Politische Diskurse | Political Discourse | 1

Elaine Burroughs

Political and Media Discourses of Illegal Immigration in Ireland

Nomos

Das Konzept *Diskurs* steht heute im Zentrum vieler sozial- und geisteswissenschaftlicher Arbeiten, die sich für die Konstruktion sozialer Realität durch sprachlich-symbolische Praktiken interessieren. Während die Diskursforschung in den 1980er-Jahren noch ein Nischen-Dasein fristete, ist sie seither zu einem zentralen Bestandteil zahlreicher Disziplinen geworden. Diese Reihe bietet ein Forum für Forscherinnen und Forscher, die sich insbesondere mit der politischen Funktion von Diskursen auseinandersetzen, wie etwa mit der Beziehung zwischen Diskurs und Macht, mit sozialen/politischen Grenzziehungen, Exklusionsmechanismen, Identitätskonstruktionen oder mit der Schaffung von (Un)Möglichkeitsräumen für politisches Handeln. Die Reihe ist offen für Monographien, Sammelbände und Dissertationen aus verschiedenen Disziplinen, die in deutscher oder englischer Sprache verfasst sind. Alle Beiträge durchlaufen ein anonymes Peer-Review-Verfahren.

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Dedication

To all those who hold an illegal immigration status,
may it be swiftly resolved.

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Chapter 1: Framing Illegal Immigration in Ireland

Illegal immigration occurs in a multitude of countries around the world at differing scales and intensities. When people move across national boundaries, their status is determined through the nation state construct of governance (Chavez, 2007: 192). In contrast to ratified citizens, those without a legal status are positioned outside of the conventional bounds of the nation state and are deemed to be illegal (Willin, 2007: 2). The term illegal immigration is quite abstract and often occurs in conjunction with legalistic language that assumes the legitimate exclusion of unwanted migrants from society. Referring solely to a migrant's legal status, this terminology lacks a human element or a face(s) behind such phrasings. This book examines institutional and authoritative discourses of illegal immigration. The two institutions that are under analysis are the Irish Parliament and the newsprint media, as these institutions provide the core parameters within which the Irish public gained their knowledge about illegal immigrants between 2002 and 2009. Over time, Irish Institutions repeatedly assigned various discursive attributes to the "subject" (illegal immigrant) and these discourses influenced how the public conceptualized this type of migration. These ideological discourses must be deconstructed in order to uncover their function. This book identifies that Irish Institutional discourses tend to amplify a particular framing of illegal immigration and the function of this may be to "legitimately" exclude unwanted migrants from society. It is argued here that discourses that surround illegal immigration are an avenue to identifying manifestations of power and mentalities of belonging and exclusion. This chapter frames this issue by discussing illegal immigration in the international and European contexts. This is followed by an in-depth exploration of illegal immigration in the Irish context. Placed in the context of Ireland's migration history and legislative reforms, the nature and extent of illegal immigration is outlined. Furthermore, this chapter relays the manner in which illegal immigration is defined and the terminology that is utilized to describe it. The chapter concludes by examining the overall aims of this book, the various contributions the book aims to make, and the contents of the chapters.

1.1 Illegal Immigration in the International and European Contexts

At the international level a delicate balancing act broadly takes place between discourses of the wanted (i.e. skilled, rich migrants) and discourses of the unwanted (i.e. poor migrants). It seems that the general focus of those in powerful positions at the international scale is to prevent and combat illegal immigration (Guild, 2004: 3). This focus largely ignores broader governmental and capitalist processes that cause people to migrate without official permission. Placed within this framework of controlling and preventing illegal immigration, different countries have diverse issues with it. While acknowledging that there are exceptions to this broad generalization (e.g. Mexico/South Africa), there is the obvious distinction in concerns between richer and poorer countries (that is, between sending and receiving countries). Receiving countries (such as America or France) are often concerned with a perceived lack of control of illegal immigrants entering their country, potential threats to national security, and the effects of illegal immigration on the domestic labour market. Sending countries may be concerned with the effects emigration has on their country, or the problems associated with the trafficking industry. Reciprocal relationships have developed between sending and receiving countries in an attempt, on both parts, to control illegal immigration. These relationships can materialize in the form of bilateral agreements (Papademetriou, 2005).

The rich and powerful countries of the world (e.g. the US, Canada, Australia, and several European nations) are forceful in their attempts to control their borders and to prevent illegal immigration. They place huge investment in exterior protections, materializing mainly in the form of border enforcement, air/coastal patrols, fences, and surveillance devices. States also exchange various enforcement measures. For instance, Canadian officials have studied detention practices in Australia, prosecution processes in Europe, and interception strategies in the US. By collaborating with other states and sharing information with private corporations, governments can reach across borders and oceans to manage illegal immigration. Although these control measures are substantial in terms of the cost involved in executing them, in the image they portray, and in the power they wield, these measures have not been a deterrent for illegal immigrants. Highly motivated migrants, driven by numerous incentives (be they economic or humanitarian), have found multiple ways to circumvent tighter border controls. The most notable of these is the use of professional people smugglers. Nation states also utilize interior protections to prevent

illegal immigration. An example of this is the implementing of immigration laws in the workplace. Nevertheless, laws that penalize employers who hire illegal immigrants have generally failed due to (among other reasons) the low fines imposed and the lack of criminal penalties enforced on employers (Cornelius and Tsuda, 2004: 8; Mountz, 2010: 8-48).

The extent of illegal immigration in the international context is largely unknown and is probably not quantifiable. Organizations and state authorities have attempted to estimate the number of illegal immigrants through various methods, for example by assessing the number of refused immigrants, deportations, regularizations, falsified documents, and by using specialized surveys. The degree to which these indicators are accurate and reliable is debatable. The reasons for this are multiple. Firstly, many of the figures can include those fleeing persecution and seeking asylum. Secondly, the methods of measuring illegal immigration can reflect administrative procedures (i.e. ways of defining an illegal immigrant), rather than all "illegal" movements of people. Indeed, the number of apprehensions only indicates illegal immigrants that were identified by the State. Thus, one must assume that the figures gathered by state authorities are only fragmentary indications of all illegal immigration movements (Mitsilegas, 2004: 29-39). Thirdly, the procedural data that is available is not comparable between countries. This is because each country has its own system of recording and defining illegal immigration. Indeed, even within the EU there is a lack of a common legal definition. Furthermore, the status of illegality may change over time and overlap with the status of legality (Duvell, 2006: 6-7; Mitsilegas, 2004: 29-39). Fourthly, by its very nature illegal immigration concerns unobservable events and people, therefore, it is impossible to definitively quantify it. For these various reasons the number of illegal immigrants at the international scale is impossible to accurately assess, which in many ways adds to the illusive characteristics that are assigned to illegal immigrants by those in positions of power (Jandl, 2004: 142).

Nevertheless, it is worth briefly noting some estimates of the number of illegal immigrants internationally. It has been suggested that the global illegal immigrant population could be as many as 30 to 40 million, which is between 15% and 20% of the total immigrant population of the world. The US is estimated to have the largest number of illegal immigrants – between 10 and 12 million. South Africa is said to have the second highest level of illegal immigrants (Mountz, 2010; Papademetriou, 2005; Skeldon, 2000). Most sources estimate that there is anywhere between 2 and 8 mil-

lion illegal immigrants in the EU (Duvell, 2006: 6-7; Quinn and Kingston, 2012: ix). Estimates for continental Europe are large (between 3 and 8 million). It is also projected that there are between 2 and 3 million illegal immigrants in East and Southeast Asia. As referred to above, illegal immigration not only occurs in wealthy, "Western" countries. Mexico, for example, hosts approximately 1 million illegal immigrants; many of these people are American retirees who have settled in Mexico without official permission. Two groups of countries account for the remaining cohort of illegal immigrants internationally. These are the growing regional economies of the "developing" world and countries that are adjacent to "advanced" industrial nations. Countries adjacent to desirable countries (e.g. Georgia is adjacent to the EU) are locations where many illegal immigrants are often stranded or temporarily deposited by traffickers or smugglers (Mountz, 2010; Papademetriou, 2005; Skeldon, 2000). Overall, these estimates may offer some context to the situation of illegal immigration internationally. However, these figures are unreliable as they are frequently compiled by those with a political agenda (e.g. to control illegal immigration or to offer humanitarian assistance). Indeed, the statistics for illegal immigration reflect this, as they are either unbelievably high or implausibly low (Duvell, 2008: 485-486).

Focusing within the European context, different levels of illegal immigration occur between countries. The proportion of illegal migrants to the overall immigrant population ranges from 1% to 2% in Sweden (the lowest in the EU) to 15% in Germany (Duvell, 2006: 6-7). Illegal immigration has increasingly become a major concern, especially for certain countries (Albrecht, 2002: 1-5). The main EU receiving countries include Germany, Spain, Italy, France, and the UK (Duvell, 2008: 482). Some countries (such as France) have larger levels of illegal immigrants than other countries (e.g. Ireland). Illegal immigrants can enter a country from neighbouring states, whilst other countries have illegal populations from countries outside of Europe (e.g. migrants from African countries that travel to the UK). Some countries are only transited by illegal immigrants (e.g. the Ukraine), whilst other countries are the destination for illegal immigrants (e.g. Italy). Frequently, but not always, a certain nationality will illegally migrate to a particular country. An example of this is the large number of Moroccan people that continually migrate to Spain (Duvell, 2008: 481-483). Illegal immigration remains on the European political agenda due to the opening of the borders between Eastern and Western Europe, the creation and implementation of the Schengen Treaties, the abolition of

internal border controls in most of Western Europe, the enormous reduction in opportunities for legal immigration, and the general increase in the control of immigration to Europe (Albrecht, 2002: 1-5). In the European context, there seems to be two main, but contrasting patterns of illegal immigration. Firstly, once in a European country, migrants remain as long as possible and add to the increasing number of those residing illegally. Secondly, migrants remain in a country on a temporary basis. It has been found that the easier it is for migrants to enter, leave, and re-enter a country, the more likely it is that they will come and go, instead of permanently settling in a country. Vice versa, the more rigid a country's entry and exit controls are, the more likely it is that once a migrant has made it successfully into a country, they will remain there. Some illegal immigration is economically driven and once the demand for labour decreases, illegal immigration also decreases. Illegal immigration may also display more complex patterns and can be driven by a culture of migration, family reunification, or by mere dreams and perceptions of a European lifestyle (Duvell, 2008: 481-483). Thus, illegal immigration in the European context is a complex issue and there are huge variations in the nature and extent of it between countries. The next section pays particular attention to the Irish context.

1.2 Illegal Immigration in the Irish Context

People have immigrated to and emigrated from the island of Ireland for thousands of years; from historical migration (e.g. colonialization) to large scale emigration during the time of the Irish famine. However, in the context of the current period, the 1990s (with the exception of a short period during the 1970s) is considered the key period of significant immigration. At this time the country was still largely ethnically homogenous (Quinn and Hughes, 2005: viii). Prior to the 1990s, few immigrants came to Ireland, except for those of Irish or British backgrounds. Non-EU immigration was insignificant, aside from a few professionals in the multinational sector. Furthermore, apart from a very modest inward migration of a number of "programme refugees" (planned and agreed to by the Government), substantial immigration from countries outside of the English speaking world is very recent to Ireland. The 1996 Census marks the beginning of a modern period of net immigration to Ireland. The emergence of the economic boom saw growth in the economy, inward multinational investment,

and an increase in employment. Returning Irish migrants accounted for a considerable proportion of this early immigration. Of course, over this same time period other immigrants arrived, including EU immigrants and non-EU immigrants (who were permitted access to the State through short-term work permits, student visas, and through asylum applications) (Mac Éinri and White, 2008: 153-154). The number of people claiming asylum in Ireland grew from a very small amount (39) in 1992 to over 7,000 in 1999 (NCCRI/Equality Authority Ireland NFP, 2003: 2). People had sought asylum in Ireland prior to the 1990s through organized reception or resettlement programmes, but the number of migrants involved were very low and the Government had control over the number of those admitted. The amount of immigrants claiming asylum in Ireland rose steadily until 2002 (to 11,000), when the figure slowly declined thereafter (due to a number of control measures by the Government, for example a list of "safe" countries of origin and the policy of Carriers' Liability). The majority of those seeking asylum in Ireland came from Nigeria and Romania, although Romanian applications fell when Romania joined the EU in 2007 (Mac Éinri and White, 2008: 153-154; Ruhs, 2009). Prior to 2004, all non-EU citizens required a work permit to be employed in Ireland. These were referred to as the Working Visa/Work Authorization programmes (for highly skilled, well-educated employees, and those employed in skilled manufacturing positions) and the Work Permits scheme (for lower skilled workers from outside the EEA in catering positions, agriculture, nursing, etc.). With the accession to the EU by 10 new Member States in 2004, the Work Permit scheme altered when Ireland (along with the UK and Sweden) permitted citizens of the new Member States access to the labour market (Mac Éinri and White, 2008: 154). This amendment contributed to accelerated EU immigration to Ireland, a large proportion of which came from Eastern European countries, such as Poland (Ruhs, 2009). Following from this, Ireland moved away from its more liberal work permit system for non-EEA workers and enforced stricter policies on non-EEA immigrants, resulting in the permitting of mainly highly skilled workers to the labour market. The country met its low skilled labour needs with migrants from within the enlarged EU (Mac Éinri and White, 2008: 154; Ruhs, 2009). The current situation in Ireland is that, on the whole, EU migrants reside and are employed legally in Ireland with virtually no restrictions, while non-EU migrants are either rich, highly educated/skilled individuals in employment (e.g. doctors), students, those seeking asylum (or granted refugee status), or illegal immigrants.

During the period between 2002 and 2009, the Irish Government introduced and amended a range of immigration legislation, policies, and regulations. Between 1935 and the late 1990s very little immigration legislation existed. For many years the *Aliens Act 1935* was the primary piece of legislation governing the entry and residence of immigrants in Ireland. The *Aliens Orders (1946 and 1975)* dealt with permission for migrants to enter the State ("leave to land"), the deportation of migrants from the country, and the detention of migrants within the State. Following challenges in the superior courts, new legislation was introduced with the *Immigration Act 1999* (Quinn and Kingston, 2012: 9). From 1999 onwards, a range of measures were implemented. Legislative changes occurred in reaction to the rapid increase in immigration and the large influx of asylum seekers (Quinn and Hughes, 2004: 8). The governance of immigration was also highly influenced by UK policies on immigration and by broader European processes. EU Treaty provisions and legislative measures on citizenship rights, including the right to free movement, required Ireland to adapt laws and policies that would facilitate rights of entry and residence in the State. Nonetheless, Ireland did not adopt several European measures, citing the preservation of the CTA (Common Travel Area hereafter) with the UK as a primary reason (Quinn and Kingston, 2012: xiv). Indeed, the CTA plays an important role in the regulation of Irish immigration and is key to understanding Irish immigration policy.

The array of measures that were introduced between 2002 and 2009 were implemented in a piecemeal and reactive manner, with no clear long-term plan other than to control immigration (Collett and Lacko, 2006: 3). A number of these amendments are noteworthy. The *Refugee Act 1996* relates to applications for asylum and provides the legal basis for the Office of the Refugee Applications Commissioner and the Refugee Appeals Tribunal. The *Immigration Act 1999* reinforced the process of deportation. The *Immigration Act 2004* sets out in primary legislation many of the immigration controls previously contained in the *Aliens Order 1946*. The *Illegal Immigrants (Trafficking) Act 2000* deals with trafficking in human beings, while the *Immigration Act 2003* introduced Carriers' Liability and contains a substantial number of amendments to the *Refugee Act 1996*. The *Employment Permits Act 2003* provides a separate and more comprehensive codification in law covering issues related to work permits and working visas. The *Twenty Seventh Amendment of the Constitution Act 2004* enacted into law the result of the Citizenship Referendum (Quinn and Hughes, 2004: 8), which altered the criteria required for a person to

gain Irish citizenship (Quinn, 2005: 7-9). In 2005, the *Immigration, Residence and Protection Bill* was introduced; however, it is currently withdrawn from parliament.

In relation to illegal immigration specifically, different components of numerous bills and acts define into law that those who do not have permission to be in the State must leave or be deported. In order to prevent illegal immigration, the Irish Government implemented a series of external and internal controls, such as border controls and policy and legislative changes, including "leave to land", Carriers' liability, Dublin II transfer, "safe country of origin", repatriations, voluntary returns, and readmission agreements (Coghlan, 2007: 57; Quinn, 2009: 42-43). Additionally, the GNIB (Garda National Immigration Bureau hereafter) enhanced its information system and developed links with other government departments. Security around a variety of immigration documents also increased, for example the practice of fingerprinting asylum seekers was adopted (Quinn and Hughes, 2005: ix). Irish governance of illegal immigration will continue to evolve and change into the future.

1.2.1 The Nature of Illegal Immigration in Ireland

The topic of people migrating illegally without authorization has been in the lexicon of the Irish people, the Irish Government, and the Irish media since the 1980s and 1990s. However, the concentration at that time was on the undocumented Irish in the US. Ironically, as the Irish Government advocated for the undocumented Irish in the US (through their ongoing campaign for a regularization programme), the issue of illegal immigration in Ireland began to emerge (Crosscare Migrant Project, 2009: 20). Compared to other migration issues, little attention or consideration has been given to illegal immigration in the Irish context. There are scant references to it within academic research and when it is referred to, it is often discussed in the context of asylum, labour immigration, or other issues (e.g. Lentin, 2007). The majority of research into illegal immigration has been undertaken by civil society groups (e.g. Coghlan, 2007; Crosscare Migrant Project, 2009) or by statutory bodies (e.g. Quinn and Hughes, 2005; Quinn and Kingston, 2012). Furthermore, when illegal immigration is mentioned in the Irish Parliament and the newsprint media, quite often it is not discussed in detail and it is referred to in relation to other topics. For example, on one occasion in the Irish Parliament, illegal immigration was refer-

enced in the context of human trafficking (Naughten, 2009: 694) and in the Irish Times, illegal immigration was mentioned in an article that concentrated upon prostitution (O'Regan, 2009: 8).

By definition, illegal immigrants constitute a hidden population that is difficult to accurately describe and assess (Quinn and Kingston, 2012: 4). While acknowledging this, and in order to understand the nature of illegal immigration in Ireland, it can be placed into two broad typologies. Firstly, there are those that enter Ireland legally and subsequently become illegal; and secondly, there are those that enter Ireland illegally. Immigrants who enter a country legally can become illegal for various reasons. For example, if (i) they overstay a visa; (ii) they refuse deportation; (iii) immigration laws change; (iv) there is a change in an immigrant's status; (v) an asylum application of a person is denied and they remain in a country; (vi) a person works outside the terms of the residency permit; (vii) a person resides and/or works on false papers or; (viii) a spouse dependant or family dependant visa becomes redundant. Immigrants are considered illegal entering a country if, for example they (i) enter without permission from immigration authorities; (ii) enter and stay in a country and do not contact authorities or make an asylum application; (iii) enter a country without documents, or with false documentation, or; (iv) enter illegally and engage in employment. Furthermore, a child born to an illegal immigrant can be defined illegal by birth and may have no right to citizenship or residency in the country (Coghlan, 2007: 14; Duvell, 2006: 3).

Given its geography, the level of illegal immigration in Ireland, although largely unknown, is likely to be low. Unlike the US, for example, Ireland does not have any porous land borders with countries whose citizens have to obtain permission to enter and work in the country. Furthermore, unlike Canada or Italy, Ireland does not have instances of immigrants arriving by boat to its shores. Illegal entry into Ireland probably occurs either through the ports (air and sea) or through the land border with Northern Ireland, which is easily accessed due to the CTA agreement between Ireland and the UK. Within the CTA there are technically no passport controls for Irish and UK citizens travelling between the two jurisdictions. Yet, in recent years, with the threat of terrorism, airlines conduct passport checks on all passengers. The ports, however, do not carry out such detailed security checks, and the land border between the Republic of Ireland and Northern Ireland is virtually open (Ruhs, 2005: 22-23; Quinn and Hughes, 2005: 10-11). Komolafe's (2008) research identified that the most common method for Nigerian migrants to gain entry to Ireland in-

volved illegally crossing a series of borders. Many of the migrants interviewed as part of Komolafe's research travelled by bus from Nigeria to the North African border (e.g. Algeria and Mauritania) and went through immigration controls on foot. Frequently, these people would work for a few months in North African countries before continuing their journey by boat across the Mediterranean to Spain. Once in Spain, they would forge an identity to take them to Ireland (2008: 235). One assumes that these migrants gained access to Ireland through false documentation or by avoiding immigration controls, perhaps by travelling to Ireland via the UK and Northern Ireland.

There is much debate as to whether the majority of illegal immigrants in Ireland entered the country illegally (mainly through the border with Northern Ireland) or whether they became illegal over time (after entering legally). During the period between 2002 and 2009 the Irish Government seemed to lean towards the notion that most illegal immigrants entered the country by travelling through the border with Northern Ireland (Ahern, 2009: 693; McDowell, 2006: 613). In contrast, the majority of civil society groups held the view that most became illegal over time (Ruhs, 2005, 2009; Coghlan, 2007). A recent study by Quinn and Kingston (2012: xi) found that it was widely accepted by officials from the GNIB and Non-Governmental Organizations (NGO hereafter) that the majority of illegal immigrants overstayed their permission to visit or reside in the State, as opposed to having entered illegally. As neither theory can be definitively proven (and in many ways it is a futile debate), it is adequate to state that both methods of becoming illegal occur in the Irish context.

An important aspect that can be overlooked by government officials is that the Irish immigration system can actually contribute to migrants becoming illegal. Recognition of this point moves one away from solely conceptualizing illegal immigrants as deceitful people who illegally enter the State, or as people who come under the guise of student visas or tourist visas. Many immigrants who come to the State legally become illegal due to the manner in which the Irish immigration system operates. NGO groups maintain that this happens for a number of reasons. Firstly, it is argued that there is a lack of information on various immigration status options. Secondly, there is a lack of clarity and transparency in application processes and procedures. Thirdly, it was found by those engaging with the system that there is inadequate or sometimes no responses by various agencies to immigrant requests. Fourthly, NGO groups argue that immigrant agencies do not adhere to customer charters. Lastly, it was found

that there is inadequate dissemination of immigration policy and procedural changes (Crosscare Migrant Project, 2009: 6-7). In essence, the Irish immigration system is found to be inflexible and it does not allow for immigrants' (life or employment) circumstances to change (Coghlan, 2007: 26-30).

Not only can the Irish immigration system contribute to people becoming illegal, it can also force migrants to remain illegal, as there are no clear mechanisms or criteria for a migrant worker to regularize their status in Ireland (Coghlan, 2007: 26-30). The only way for illegal immigrants to become legal is for the Minister for Justice to grant permission on an individual basis. This procedure can take a long time to process and the number of applicants granted "leave to remain" (permission to reside) is very low. Furthermore, an unsuccessful application for "leave to remain" will be assigned a deportation order. Therefore, it can be argued that illegal immigrants who wish to legalize their status are faced with the reality that they will probably be assigned a deportation order at the end of the process. Ireland has limited experience of regularization schemes. On one occasion a "Bridging Visa" became temporarily available (between October and December 2009) in Ireland. After much campaigning by a number of civil society groups over a three year period, the scheme was available for those who had become undocumented "through no fault of their own" to apply to have their immigration status regularized. This was the first and only time that the Irish State has regularized the status of illegal immigrants. The availability of this regularization scheme was not widely known by the general public or by immigrants and only 185 immigrants applied to regularize their status (Quinn and Kingston, 2012: xii-xiii). This Bridging Visa was welcomed by those who work with individuals that are undocumented, nevertheless it was only a temporary measure to solve the situation for a certain number and type of illegal immigrant. A more long term and inclusive strategy is required that examines the whole immigration system, as the issues that contribute to people becoming illegal persist within the system. In this context, regularization schemes should operate in tandem with system changes and not just as isolated initiatives (Crosscare Migrant Project, 2009: 20-21). This research acknowledges that the manner in which the Irish immigration system functions in relation to illegal immigration is not significantly different from other European States. Indeed, they are all part of a broader European and international attitude that aims to restrict immigration. Nonetheless, those that are illegal in Ire-