Guest Editorial
Researching Illegality and Labour Migration
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ABSTRACT

This introduction to the *Population, Space and Place* Special Issue ‘Researching illegality and labour migration: the research/policy nexus’, considers what is meant by ‘illegal immigration’. This is of key importance to both policy and academic discussion, and contradictions and debates are evidenced in the terminology (‘illegal’, ‘irregular’, ‘undocumented’, etc.) deployed. The paper briefly reviews current academic literature and situates the issue’s contributions within this. It concludes by drawing attention to migrant agency and its relation to labour markets and migratory networks. Copyright © 2010 John Wiley & Sons, Ltd.

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‘Illegal immigration’ is an inevitable feature of border controls and nation state organised citizenship. There will always be non-citizens who, whether in error or deliberately, break the rules attached to entry and residence, and the legislation, however well drawn and sophisticated, can never cover all permutations and eventualities (Torpey, 2000; Ngai, 2005). However, until about 20 years ago this subject was of relatively little academic interest, partly due to a lack of data. The small body of research on illegal migration that existed was typically perceived, according to Cvajner and Sciortino (2009), as being little more than an ‘appendix’ to legal migratory processes. This began to change with work drawing from data generated by large-scale regularisation processes, particularly in the US but also in Southern Europe (Bean et al., 1987; Chiswick, 1988; Cornelius, 1989). Since the late 1990s illegality and migration have generated a significant body of policy and academic literature.

Yet what, exactly, is meant by ‘illegal immigration’? Is it a problem to be solved, or a phenomenon characterising nation states in the global economy? Is it an end state, a category, or a process? And what terminology is appropriate to use? The contested nature of the adjectives attached to migrants who are the subject of these studies and policies – undocumented, irregular, clandestine, non-compliant, unauthorized, trafficked, *sans papières*, etc. – is an indication of the intensely politicised nature of claims to knowledge and analysis. The terms used may in themselves indicate a particular political position. Academics, often in an attempt to remain independent from association with particular positions, commonly use ‘irregular’ or ‘unauthorised’, and in this special issue we have respected the terminology preferred by each contributor. States, however, typically use the term ‘illegal’. They tend to present ‘illegality’ as a problem to be solved through stronger borders (internal and external), strict enforcement of immigration and residence controls and, increasingly, cooperation between the state and civil society (Frank, 2008). It is said to be imperative because illegality is not simply a challenge to the authority of states to control their borders, but is increasingly linked to national security and organised crime (Wæver et al., 1993; Alexseev, 2006; Koser, 2009). Illegality, it is argued, may also result in unfair competition in the labour market, giving an edge to employers who are prepared to break the law in...
pursuit of higher profits (Home Office, 2007). It may more generally be perceived as depleting limited resources (such as welfare benefits) by those who have no right to access them (Miller, 2008). ‘Illegality’ is also the term that is often used by those elements of the mass media that promote and reinforce negative public attitudes to immigration, and illegal immigration in particular (Chavez, 2001; Crawley, 2005; Düvell et al., 2009; Koser, 2009).

However, there is also a strong current in civil society that is more sympathetic to people they would rather term ‘undocumented migrants’. While concurring with states that being ‘undocumented’ is indeed a problem, the reason for it being a problem is perceived as being related to exploitation by unscrupulous employers, landlords and other agencies on the one hand, and to migrants’ inability to access fundamental rights on the other (Carens, 2008). Being undocumented, it is argued, renders migrants vulnerable to abuse and exploitation. In this way, states and some civil society actors (particularly radical feminists, anti-slavery activists, labour and migrants’ rights groups), have found common ground, at least in theory, over concerns about ‘trafficking’, though some academics and NGOs have also questioned its usefulness (Sharma, 2003; O’Connell Davidson, 2006).

Academics from a wide range of disciplines have been concerning themselves with this policy debate and their contributions (as geographers, sociologists, economists, anthropologists, political scientists, and philosophers, to name but a few) have tended towards a qualitative/quantitative division. There is an interest, on the one hand, in estimating the size and economic impact of the population of illegally resident migrants, often using standard sources of demographic data though, particularly in the US, new datasets may be generated for this purpose (as Martin describes in his paper for this issue). There are particular interests from policymakers in this kind of quantitative research. There have also been small-scale qualitative studies, principally with migrants, but occasionally with employers. However as yet the mixed method approach advocated by prominent migration scholar Douglas Massey has remained relatively underdeveloped, with the exception of research around trafficking. Such research has tended to combine numerical estimates – often rather unreliable (United States’ Government Accountability Office, 2006) – with a case study approach.

However, there has also been a resurgence of academic interest in moving away from the debates driven by policy or by civil society concerns and towards theorising illegality, and (in particular) considering it as a phenomenon to be studied rather than as a problem to be solved (De Genova, 2002). There are interesting theoretical moves to escape from the analytical cul de sac that illegality is ‘produced’ by the state. This is part of a literature retheorising borders, migrants’ agency, and the state. Moving away from viewing (irregular) migrants as objects or victims of migration regimes, this literature takes migrant subjectivities as its starting point, and considers the responsive nature of immigration controls to migratory practices (Papadopoulos et al., 2008). In so doing, it brings to the fore citizenship and citizenship-making practices, with the sans papières hailed as new agents of political change through their enacting of ‘dissensus’, or the highlighting of the gap between rights in theory and rights in practice (Balibar, 2004; Rancière, 2004). The problem is, as Nyers and others (Nyers, 2003) have pointed out, such radical departures may always be recaptured by the state. Politically active sans papières recognise the importance of access to formal rights as bestowed by formal citizenship, or at least a recognised legal status. While they may build citizenship from below through their political action, calls for legal status cannot avoid reinscribing the power of the state in granting these rights. In this respect, ‘speaking to policy’ can in itself be a helpful refinement of theory.

This issue is concerned with the research/policy nexus. It has a particular interest in how illegality is conceptualised as this poses one of the greatest challenges to the analysis of illegality as a phenomenon. Who counts as ‘illegal’ or ‘undocumented’ (particularly since the ‘undocumented’ often have documents that are fake, stolen, rented, or borrowed)? The lines separating legal from illegal have long been recognised as diffuse and there have been various attempts to produce taxonomies of illegality in order to begin understanding and delineating the nature of this subject of study (Ghosh, 1998; Tapinos, 1999; Samers, 2004; Wright and McKay, 2007). A common first step has been to focus on the means of entry, and more particularly, to distinguish...
illegal entrants from overstayers who have entered legally and had a period of legal residence. While this is recognised as valid by policy makers, its lessons are often not reflected in policy. It draws attention to the processual nature of ‘illegality’, namely that a person does not contravene the law until they have crossed a border and often not until well after that. While policy tends to view illegality as an end state, research has found that it is often part of a shifting range of statuses that non-citizens may move between – for instance: from legal resident, to overstayer, to legal resident (Schuster and Solomos, 2004). This status mobility may be a consequence of shifting state policies or of individual choices and opportunities, and under certain circumstances and regimes may actually be used strategically by migrants to improve their positions.

Status mobility draws attention to the temporal as well as spatial dimensions of immigration status. Cvajner and Sciortino (2009) develop a typology for understanding irregular migratory systems by building on the notion of an ‘irregular migratory career’, thereby drawing attention to the temporal nature of irregularity. They distinguish between ‘atomistic’ careers, which are the outcome of individualised exigencies and legislative loopholes, ‘volume based careers’ driven by responses to sudden migratory opportunities, and ‘structural careers’ that take place within a well-established migration infrastructure. Cvajner and Sciortino observe the differing relations to networks and different self-presentations made by migrants depending on the nature of their career. The authors show that it is the interaction of migration flows and policy changes that create the conditions for these individualised careers.

Ruhs and Anderson (2009) offer a different approach to the typologising of immigration status in their discussion of one of the key blindspots for the state: those who are residing legally but working in breach of employment restrictions attached to their immigration status, and those who are, therefore, to use De Genova’s (2002) term, ‘deportable’. The numbers of people in such a situation are likely to be considerable in cases where labour markets are flexible, but they can be difficult to capture in large-scale datasets. The subjective experiences of this group, whom Ruhs and Anderson describe as ‘semi-compliant’ may vary considerably, but it is of note that it may be perceived of by some as being a preferential status to being ‘non-compliant’. For some members of this group – and their employers – ‘illegality’ may be felt to be ‘no big deal’ and even mutually advantageous, particularly if it is only anticipated to be a temporary status for a limited period of residence and employment. This, particularly in conjunction with Cvajner’s and Sciortino’s contribution, raises questions about the extent to which it is possible to apply more generally the typologies of illegality generated at particular times and in particular states.

The complexity and ambiguity of the concept of irregular migration, as Koser (2009) discusses, has implications for the collection and analysis of data. He considers the available data on the scale of irregular migration and its limitations, and analyses in general terms the empirical causes of irregularity, distinguishing between the macro-level (global inequalities, improved communication, and labour supply and demand), and the meso-level (including policies and intermediaries). Koser observes a disconnection, however, between the interest in small-scale qualitative studies of irregular migration, and research on decision-making processes that result in irregular migration. While his focus in this particular instance is on the “decision to migrate in an irregular manner” (Koser, 2009: in press), it is of note that even less empirical and theoretical attention has been devoted to the structure/agency relation in the illegalising process once migrants have entered a state. This has often led to an oversimplified version of illegalised migrants as ‘victims’ of exploitation (by smugglers, employers, and other third parties) or ‘villains’ who have set out to break the law (Sharma, 2003; Anderson, 2008).

The problems arising from the conceptual/definitional issues associated with illegality are clear from Martin’s (2009) paper. Here he argues that, alongside the entrenchment of political and economic interests in the policy making process, the problems of interpreting and analysing data (and consequent disagreements among economists), are a crucial contributory factor in explaining the limited impact of academic research on US policy. In their considerations of the labour market impact of migrants’ illegal working in the US, as elsewhere, economists and others who analyse large datasets are clearly hampered by the fact that it is almost always impossible to
disaggregate those who are working illegally from those who are working legally. Thus, typically, these studies (with some notable exceptions, such as those generated by regularisation exercises) focus on the impact of ‘low-skilled’ migrants in general on similar US citizens.

Düvell et al. (2009) discuss the ethical issues arising not only in the process of conducting research on irregular migration, but also in its dissemination. Like Koser, they observe that the collection and dissemination of quantitative data raises particular ethical challenges and is particularly vulnerable to misuse. They argue that the researcher is a social and political actor who must be attuned to the research-policy nexus both at the macro-level (being aware of the politics of the generation and presentation of quantitative data, for instance) and at the micro-level (e.g. by showing sensitivity to the implications of revelations about status on the lives of individual migrants). The ethics of research and research methodology have been subjected to considerable debate, both at the meta-ethical level and with respect to specific research topics and projects (Bryman, 2004; Copp, 2006; Hammersley, 2009). In research situations some ethical concerns and individual interests may need to be traded off against others. Some may feel, e.g. that the use of covert observation ‘without the consent of any party’ (Düvell et al., 2009: in press) as a response to the personal harm that may be caused by openly interviewing irregular migrants in the workplace, may not be ‘ethical’, while others will disagree. What seems to be important is researcher reflexivity and further debate within the research community, as well as situated negotiation rather than tick box responses.

In researching immigration and illegality, theorising migrant agency is of crucial importance. Migrants interact with and help shape policy, which is itself reactive to migrants as well as to the broader political and economic climate. Notions of agency tend to be oversimplified at the policy level and presented as being related to ‘choice’, particularly in debates about illegality and trafficking. However, as Koser, Cvajner and Sciortino, and Ruhs and Anderson separately discuss, understanding decision making, the room for manoeuvre, opportunity structures and migration trajectories, are all crucial to understanding illegality as a phenomenon of the modern nation state in the global economy.

Migrant agency cannot be divested from the array of very different contexts and life histories, and illegality cannot be examined in isolation from other processes and phenomena. Migratory networks, e.g. many of which may be legal, have long been recognised as important to understanding the facilitation of illegal entry and illegal employment. However, as Cvajner and Sciortino point out, these are in turn embedded in other structures. Labour market regulation and segmentation can be crucial to understanding processes and impacts (Martin, 2009; Ruhs and Anderson, 2009). Illegal immigration is not susceptible to easy answers and is, in the end a deeply political question.

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REFERENCES


