get from one place to another in order to seek asylum. We saw this above all in 2015, when so many people were helped across the border between Denmark and Sweden or, in our case mostly, Germany and Sweden. And in these situations, we definitely understood it as a humane … humanitarian action […] and not as human smuggling. Because, for us, human smugglers … it is still this image that one has of people who take quite a lot of money from these vulnerable people, above all in their home countries or around their home countries where the conflicts and persecution [take place]. And they take quite a lot of money – it costs thousands of dollars. And for us that is human smuggling because the aim there is profit and the profit comes first. The humanitarian … I doubt that it even exists there. The histories that I have heard from those who fled Syria are that they were left adrift once they had paid. So, for us there is a huge difference with this concept … ‘human smuggler’. (Research interview with activist)

The case of the film crew allows for making the distinction between human smuggling and humanitarian action in a seemingly straightforward way – the discrepancy with the purpose of the law becomes visible. Both the slogan – ‘Legalise compassionate human smuggling’ – and the nature of the case around which the advocacy work is done suggest that the protest aims at challenging the law’s application to the cases of humanitarian action or asylum-rights activism. This is sometimes done by introducing a historical perspective, thereby appealing to a particular collective imaginary, as in these words of an activist protesting outside the court:

I think the events here reflect a lack of historical memory. Imagine if we had seen Raoul Wallenberg as a criminal? (Activist outside the court, Sydsvenskan 26.01.2017b)

Other activists’ accounts use a more universal language of humanitarianism and create a continuity with the individualised morals-oriented account of the events in the media. An activist in front of the court says in a newspaper interview: ‘I hope that morality and love will win over the law’ (Sydsvenskan 26.01.2017b).

However, these political stakes leave the fundamental narrative about the regulation of border crossings as a process of distinguishing ‘legal’ from ‘illegal’, ‘good’ from ‘bad’, unchallenged. These frames of the pragmatic action thus lead to responses that delimit the territory of the activism and leave a possible contestation of criminalisation of human smuggling in general outside of its scope. As scholarly analysis of clandestine migration facilitation has shown (e.g. Khosravi 2010; Sanchez 2017; Solano 2017), this kind of binary narrative organised into ‘good’ humanitarians and ‘bad’ smugglers is not only empirically ungrounded but also inscribed in particular cartographies of here/us and there/them. Moreover, the production of the ‘good humanitarian’ subject of the global North is intrinsically intertwined not only with its binary of ‘villain smuggler’ of the global South, but also of the ‘vulnerable refugee’ subject, reproducing in this way the image of people crossing borders as victims in need of assistance. In this sense, this type of humanitarian narrative, in its search for (legal) innocence and purity (cf. Ticktin 2017), risks being dependent on these sorts of problematic binaries and obfuscating global structures of power at the very root of border regimes.

Despite these limiting frames, the protest against the prosecution of the film crew also offers more subversive elements, questioning the legitimacy of the law in itself. The critique articulated by the activists becomes more radical, when activists make an attempt to understand the events and the trial in a structural way: not only as an example of criminalisation of the humanitarian action, but also as a border spectacle in itself, part of the European border regime that is the source of the problem:
We want to influence public opinion and [...] mediate the perspective of those who are afflicted by Sweden’s and the EU’s current migration politics. [...] we insist that we need to have safe escape routes through Europe, because, at the end of the day, that’s what caused this, that there are no safe routes, so that is the reason the boy travelled with this film crew, so that he should not have to throw himself onto a truck from a bridge. (Interview with an activist)

This kind of more systematic critique of the migration regime, and in particular of Europe’s failure to offer refuge to people fleeing from wars, is clearly articulated here. It makes it possible to recount the story on trial in a very different way. The story is no longer told in terms of a moral choice, nor in the legal terms of a particular criminalised act, but in political terms that link the events to the European and Swedish border regime and call for a particular type of accountability. The audience is addressed not in their capacity of moral individuals, nor of subjects of the law, but as political subjects shaping the community that they are part of.

The activists’ intervention not only reinterprets the story of the boy’s journey, but also disrupts the border spectacle that is enacted through the trial. The rituals of the trial – the organisation of the space, the trial protocol, the agon discussed above – all feed into legitimising the power of the court. The law’s and court’s potential to naturalise the legal/illegal boundary is called into question when the room is filled with people who attend the trial in protest against the law. In this way, the presence of activists and supporters of the defendants in the courtroom and the interaction between the defendants and this supporting audience – through glances, smiles, waves, tears – work to disrupt the spectacle of border control and instead stage the clash between their support for the boy, the film crew and their acts on the one hand, and the intervention of the state on the other. This effect of disruption of the state’s power and of the border spectacle has been identified by one of the defendants in a published opinion piece about the trial:

However, I do not think that this movement is about us, but rather about what our decision symbolises. About the common person’s responsibility in the larger scale of events, about standing up for something even when it is difficult, even when it has a cost in terms of comfort and consequences. What would I like someone to do if it was about me, about my children, about someone I love? [...] Our struggle is, at the end of the day, a struggle for our and others’ right to recognition. There is something in our current times that mobilises to struggle. We are living in a time in which dark forces are making their way into everyday spaces like our workplace or the bus stop, in which hatred and protectionism lurk behind the coffee machine at our workplace. We need to show solidarity with each other, we need to stand up for each other when our comrades are threatened and silenced, regardless whether it is at work or in an attempt to deport someone forcibly. [...] I believe that the love that people have shown us in the district court is an act of resistance. (Shakrah, ETC 09.02.2017)

The activist arena offers disruptions in relation to the other arenas in terms of representations of agency. While the programme presenter became the central face of the events – as an individual professional journalist – in the arena of mainstream media, the activist arena is one where the interpreter instead is more visible due to her profile in the contexts of antiracist and migration-rights struggles. In the quote, the interpreter does not define the event at stake as only the crew’s journey with the boy or only the trial against the three, but represents it more broadly as a collective event, in which displays of support for the acts of the crew and the boy constitute a more radical contestation of the violence of the European border regime.

Discussion

In this article, we have explored a case of clandestine migration facilitation, through its representation in the documentary Fosterland and the media, the trial against the film crew that ended in conviction for human smuggling as well as activists’ engagement in the case. We analysed how the border as a spectacle was reinforced, but also contested, in the three arenas – the media, the court and activism. In each of them the workings of the borders sometimes manifest themselves and sometimes become invisible and naturalised. We also explored how different attempts to disrupt or display the border spectacle are made.
The widespread support for the film crew and especially the programme presenter, who became the public face of the documentary and of the court case, can be placed within a tendency towards dividing acts of clandestine migration facilitation into either morally superior or vicious and exploitative of migrants’ vulnerability (Sanchez 2017). When approached on the arena of the media and in the documentary itself, the story of the contestation of the border regime has been framed through the politics of pity rather than the politics of justice – as a kind of ‘celebrity humanitarianism’ displaying a moral dilemma for a white European subject (cf. Chouliaraki 2012) and resulting in a depoliticisation and individualisation of structural and political issues. However, as we have also discussed, when brought to the arena of the court, and when the crew eventually were sentenced, those frames for the representation of the case were disrupted. The conviction of the film crew reinforces the power of the state over its borders through the criminalisation of migration facilitation and of the related forms of solidarity. In a way, the trial and the sentence become a border spectacle in themselves, displaying to us both the relentlessness of the border regime and how that relentlessness combines with privileges and differentiations in terms of how the character of the border can be challenged and exposed as a spectacle. Still, despite this, and beyond the limitations of the different arenas, the event as a whole emerges as holding a potential for a collective and political exposure of the border as spectacle to the public.

Our point of departure has been that each of these arenas is structured by conditions and logics that deeply shape the actions and accounts of those who enter them. By identifying these, we showed possibilities for and limits to staking political claims for justice in relation to migration in today’s Europe. We have also pointed out that the motion across these arenas – how the case moves from the documentary, to the court, to the media and to protests and rallies – offers an opportunity to disclose the operation of the borders as a regime that impacts the mobility of some people, solidarity and possible ways of imagining Europe. While in de Genova’s original conceptualisation of border spectacle it is about an ‘enactment of a scene of exclusion’ and ‘rendering migrants’ ‘illegality’ visible’ (2013, 1180), in this case the border spectacle works through the criminalisation of solidarity acts that threaten the border regime. The film crew is penalised for disrupting the established border regulations and the regulations’ exclusion of certain subjects from national and European territories. In the motion across the different arenas, the case ultimately becomes a manifestation of the deeply conflicting values on which European societies are manoeuvring when pursuing border control, combined with a continuous claim to the moral high ground on the global stage.11

Notes

1. Fosterland can be translated to Fatherland. The documentary was shot during 2014 and screened on Swedish public television at the beginning of 2015.
2. In Swedish the words ‘compassionate human smugglers’ become a more inventive phrase. The word for ‘compassionate’ – ‘medmånsklig’ – shares a root with the word for ‘human’ – ‘människa/månsklig’. ‘Compassionate’ and ‘human smuggler’ can be amalgamated into one word – ‘medmänniskosmugglare’ – which approximately means ‘compassionate human smuggler’ or ‘humanitarian smuggler’.
3. Inspired by Gabriella Sanchez (2017); and to avoid reproducing the problematic connotations of the concept of ‘human smuggling’, we will use the phrase ‘clandestine migration facilitation’.
4. De Genova’s focus lies on the relation between border control and the labour market, but we argue that, while labour market dynamics are key to understanding bordering processes, it is also important to see that these go beyond the labour market and organise differential access to inclusion, rights, welfare, health, et cetera.
5. The research project was approved by the Regional Research Ethics Review Board in Lund (Decision No. 2017/3).
6. All the interviewees were given detailed information about the project and the conditions of their participation prior to the interviews and signed a form confirming their informed consent.
7. For the discussion of criminalisation of immigration in the US legal context, see Juliet Stumpf (2006).
8. The concept is inspired by Lilie Chouliaraki’s analysis of ‘celebrity humanitarianism’ consisting in ‘a politics of pity based on a theatrical conception of action: the circulation of images and stories about suffering that propose dispositions of emotion and action to the West’ (2012, 16).
9. The Dublin Regulation, or Dublin III, regulates how EU states cooperate around the reception of asylum seekers. Central to the Regulation is that one has to apply for asylum in the first EU country one arrives in. The Swedish...
decision, referred to here, meant that people who normally would have been returned to Greece, to apply there, got exempted and were allowed to file their application in Sweden.

9. Similar evocations have been made in other cases against human smugglers in Europe. For instance, the lawyer of a French farmer trails in 2017 for helping migrants through the Italian-French border addressed the judges in the court in the following way: ‘Remember the last words in the French Republic’s motto, ‘Liberté, Égalité, Fraternité’. They are saying M. Herrou is endangering the Republic... Think about the impact of your decision on the practical application of the idea of fraternity’ (The New York Times, 5 January 14).

10. One historical example that is interesting in the Swedish context is the story of clandestine migration facilitation across Öresund between Denmark and Sweden during World War II. These actions of facilitating Danish Jews’ escape from Nazi-occupied Denmark to neutral Sweden were carried out with the help of local fishermen. While today celebrated as a unique instance of helping Jews across the borders, and often referred to in a similar way as the story of Wallenberg, testimonies and historical sources are clear that the transport was very expensive (e.g. Bak, 2020), complicating the clear-cut division between not-for-profit and for-profit clandestine migration facilitation.

11. This article is part of the research project ‘The court as an emerging arena for struggles against and about racism’ funded by the Swedish Research Council. We would like to thank our colleagues at the Department of Gender Studies, Lund University, for the comments we received on an early draft of the article. Moreover, we are grateful to Amin Parsa, Diana Mulinari and Rebecca Selberg for their reading and comments at a later stage of the work. We would also like to thank the reviewers at the Mobilities Journal for their valid points.

Disclosure statement

No potential conflict of interest was reported by the authors.

Funding

This work was supported by Vetenskapsrådet[2016-03858.

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