

Evidence and absence in the archives: A study of the Irish Refugee Appeals Tribunal Archive to assess the state practice of determining asylum in Ireland

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Abstract

Creating borders and borderlands is a key role of the contemporary state (Mountz, 2010). This dissertation investigates the Irish state agencies that are part of the border complex and the ways that borders are enforced for those seeking asylum in Ireland. Specifically, this dissertation examines the Appeals Tribunal Archive (ATA), a digital archive of refugee and international protection appeal decisions granting or refusing asylum and refugee status to asylum seekers in Ireland. This archive contains rituals and practices of the Irish state as the Tribunal determines asylum and ‘processes’ asylum seekers through national borders. This project uses innovative mixed methods including digital qualitative analysis, geocomputation, web-scraping, knowledge exchange forums with those affected by the state asylum process and archival ethnography to carry out a ‘sustained engagement’ (Stoler, 2009) with the archive.

This investigation, like similar investigations of state archives, reveals a landscape of clarity and shadows: some practices become clear, some remain hidden. For asylum seekers, the asylum process is murky, chaotic and disorienting. For the researcher, the asylum process also appears shadowed; rituals and practices become evident from investigating the archive’s form and content. This project works towards investigating the practices, knowledges, assumptions and ‘common sense’ of the Appeals Tribunal through the archive.

In this dissertation I argue that acts and practices of bordering are central aspects of statecraft, enacted and performed by state agencies and state agents. This research into state practice opens space to question the judgements documented in the archive through, among other things, the deep analysis of decisions and the creation of publicly accessible records and reports of Tribunal practice. The evidence presented in this dissertation shows the double-sided nature of asylum determination in Ireland. Outwardly, asylum agencies

work to maintain compliance with state and international asylum laws; inwardly, asylum agencies are restricting borders and movement in Ireland and are restricting the rights of asylum seekers and their claims to protections under law.

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List of Abbreviations

IPAT – The International Protection Appeals Tribunal

RAT – The Refugee Appeals Tribunal

ORAC – The Office of the Refugee Applications Commissioner

IPO – The International Protection Office

IPA – The International Protection Act 2015

DoJE – The Department of Justice and Equality

MfJE – The Minister for Justice and Equality

GNIB – The Garda National Immigration Bureau

INIS – The Irish Naturalisation and Immigration Service

MASI – The Movement of Asylum Seekers Ireland

IRC – The Irish Refugee Council

CJEU – The Court of Justice of the European Union

CEAS – The Common European Asylum System

Appreciations

The term 'Acknowledgment' has always struck as a misnomer that carries with it more an obligatory recognition of debt than the valued recognition that appreciation implies. How to convey the gratitude that comes from those savored friendships, nourished by trust and care, that in turn enable bolder forays and more engaged critique?

- Ann Laura Stoler, 2009

Stoler, in better words than I could, aptly describes the great joys of working with others together, towards bright aims. This PhD has been made just as much in the interactions, and in the joys and sadness of working with others, and I have many to thank, more than I can mention, for the joys, for the lows. This PhD would not be possible without these great joint efforts, and the help and kindness I have received from so many people. I would like to appreciate and thank many people.

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IRISH RESEARCH COUNCIL
An Chomhairle um Thaighde in Éirinn

1 Chapter One: Introduction

The Irish Office for the Refugee Commissioner (ORAC) began issuing annual reports in 2001 and from 2001 until 2019 the Irish state recorded 76,200 applications for international protection, the term used in Ireland for refugee status or subsidiary protection -- an expanded international protection definition guaranteed in the European Union (Eurostat 2020). These 76,200 applications from individuals and families filed with the Irish state claim that they are eligible for protection against *refoulement*, forcible deportation to a place identified as their 'country of origin' by the Irish Department of Justice and Equality (DoJE) and the Garda National Immigration Bureau (GNIB), the police bureau responsible for immigration enforcement in Ireland. Between 2001-2019, the DoJE issued 66,699 first-instance decisions, the first decision for an application, granting or refusing international protection,¹ each for a separate application for this protection. The DoJE granted international protection in 8,090 instances, eleven percent of all decisions issued and eleven percent of all applications (See Figure 1.1).

For the individuals and families who have filed applications for international protection, they are relying on a known and agreed upon definition of what a refugee is. A refugee is someone who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such

¹ Applications in which a decision has not been issued are still awaiting a decision or have been withdrawn.

events, is unable or, owing to such fear, is unwilling to return to it. (UN General Assembly, 1951)

This definition of a refugee comes from the Refugee Convention of 1951 and the Refugee Protocol of 1967. An asylum seeker is someone who is seeking to be recognised as a refugee and/or subsidiary protections. In the course of this dissertation, I use different terms to describe individuals and groups of people who have applied for asylum, often to specifically describe the situations people are in, such as seeking asylum in Ireland, applying for international protection or appealing a decision, or living in Ireland. Asylum seeker is used as a general term and refers to a person seeking asylum as a refugee or under subsidiary protections, and other descriptors are used to accurately and specifically refer to who is in certain situations.

People who apply for asylum² and receive a first-instance negative decision in their application for refugee status and/or subsidiary protection from the DoJE have a right to appeal this decision. In Ireland this appeal is made to the International Protection Appeals Tribunal (IPAT), a ‘quasi-independent judicial body’ (IPAT, n.d.) in which Tribunal members, appointed by the Minister for Justice and Equality (MfJE), review appeals assigned to them by the IPAT chairperson. Before 2017 the appeals were heard by the Refugee Appeals Tribunal (RAT) (See Figure 1.1).³ From 2001 to 2019, these appeals tribunals, the RAT and the IPAT, received 49,762 appeals to negative first-instance decisions, and in this time period Tribunal members issued 44,837 decisions. Most often, the appeals tribunals were issuing decisions on cases of refugee protection and subsidiary

² In the course of this dissertation, I use different terms to describe individuals and groups of people who have applied for asylum, often to specifically describe the situations people are in. Asylum seeker is used as a general term and refers to a person seeking asylum as a refugee or under subsidiary protections, and other descriptors are used to accurately and specifically refer to who is in certain situations.

³ The RAT had statutory responsibilities to hear international protection appeals under the Refugee Act 1996 (as amended 2003) until 1 January 2017, when the International Protection Act 2015 came into effect, disestablishing the RAT and assigning the responsibilities to the newly created IPAT.

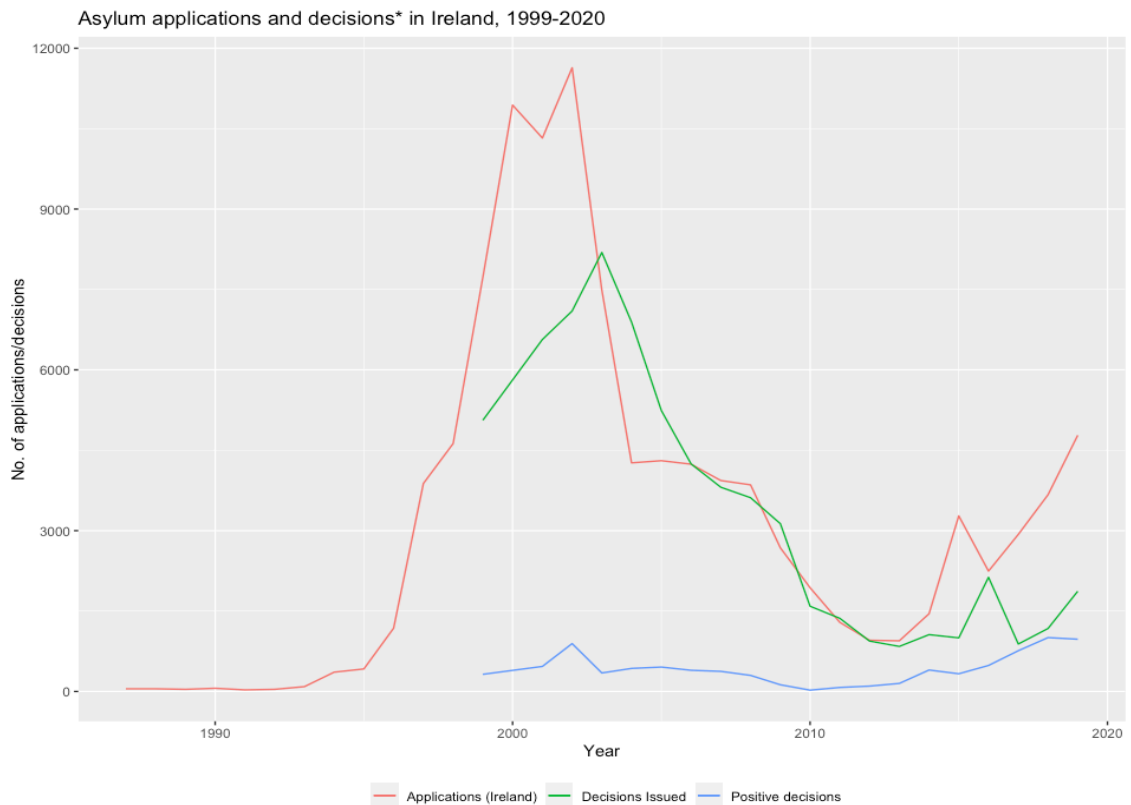


Figure 1.1 Asylum applications and decisions in Ireland, from Eurostat. Data for applications for asylum in Ireland go back to 1995, and data on decisions go back to 1999. Decisions are first-instance decisions by ORAC or IPO.

protections but also were issuing decisions on ‘Dublin Regulation’ decisions, which are decisions by the DoJE on whether a different EU country is responsible for hearing the asylum claim as set out in the Dublin Regulations.⁴ The appeals tribunals also issued a small number of decisions on other matters (IPAT, 2019). In the 44,837 decisions issued by the appeals tribunals in 2001-2019, 41,257 decisions issued were on appeals for international protection, and the Tribunal members refused international protection and affirmed the initial DoJE decision in 34,431 (83.5%) of these decisions. For the people refused in their applications, the DoJE has issued their opinion that they are not eligible for protection against refoulement and may face deportation or detention.

⁴ The Dublin Convention, signed in 1990 and came into effect in 12 signatory countries in 1997, set out rules to determine which EU signatory state (or non-EU signatory state, which currently includes Norway, Iceland and Switzerland) is responsible for the examination of an application for asylum. The Dublin II Regulation (343/2003/EC) was adopted in 2003 and replaced the Dublin Convention, and the Dublin III Regulation was adopted in 2013 and replaced the Dublin II Regulation.



Plate 1.1 Photograph of the International Protection Appeals Tribunal (IPAT), formerly the Refugee Appeals Tribunal (RAT). Photo by author, 2019.

This brief description I have provided of decisions issued by Irish state agencies in determining asylum begins to show the landscape of a restrictive asylum determination process in Ireland, in which most claims for refugee status and international protection are refused. This description also highlights how a significant minority of decisions are overturned on appeal -- in 6,680 appeals (16.3%), the appeals tribunals overturned the initial decision by DoJE refusing international protection. Some negative asylum decisions have also been further appealed for Judicial Review, a limited appeal on tribunal decisions

that can be made to the Irish High Courts on technical grounds in which decisions can be quashed by a judge, to be re-heard by the appeals tribunal. International protection decisions have an outsized effect on people's lives -- when the state deports someone who has sought asylum, that person has already claimed that they may face serious harm or death if they are returned. The state risks placing people in this danger, in addition to often separating them from family and their lives in Ireland.⁵

This description is also a geography of asylum determination in Ireland. I work here towards an understanding of the asylum determination process in Ireland as a form of border control and border enforcement, carried out by a web of Irish departments, agencies, tribunals, courts and law enforcement. As Ireland and other European and EU states have moved to limit and control immigration to these states through *regular* means -- controls at physical borders, and increasingly placing pressure on non-EU countries to control in-migration across EU borders and to EU territories -- these sites of arbitration of asylum claims under state's obligations under international law have increasingly become places where state agencies, governments and individuals acting as state agents have attempted to exert control over the movement and residency of migrants. The interview rooms, the questionnaire forms, the hearings, the reception/living conditions for asylum seekers, the administrative documentation, the formal submission of evidence and the written decisions by the DoJE and by the appeals tribunals -- these have increasingly become the places where border enforcement happens. These places have become the *borderlands*, where individuals, as civil servants, elected officials and private contractors, represent, perform and enact the duties, responsibilities and practices of the state - a statecraft of bordering.

⁵ From 2008, when Eurostat started collecting this data, to 2019, Ireland deported 6,990 people. (Eurostat, 2020)

1.1 Investigating the archives of asylum determination

This dissertation is an investigation of the asylum determination process as a site of bordering through the study of the Appeals Tribunal Archive (ATA), an online archive of decisions issued by the RAT and the IPAT from 2001 to present. The archive includes records on the type and outcome of tribunal decisions and the written decisions by Tribunal members -- the decision-makers at the tribunals -- that detail the justifications and evaluations that tribunal members make in their decisions. These decisions are usually twenty to thirty pages but range from as short as one page to decisions over one hundred pages. The ATA today contains over 17,000 written decisions and metadata – the year of the decision, the type of the appeal, the identified nationality of person(s) making an appeal and the outcome/decision issued in the appeal – on more decisions issued by the RAT and IPAT from 2001 to 2020. The ATA was first made available for access by researchers in 2014, providing a unique opportunity to study the practices of the appeals tribunals. In this dissertation, I employ various tools and methods to approach this online digital state archive in order to comprehensively, systematically and methodically analyse and investigate the practices of the appeals tribunals and other parts of the asylum determination process.

The results of this project provide systematic evidence of the asylum determination process as an aspect of a bordering strategy by the Irish state to restrict in-migration and to limit the Irish state's obligations under the Refugee Convention and other international law. The study also reveals a culture of practice by members of the tribunal and other agencies, departments and individuals involved in the production of a state conception of the 'genuine refugee', produced out of anxieties and sentiments of civil servants and state agencies, that undermine the frameworks of refugee protections. In this dissertation I employ the use of an innovative mixed methods approach including digital qualitative analysis, geocomputation, web-scraping, participatory research and archival ethnography to

carry out a ‘sustained engagement’ (Stoler, 2009) with the archive. Using this methodology as well as an iterative process of engaging with the archive and engaging with involved and affected communities, groups and individuals, I map out a research path that systematically investigates the archive as a significant element of the landscape of asylum determination in Ireland. During this process, I focus on and prioritise issues raised and informed by previous research by myself and others; by engagement with affected communities; and by findings from this project along the way.

I refer to this path of research methods chosen and employed along the way as the ‘curated research stream’ of the project. Methods were carefully chosen and informed along the way by research and consultation to take full advantage of investigating the form and the content of the archive and the asylum determination process. Exploratory research was often an important part of progressing the ‘stream’ of the research for this project, and this exploratory research and preliminary findings allowed for further systematic searches and investigations. This project also collected evidence along a variety of scales, recognizing the profound importance of events, non-events and ‘quasi-events’ (Povinelli, 2011) amid the decisions within the archive. These methods included ‘web scraping’ to view the full extent of the archive as it is situated, as a database located on an online server produced and maintained by the DoJE; systematic qualitative coding of representative samples of decisions by the appeals tribunals; knowledge exchange forums with individuals impacted by the practices of asylum determination and involved in community and advocacy groups for asylum seekers; and also further ‘digital qualitative methods’ including Optical Character Recognition (OCR), text searches and text mining to further systematically investigate the text of decisions.

Much of the asylum determination process -- and the actions of bordering that are part of this process -- is hidden from systematic social research. While there are many ways to study and investigate the state process of asylum determination, and while there have

been many such studies and investigations, it has proved difficult to systematically study the practices of the Irish agencies, governmental departments, tribunals that perform asylum determinations and their decisions and actions that affect the lives of migrants, asylum seekers and refugees. This difficulty parallels the experiences that scholars studying (in) other countries and contexts have found, in which researchers encounter obstacles in gaining access to the sites of immigrant detention and determination, and where often only fleeting moments are available for critical research (Maillet et al., 2016).

In the bureaucracy of these asylum determination agencies, the violent acts of deportation and border enforcement become normalised as everyday occurrences, as paperwork or as evidence and absence of evidence (Amoore and Hall, 2010). Coleman and Stuesse use the work of Povinelli on quasi-events “to describe the fleetingness and fluidity of power” (Coleman and Stuesse, 2016, p. 527) when state power is produced as everyday. Those people experiencing these bordering acts and practices by state agencies often can and do share their experiences and can speak to these state practices. Research investigating the archives of state practice can add to this evidence.

State archives are key places where individuals and groups perform and (re)produce the state. I propose that mapping the evidence and absence of evidence in the archives fills gaps and identifies new lapses in our understanding of the ‘chaotic geographies’ (Hiemstra, 2013) of border enforcement by states, and in our understanding of the role of bureaucratic and legal cultures of state agencies in enforcing state borders. The work of border enforcement in the blocks of state offices and agencies is an everyday violence, and this everyday violence is somewhat visible in the archives. From the point of view of a researcher looking at statecraft in the ATA, systemic patterns of state practice of border enforcement become more visible.

Methods used to study 19th century colonial archives (Stoler, 2009) and emerging methods from online digital studies coupled to study contemporary state archives can make

innovative ways and tools to reveal how state agents (re)produce and (re)perform the narratives of those people who are vulnerable to state power, and these innovative methods can reveal, and in some cases fill in, still existing gaps in our understanding of the judicial, legal and practical frameworks of border enforcement.

1.1 Aims of the research

This project was designed to engage with the ATA to achieve three distinct and interrelated research goals. Firstly, this project was designed to contribute to geographical theory on asylum determination as border enforcement. Through sustained engagement with the archive, investigations can show the state asylum determination process as a site of border enforcement, and how decision-makers (re)produce and transform knowledge to create a ‘common sense’ logic to exclude asylum seekers. Innovative methods of this project that work through thick geographical knowledge such that what is often obscured or unavailable reveal in new ways some of the border enforcement logics and practices of state officials and agencies. Secondly, this project was designed to create useful outputs for those affected by these policies. Investigations of the archive can reveal the practices of asylum decision-makers as a resource for asylum seekers, advocacy groups and self-organised asylum seeker political groups such as the Movement of Asylum Seekers Ireland (MASI). Collaboration and knowledge sharing also can inform research in the future, so that there is a profound responsiveness to state power, and can allow for a radical imagining and possibility of just and fair practices in asylum determination. Thirdly, this project was designed to advance theoretical contributions on the roles of state archives in contemporary state practices of bordering and in state border enforcement apparatuses. In this project I argue that state archives reveal how state agents and agencies anxieties, sentiments and violences are perpetuated across multiple scales, and I show how by

studying archives we can produce a wealth of empirical evidence of practices of bordering and statecraft.

This project set out to achieve these goals using the curated research stream methodology outlined above, and in the outcome, two major findings, presented in Chapter 5 and Chapter 6. Firstly, this project reveals in the appeals tribunals a culture of disbelief employed by Tribunal members to discredit asylum seekers and their applications for asylum. Secondly, by investigating the practices of individual tribunal members, this project reveals irregularities and differing practices among decision-makers in the appeals tribunals. Together these findings show that the asylum seekers in their appeals face a disorienting process, an appeals process in which Tribunal members employ multiple strategies to refuse appeals for international protection and in which Tribunal members reproduce the stories and evidence that asylum seekers provide as ‘damaging’ to the state. These decisions are also discrete objects. Each decision issued by the RAT and the IPAT is a document issued by that Tribunal, written and signed by the Tribunal member. At the bottom of each of these documents is a recommendation by the Tribunal member that the MfJE grant or deny the appeal, and the documents include, in the Tribunal member’s words, a description of the appeal, the arguments, and the opinions and judgements of the Tribunal member on issues in the appeal. These documents are at once performances of statecraft and sites of production of state knowledge.

Out of necessity, this dissertation is a multi-scalar analysis. In the context of asylum determination, many scales are always present: international laws; global migration patterns; inter-state treaties and agreements; migration paths and patterns across borders and territories; in airports and local Garda offices in Ireland; and at the scale of individual civil servants and elected officials determining cases. In this process, each of these scales are essential to understanding these state practices as bordering.

1.2 Asylum determination in the European Union

Among member countries of the European Union (EU), Ireland included, countries are required to apply similar international laws and guidance in assessing applications for international protection, and in carrying out their responsibilities under the Refugee Convention and Protocol and in the EU human rights framework. EU refugee policy is part of larger EU strategies for controlling migration, including the Common European Asylum System (CEAS), the European Border and Coast Guard Agency (Frontex) and other EU initiatives that make up policies of ‘Fortress Europe’. However, there are also differences in how EU countries carry out the process of asylum determination.

The EU has over the years attempted to create uniform border enforcement policies among EU states and to create hard borders in the Mediterranean and in borders with Turkey and also to externalise the work of border enforcement and ‘fortress Europe’ to states in the global south (Hyndman and Mountz, 2008). These policies make up a violent ‘border imperialism’, a term coined by Harsha Walia (Walia, 2013), in which border enforcement is employed to restrict migration along historically colonial lines and to frame certain types of migration as an assault on the state.

Yet there has also been considerable friction and tension both among nations within the super-national group that is the EU and at local and regional scales (Mountz, 2020). Asylum determination is notably a place of considerable tensions between EU states and within states. I employ frameworks to understand these multi-scalar geopolitical power geometries and to understand the role of different scales, including the scale of the individual civil servants, police officers, state officials as well as migrants and asylum seekers, and agencies and groups and organisations.

This intra-European tension is made visible in the national statistics that are collected, disseminated and published by Eurostat (the European Statistical Office) that

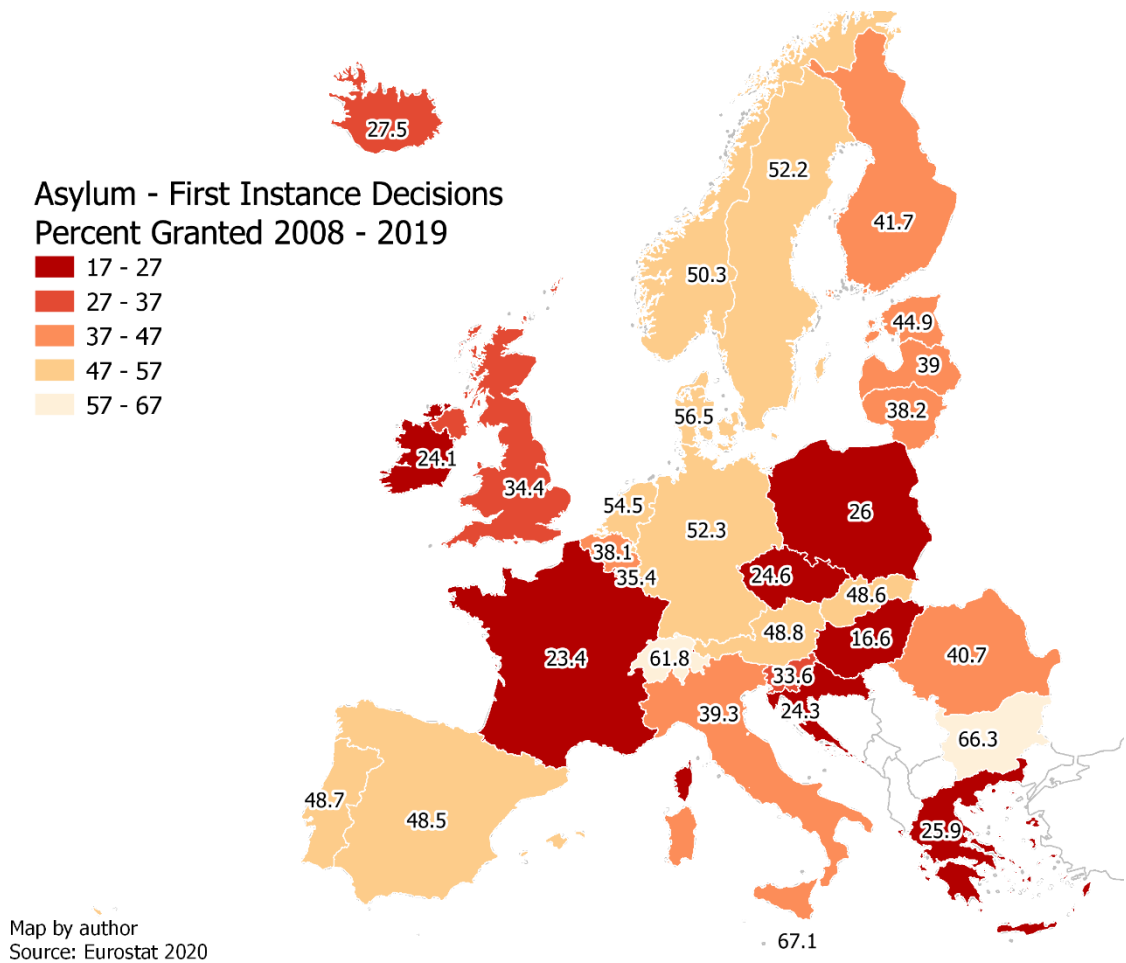


Figure 1.2 Map showing the percent granted asylum first-instance decisions in European countries, 2008-2019, according to Eurostat, showing the variation in asylum determination rates across European countries.

was created in 2008 to collect and provide statistical information for the EU. Eurostat reports on the number of asylum applications in each state, the number of asylum determination decisions issued by each state, and the number of positive and negative decisions for international protection issued by each state. Eurostat statistics on asylum determination in Europe show large differences in the number of people applying for asylum in different European countries, and Eurostat statistics also show differences in the number and proportion of people applying for asylum for whom states refuse protection. While comparable data on asylum decisions does not go back to 2001, from 2008 to 2019, Eurostat reports, Ireland has granted international protection in only 24.1% of applications for asylum in first-instance decisions issued by the DoJE, one of the lowest rates in the EU (see Map 1.1). Only three countries in the EU have a lower recognition rate than Ireland's:

Hungary (16.6%), Lithuania (21.8%) and France (23.4%). There are also wide variations in countries' rates of positive asylum decisions. Countries with a high rate of positive asylum decisions include Malta (67.1%), Bulgaria (66.3%) and Denmark (56.5%), all over 30 percentage points higher than Ireland's positive decision rate and almost 40 percentage points higher than Hungary's. The wide variations in these asylum determination grant and refusal rates among EU countries reflect different circumstances in each of these countries, patterns of migration that affect each of these countries differently, and also differing policies from EU states.

While the specific international laws and domestic legislation are often similar among European states, there is also a specific regime in Ireland that matters, and partly this is because of the local scale that is particular to the country. Ireland is a small country of around 4.5 million people, a republic occupying most of the territory of the island of Ireland, which also includes Northern Ireland, a nation part of the UK. The territorial body that the asylum seeker encounters includes Ireland's borders, its geographical limits, and some of its history and institutional structures.

I assert in this dissertation that avoiding Agnew's 'territorial trap' of privileging the scale of the nation-state and equating the state with the territory of the nation also entails examining the importance of the scale of the nation-state among other scales of analysis. In this project I employ the theoretical frameworks of feminist geopolitics methods of studying the state (Gill et al., 2013; Hyndman, 2001, 2004; Hyndman and Mountz, 2008; Maillet et al., 2016; Mountz, 2010). Both Agnew's theoretical frameworks and theoretical frameworks of feminist geopolitics are critical of centring a pre-established idea of the state, but also find importance in discovering the processes and performances that make the state and in assessing the importance of different scales of analysis in the work of studying the state. As Butler, in conversation with Spivak, writes:

If we pause for a moment on the meaning of ‘states’ as the ‘conditions in which we find ourselves,’ then it seems we reference the moment of writing itself or perhaps even a certain condition of being upset, out of sorts: what kind of state are we in when we start to think about the state? (Butler and Spivak, 2007, p. 3)

By examining and, crucially, writing about state logics, cultures of knowledge production, and sentiments and emotions at the centre of performing and operating state, we as researchers can, and often we must, attempt to write through what these states are and our own position in them. As Mountz writes:

While civil servants work furiously to manage human migration, social scientists must work equally hard to trace the changing nature of sovereignty and the many contradictions involved in its exercises in border enforcement. We must write to and through the state, to understand just what kind of state we are in. (Mountz, 2010, p. 168)

By focusing on the ATA, which includes individual Tribunal members and their decisions in international protection appeals, this project investigates the writing of individuals as they write the state in these decisions, and this project also writes through the archive as a place where state is performed. This project investigates the sentiment and anxieties in the archive: in the decisions, in the performances of border enforcement in the asylum determination process that enacts a multi-scalar violence. The decisions are part of the EU border enforcement violence that is shared among EU states, and that is enacted upon the people applying for asylum.

This dissertation also is about the process that people must go through seeking asylum and applying for international protection in Ireland, and the people going through this process, as they appear in the archive. Almost by definition the labels of ‘asylum seeker’ and ‘refugee’ encapsulate a large and disparate group of people, brought together by

the fact of their asylum claims and the conditions of the asylum process enacted upon them by the state. According to the Irish state, in the past twenty years some of the people who have applied for asylum in Ireland are from at least 186 different countries, some are from Palestinian occupied territories and other occupied territories, and some are deemed by the Irish state to be stateless, without a right to citizenship or nationality in any nation-state.

These claims for asylum often call into question the systems of the nation-states themselves, revealing conceptual contradictions and privileges of sovereignty that are enshrined in the nation-state. The sovereignty of a single state has become attached to the nation (i.e., the nation-state) largely since the end of WWII and the drafting of the refugee treaties. Over the past few decades, refugee law and state obligations to refugees have become central points in a growing global environment of controlled borders (Loyd et al. 2016, Zetter, 2007, 2015). While the 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees are still central legal and ideological documents globally in the treatment of refugees and asylum claims, the conditions for asylum seekers in states signatory to these treaties are increasingly paralleling the conditions in non-signatory states (Coddington, 2018), which are generally not bound by international law to protect refugees from *refoulement*. One central aspect of this trend globally is the process by which signatory states administrate the recognition of claims for asylum and refugee status from asylum seekers in the territory of the nation-state, a process that importantly is examining if the 'burden' of including an individual in the membership of a particular state is, under international law, the responsibility of that state. This state process is at once an administrative process – the following through with a process often set out in domestic law to operationalise these treaties, this process involves civil servants and also often the court system, elected officials, NGOs and public legal defenders, to name just a few – and also a political and geopolitical process.

This process of assessing and administrating the claims people make for asylum and refugee and subsidiary protections is a central element in how states now engage in the enforcement of their borders and in their inclusion and exclusion of membership and access to the nation and the nation-state. Creating these borders and borderlands is a key role of the contemporary state (Mountz, 2010). In enrolling the asylum determination process as central to a process of border enforcement, states and state governments, agencies and their agents, civil servants and private contractors individualise global violence in the presence of asylum seekers in the territory of the nation-state, as the states 'see' the asylum seekers as an affront to the sovereignty of the nation-state.

Sentiments of state actors such as civil servants are central to the performance of state (Stoler, 2009), especially in border enforcement efforts by states. Border enforcement is crucial to the current conception of the modern nation-state and the ways that border enforcement is performed. Border enforcement reflects the insecurities and anxieties of nation-states and the individuals and communities of the state. These insecurities and anxieties strike to the core of how state policies produce belonging and exclusion, echoing the colonial and imperial past of nation-states in Europe.

Immigration controls and border enforcement practices are part of the performances of the state that make up an intimate performance by bureaucratic officials working with limited oversight and with broad legal power and socially accepted controls over specific spaces. Studying immigration controls and border enforcement by states as critical social scientists is often very difficult, but listening to state officials, to migrants, to people who must or choose to perform some aspect of statecraft, we can learn and ideally reveal intimate workings of the performance of state. My work within the archive allows me to engage across a variety of scales that recognize EU migration controls that connect to Irish migration controls and into the bodies of individuals. This project makes

connections between EU policies and Irish policies and the conditions that asylum seekers and other migrants face at various scales.

1.3 Using archival analysis to do contemporary border research

From my work within the archive, I make several claims about the asylum process in Ireland. Firstly, I claim there is evidence of the process of statecraft and bordering in the structure of asylum determination. Secondly, I claim that the methodologies of feminist geopolitics can reveal the structures and practices of individuals and groups, and to show how the asylum process (re)produces and constructs the category of ‘the genuine refugee’ in order to limit states’ responsibilities under international and human rights law. Thirdly, I claim that we can come to know these bordering processes in a deep way that challenges what may be perceived as settled by using methodologies of studying the state.

There are difficulties in studying migration in border enforcement in the social sciences, where systemic and deep analysis can seem and be concretely out of reach. The archive presents a rich opportunity analyse migration and border enforcement in Ireland. For the researcher examining contemporary and emerging trends in the landscape of the asylum processes, what is so often partial and elusive becomes available in the archive for systematic qualitative and quantitative research into conditions and features of the asylum process, into the practices of the state agents and agencies, and into the inner workings of these processes that asylum seekers must go through. Through coming to know bordering processes in the archive in a deep way, research can reveal and challenge state productions of knowledge -- how the Irish state understands its own process of asylum determination, and the cultures of border enforcement in these agencies. This project is meant to accompany the wide and far-reaching body of works already critically interrogating the Irish state’s asylum determination process and the treatment of asylum seekers and refugees in Ireland. I address further this existing literature in Chapter 2 and Chapter 3.

This project also recognizes the invaluable contribution to this body of work by people who have experienced first-hand these state policies. Asylum seekers have voiced their experience and have contributed rich knowledge by speaking and writing about their experiences in this asylum process, at all points and parts of the process. Most asylum seekers in Ireland awaiting their decision have few resources, are not eligible for state welfare, and must live in the state reception system called the Direct Provision System. Much research of the asylum process has focused on the conditions that asylum seekers face in these settings, often waiting five or up to ten years for a final decision. Groups such as the Movement of Asylum Seekers Ireland (MASI) have been committed to campaigning for the rights of asylum seekers in Ireland, and also to contributing to and participating in the research of the state systems of asylum determination and immigration policies.

The Direct Provision System (DP) in Ireland is the structure in which the Irish state provides accommodation and reception for asylum seekers, and for refugees who have gained status but have not yet found housing in Ireland. The system includes public and private contracted reception centres and operation of centres, administered by the International Protection Accommodation Service (IPAS). Much of this accommodation and the reception services are privately contracted. For example, many centres are located in remote areas in the country and are often leased from or run by companies that previously ran hospitality such as hotels or summer retreats. While some centres are run by the state, many centres are run and operated by these small hospitality companies or by transnational hospitality corporations such as Aramark (RIA, 2014). IPAS and its predecessor, the Reception and Integration Agency (RIA) have been widely criticized for many reasons. Researchers have criticised DP for the treatment of children asylum seekers and refugees in the system, and that at its core DP was a state policy for child poverty (Fanning and Veale, 2004); and for the treatment of young adults (Ni Raghallaigh and Thornton, 2017); of parents (Ogbu et al., 2014). O'Reilly documents the overall hostility of

the system (O'Reilly, 2018) and Breen documents DP as a violation of human rights around housing (Breen, 2008). Nedeljkovic, artist and creator of Asylum Archive, an online repository of records of DP, describes DP as places where asylum seekers and refugees “live in dirty, cramped conditions with families often forced to share small rooms. Managers control every aspect of their lives: meals, mobility, access to bed linen, and cleaning supplies” (Nedeljkovic, 2018, p. 289).

Direct Provision has been a focus of activism and campaigns for human rights for asylum seekers; however, this attention does not usually carry over to examining other aspects of the asylum determination process, such as the ORAC, IPO and the appeals tribunals. In this context, setting out to research the practices of the DoJE, I attempted to find a way to do this research. I first came to this research in 2015 during an MA in Human Geography at Maynooth University. I found social and political research at once accessible – living near the small capital city of Dublin there were opportunities to learn and meet people involved in the structures of government, civil service and policy, and to engage in social research – and at the same time inaccessible, in that government departments in Ireland, especially the DoJE, are protective of their administrative structures and processes, and are unwilling or reluctant to talk to researchers.

If administrative structures and processes are only partially available for researchers, then how can we, as researchers, examine and analyse their patterns and practices? As researchers engaged in social research, there may be ways to do this work and to investigate the ways states act within their structures and upon people. Looking for a way to study border enforcement in Ireland, I found the archive to be a place where I could study and learn in a new and different way about the state efforts of bordering. The court requirements that the appeals tribunals make the ATA open and accessible provide some view. This investigation of this archive is situated exactly in this place, in the context

of a department clearly desiring not to release their decisions but required to make available a database that previously they used internally.

In 2015, I was introduced to the ATA, which had been newly made available to researchers in 2014 based on an order by an Irish High Court judge, and I found the archive to be a place to investigate the appeals tribunals. This investigation of the archive is thus a way to contribute in unique and interconnected ways to the research of state border enforcement efforts and to providing a resource for others to investigate an opaque process that is so difficult to see. As stated earlier in this introduction, I have had three main goals for this project in investigating the ATA: to investigate the archive to show the state asylum determination process as state efforts of bordering as statecraft; to investigate the archive to show the practices of asylum decision-makers to reveal their practices as a resource for asylum seekers, advocacy groups, and self-organised asylum seeker political groups, in showing the practices of the DoJE and the Tribunals; and finally to investigate the archive to reveal the role of archives of contemporary state border enforcement apparatus.

Studying this archive has revealed possible methodologies that have been unavailable until recently; this archive is available digitally and online, which sets the context for what kind of archives they are and what kind of work we can do. As Stoler writes about her archival research, the archive is a place that does not only hold state power, but “as unquiet movements in a field of force, as restless realignments and readjustments of people and the beliefs to which they were tethered....I take sentiments expressed and ascribed as social interpretations as indices of relations of power and tracers of them” (Stoler, 2009, p. 32). To investigate the ATA, I use Stoler’s methods of ‘sustained engagement’ to conduct both an exploratory and a qualitative coding system to review and analyse decisions; importantly, the archive also is a place where data can be extracted systematically using an emerging tool for online digital research, web scraping. While the

archive website has some basic tools for sorting and searching the decisions, there is no easily accessible way to assess the number of decisions in the archive or to assess its full size, and I introduce web scraping to create an innovative mixed-method investigation of state practices of asylum determination.

Web scraping involves writing a script that when run queries a webpage and extracts data from the webpage. In the case of this project, web scraping involves repeatedly performing a search of the archive and extracting the html table displaying the results. Web scraping as a method for social research is an imported method; its techniques come from a sphere of work separated from the social sciences, the commercial technologies industry. Marres and Weltevrede argue that this importing of methods risks introducing unknown and different assumptions while also offering new ways to do ethnographic and ‘social science’ research. Just as Stoler argues for a focus on the way that archives produce knowledge “as monuments of states as well as sites of state ethnography” (Stoler, 2002, p. 87), web scraping “makes available already formatted data for social research” (Marres and Weltevrede, 2013, p. 315). The digital state archives that have emerged as dominant in the past twenty years are not necessarily radically different from archives of states in the nineteenth century; the ways that they are different, however, specifically the ways that the form of the archives reveal the hidden production of state, is profoundly important.

1.4 Structure and outline of chapters

I now explain the structure of this dissertation and how each of the seven chapters develop the concept of studying the ATA as a site of border enforcement and statecraft. The chapters of this dissertation present the theory and literature of studying the state and studying the state through archives; the context and history of the current asylum

determination process in Ireland; the methodology and methods employed in this project; and the findings of systematic evidence of bordering in the ATA.

In Chapter 2, following this introduction, I discuss the theory and literature and the approach of studying the state as a way of studying performances of statecraft, bordering as statecraft, and the archives as forms of bordering and statecraft. The framework of feminist geopolitics gives us the tools to study these performances, and I detail in this chapter how studying archives of state practices of bordering can be a method of feminist geopolitics work and can reveal/investigate multi-scalar dynamics of power in the production of state.

In Chapter 3, I outline the context of the refugee regime in Ireland and stress the interconnectedness of asylum regimes in Europe and globally, and the importance of also understanding asylum and border practices at multiple scales. The privileging of the national scale in migration research has often limited migration research, and has often caused scholarship to be vulnerable to the ‘territorial trap’ (Agnew, 1994, 2015). De-nationalising methodology provides a framework to highlight other scales in border enforcement, highlighting transnational histories and legacies of border enforcement and control on the movement of people. In this chapter I argue that while the national scale is still important in migration scholarship and studying of border enforcement, it is crucial to highlight and prioritise other scales. I present in this chapter the history of refugee politics; legislation and policies in Ireland; and the context of these policies in European law, international law, and local/intra-national politics in Ireland.

In Chapter 4, I describe the methodology of the project and how I used a range of methods including web scraping to access the archive as a whole. I describe how assessing the form of the archive was as important as assessing the context, and I describe the process of analysing the archive using qualitative, quantitative, digital and non-digital methods. I further detail the curated research stream research design process, and how this process led to a range of methods being employed, including web scraping, digital

qualitative research, qualitative coding and knowledge exchange forums. These methods were crafted to be systematic in their approach, and also to provide robust evidence in areas in which other researchers, advocacy groups and those affected by state policies of asylum determination were calling for investigation.

In Chapter 5, I present my findings on a culture of anxiety in the Tribunal. I focus on Tribunal members' assessment of evidence and interrogation of the journeys that asylum seekers take in their travels to Ireland before their claim, usually not considered as an element of an application for asylum and refugee status, as a way to discredit asylum seekers. Tribunal members in their construction of a 'common sense' cast doubt upon asylum seekers. Tribunal members employ this common sense as a political tool that operates on a knowledge that even Tribunal members often profess they do not have and that creates a stereotypical creation of the 'genuine refugee'.

In Chapter 6, I present my findings on creating a public database of Tribunal member decision grant/refuse rates, previously not available. I review the role of individual Tribunal members in making decisions on appeals cases and show a spectrum of variations among individual Tribunal members. This chapter outlines the creation of a public resource as well as investigating some specific patterns in decision-making, especially the changes in the Tribunal over time and over multiple governments. This chapter especially leverages digital methods and tools to systematically review and analyse decisions in the ATA.

I conclude the dissertation in Chapter 7 with a discussion of the significance of the project, the contributions this project makes to the literature and to the usefulness of this and other projects. This chapter details the overarching contributions of the dissertation and outlines further work that can be done using the archive and beyond in assessing state practices of asylum determination in Ireland. I describe how the project and the range of methods used in this project accomplished the project goals and how focusing on the ATA

and investigating the ATA has allowed for a considerable expansion of evidence on the appeals tribunals and has also developed how we can study archives to study the state. I map out the evidence and remaining absences of evidence in the practices of asylum agencies in Ireland and describe how this project has found in the asylum process that chaotic geographies and unplanned state policies often cause the most disorientation for asylum seekers and for researchers studying this bordering. I discuss in particular some relevant events and developments in Ireland in 2020 and how this project worked in one particular case to contribute to centring in public discourse and debate the practices of the asylum determination process in Ireland. I conclude by reflecting on the future work of this project and future projects studying statecraft and bordering in Ireland and beyond Ireland.

2 Chapter 2: Statecraft and the production of the state in the archives

2.1 Introduction

In the introductory chapter I began to describe how border enforcement is important to the current conception of the modern nation-state and the ways that border enforcement is performed. Immigration controls and border enforcement are central parts of the performances of the state, including the intimate performances by bureaucratic border enforcement officials working with broad legal power and socially accepted control. Also central to the ‘doing’ of the state are the insecurities and anxieties of individuals, agencies, groups and communities that perform the state. These insecurities and anxieties strike to the core of how states police and produce belonging and exclusion, echoing the colonial and imperial past of nation-states in Europe. Studying immigration controls and border enforcement by states as critical social scientists is often very difficult, but listening to state officials, to migrants, to people who must or choose to perform some aspect of statecraft including reading through the writings of those experiencing state power and performing statecraft, we can learn and ideally reveal intimate workings of the performance of state.

In this chapter I argue that understanding the state as practiced and performed and understanding statecraft as the performance of acts of practicing and crafting the state is necessary to question what kind of state we are in. I argue that the Appeals Tribunal Archive (ATA) is an archive of border enforcement, and that investigating and engaging with this archive in this project is a key way of studying state practice of border enforcement. I also argue that engaging with and working through the logics and sentiments of state and statecraft offers the opportunity to understand the role state and

state power has in our lives. To make these arguments I bring together three theoretical elements. Firstly, I define how geographers and social theorists conceptualise the state, and how they conceptualise the state in the context of asylum, refugees and migration. Secondly, I develop a concept of statecraft to understand acts and practices that enact and perform the state. I develop this concept of statecraft as a critique of and reflection on literature on the state, and specifically as a framework to understand acts of border enforcement as a type of statecraft – as processes of bordering. Thirdly, I discuss ways of studying statecraft and highlight state archives as places of statecraft and discuss state archives of border enforcement as places to productively investigate state bordering.

Recent research in feminist geopolitics has been challenging the state as a preconceived entity and has studied how the practices of those performing that state—whether in structures of governments, elected positions, bureaucrats, or more widely as subjects of the state or others—are enmeshed and entangled within larger communities and societies (Hyndman, 2004; Johnson et al., 2011; Mountz, 2010; Painter, 2006). State practices are enacted in daily life and in the lived realities of people’s lives, such that the state emerges not as a concrete or substantiated object, and not as only a concept, but as a series of actions and conceptions from performed and performative acts (Amoore and Hall, 2010; Conlon, 2013). But it is not enough to conclude that the state is not concrete; empirical fieldwork investigating the everyday actions and rituals performing the state is central to understanding state practice (Gill et al., 2013; Meehan et al., 2014; Parsons and Lawreniuk, 2018), and it is also important to be having open discussions on the best practice for researchers to do this work (see for example Maillet and Mountz, 2016).

Stoler (2009) contributes to the description of how statecraft, and especially the productive record-keeping of state bureaucracy, is emotional work, and closely entangled with deep sentiments. Stoler adds sentiment to the essential readings of what state is, including Foucault’s governmentality: “*statecraft was not opposed to the affective, but about its*

mastery. Like Foucault's notion of 'governmentality,' statecraft joined the care and governing of the polity to the care and governing of the affective self' (Stoler, 2009, p. 71). The practice and performances of state are deeply embodied acts, and these practices remain and are re-performed in state archives.

The theoretical discussions and arguments in this thesis come from the deep engagement with the ATA as an archive of statecraft and of border enforcement in Ireland. While I engage with theoretical concerns in human geography and other disciplines focused on geopolitics, the engagement with this theory is also grounded in the real issues of border enforcement and asylum happening in places. One of the research aims of this project is to contribute to theory, and this aim stands with the aim to engage and investigate the ATA to create useful outputs for people experiencing and suffering the bordering by the Irish state, and to produce systematic evidence of this process. There are people suffering in the de facto detention of Direct Provision system in Ireland, people labelled as asylum seekers or as refugees or as economic migrants, who are suffering a violence from the state and from the current global refugee and border regime. And there are also others, myself included, who are caught in the precariousness of this regime in a different way, whose right to exist where they are may not be constantly questioned, but these people also exist in a state regime where these rights can be questioned. This regime is part of a global border imperialism (Walia, 2013) that produces the state as a 'victim' of 'irregular migration', hemmed in by international law including the Refugee Convention.

I propose the Appeals Tribunal Archive as a case study in the best sense for political geography. The point of studying this archive of asylum decisions in Ireland is not to study to 'discover a global perspective' – to discover the 'universal truths' of border enforcement – but for 'an other perspective'; in this way I am following Gilmartin (2009) and O'Tuathail (2003) in proposing that the archive is a place of 'thick geographical knowledge'—"not as an exemplar of a particular theoretical position, but rather as a

complicated and entangled place with its own ‘spaces of experience’ and ‘horizons of expectations’” (Gilmartin, 2009, p. 279). Theoretical contributions in geography are inextricable from where they come from, just as knowledge is produced somewhere. This project takes these places of knowledge production as key to the insights that come from examining them and situates knowledge primarily in the work and performances of people and bodies and also communities and institutions that come about from repeated and institutionalised practice.

The structure of this chapter is as follows: In 2.2 I elucidate some key themes from the archive through the presentation of one decision issued by RAT Tribunal member Olive Brennan Barrister at Law (B.L.) in 2006, as an example of the format and some of the decisions in these documents. How states produce and perform practices of power has long been a focus of research in the critical social sciences, and in 2.3 I outline how geographers and social theorists conceptualise the state, particularly in the context of asylum, refugees and migration. In this section I develop conceptions of state, primarily as the practice of groups and cultures, and from the concept of state as practice I develop a theoretical framework understanding state and statecraft as an everyday practice happening in places. I also discuss the events and spaces of statecraft that play an important role in the cultures of state. I propose this framework of statecraft to understand the power and practice of the state and government. The framework of statecraft draws upon a range of work in feminist geopolitics and decolonial studies challenging the state as a preconceived entity. Recent studies have investigated the structures of governments, elected positions, bureaucrats, and more widely subjects of states and media, all as enmeshed and entangled within larger communities and societies (Hyndman, 2004; Johnson et al., 2011; Mountz, 2010; Painter, 2006).

In 2.4, I explore how critical researchers can study and reflect upon statecraft as a productive and knowledge-producing process. I describe some ways that researchers have

studied the practices of statecraft. This work is studying the everyday occurrences as well as how some practices are eventualised – produced as events – while other practices are not produced as events or produced as non-events. I frame the process of studying the state as a social one, to be done in conversation with other researchers and those involved in the process, and as a studying of the rituals and performances of the state.

In 2.5, I propose archives as an important part of this statecraft, and I review literature on archives as central sites of statecraft throughout the emergence of the modern nation-state, from colonial and imperial states governing and controlling colonies and metropolises to today. Empirical research in state archives can work to reveal and map statecraft at the human scale of bureaucratic agents in their daily work, in their repeated encounters, and in the justifications or marginal writings. Stoler (2009) posits that sustained engagement with archives of statecraft can reveal the contents of the archive and also, just as importantly, the acts of statecraft by bureaucrats, elected officials, etc. as driven, produced, and consisting of sentiments—deep emotional reactions to issues and situations. In this way statecraft emerges not only from the history of a culture and engrained beliefs, but also from the personal reactions, emotions and sentiments shaped, but not pre-formed, by the world surrounding these individuals.

In the conclusion of this chapter, section 2.5, I argue that border enforcement and the control over the movement of people into and out of the territory of the nation-state has a new and reinvigorated urgency that is directly tied to the internal contradictions of state. This This attention has also recently been directed towards the destabilization of previous hegemony and control over the production what the state is, and what constitutes statecraft. Studying statecraft as produced by agents of the state, I argue, goes to the heart of what is the state.

2.2 The Brennan case

This section presents one decision in the archive to begin to give an overview of what the archive looks like. This decision is not representative, it is not like all decisions in the archive, however it is one decision, formatted like all other decisions in the highly structured documents of the decisions. In this decision is the granularity of the bordering that happens in each decision -- the granting or denying international protection. In these decisions, Tribunal members present the statement and evidence presented by other people -- by the presenting officer from the ORAC/IPO, by solicitors representing an asylum seeker, by asylum seekers in their testimony before and during Tribunal hearings -- and also present their own evidence and arguments, interpreting what comes before them and assessing points of evidence against laws and policies. This decision is issued in 2006 by Refugee Appeals Tribunal member Olive Brennan -- a Barrister at Law in Ireland who served on the Appeals Tribunal from 2005 until 2012 (RAT, 2013). This decision is now in the Appeals Tribunal Archive.

In this decision, Brennan weighs and issues a judgement as a member of the Irish Refugee Appeals Tribunal. In this decision Brennan refuses an asylum seeker's appeal to be recognised as a refugee⁶ by the Irish state. For this asylum seeker, a man from Somalia, his first application for refugee status had been rejected by civil bureaucrats at the Office of the Refugee Applications Commissioner (ORAC). In the decision of the appeal, Brennan describes her understanding of the case that the man from Somalia—people appealing their decision to the Tribunals are referred to in the decision as “the applicant”—is making in appealing a negative decision from ORAC; describes the laws and legal decisions that she

⁶ A refugee is defined in the Convention Relating to the Status of Refugees, 1951 as someone who cannot return to their country of their nationality “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” (UN, 1959)

finds relevant in this decision; declares her judgement of the facts and judgements; and issues a decision on the appeal.

Brennan writes that the applicant was seeking refugee status on the grounds that he feared persecution in Somalia for reasons of his ethnicity. In this decision, nine pages long, Brennan writes about the story told to her by ‘the applicant’ and writes describing the appeal that the man is making to be recognised as a refugee in Ireland, and to be protected from being deported back to Somalia. Brennan writes that the man from Somalia “told me he is a member of the Ashraf clan and lived in Mogadishu for most of his life” (Brennan, 2006, p. 1). Brennan writes that he testified that his home was attacked in 1999, his father was killed, and his wife and sisters were raped “on numerous occasions” by the Habir Gidir clan and militia. Brennan writes that the man testifies that in 2003 he was abducted “together with others from the market, he was blindfolded and put into a car and was taken away for two nights” (ibid). Brennan writes that the man recounts that in 2005, “8 militia came to the family hut; they knocked on the door asking for XXX⁷. When they were told he was not there they open fired [sic] and his mother and sister were shot and died. He himself was in another hut nearby and jumped over a small fence and made good his escape” (ibid p.2). Brennan writes that the applicant testified that when he heard his family had been killed, he left Somalia to an unknown country and then to Ireland, and that “he is fearful for his safety and his life should he be returned there” (ibid).

This decision written by Brennan describes a hearing in which the asylum seeker presented evidence to the Tribunal, answered questions from Brennan, answered questions from the ORAC officer advocating the first-instance negative decision, and answered questions from his counsel. The story that is told by the asylum seeker is a story that is required of him, that he must tell in order to argue for his right to belong in Ireland, and to

⁷ In the text of the decisions as they are available on the Appeals Tribunal Archive, personal details are censored and removed.

argue for his right not to be forcibly removed. These types of stories of violence and the telling of these stories have become an iconic part of contemporary debates on forced migration in media, advocacy, activism, and political campaigns (Adams, 2009; Danström and Whyte, 2019; Ní Laoire, 2007). In all types of legal appeals and legal battles, people migrating and seeking asylum have had to tell stories that focused on the violence they have experienced to protect their fates, to end detention, to prevent deportation and imprisonment. They must tell these stories not because they have committed any crime, but to argue that they have been forced to migrate. The legal requirements differ in different countries and regions⁸, but the stories required are often quite similar in their form and in the demands that are placed on the person: prove your victimhood, prove you are deserving of sympathy so that the individuals in places of power like appeals tribunals or government civil servants or officials can make a decision on your fate. The requirement on people experiencing forced migration locates the problem of international conflict not only in the geopolitical causes of forced migration but importantly in the bodies and conditions of people who have been forced to migrate (Loyd et al., 2018). In Ireland this legal requirement for the telling of stories to state officials is one part of the multi-state apparatus of border enforcement in the modern EU bloc, an apparatus that operates across the European continent and has expanded into the Mediterranean Sea, North Africa, the Middle East, and further (Hyndman and Mountz, 2008).

⁸ See Gill and Good, 2019 for a full discussion of systems and issues of asylum determination in a range of European countries

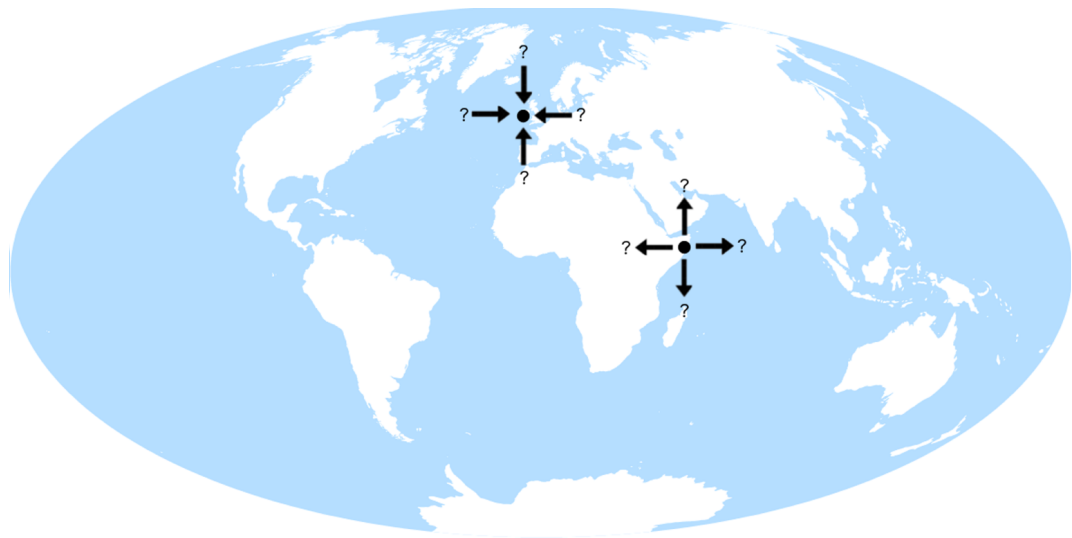


Figure 2.1 Map of the journey that the applicant took to Ireland, according to the Refugee Appeals Tribunal. He left Somalia to an unknown country and then to Ireland, and “he is fearful for his safety and his life should he be returned there” (Brennan 2006, p. 2).

In Brennan’s 2006 decision⁹, Brennan refuses the man’s appeal, judging that “the applicant’s fears of persecution are not well-founded”, and writes:

The applicant gave general rambling accounts of his wife and sister being raped and beaten on different occasions. When pressed as to when and the frequency of these attacks occurred the applicant was unable to say. That his wife and sister would be abused on the applicant’s own account on such a regular basis and the applicant would be unable to give any details as regard any attacks seems to the Tribunal to be beyond belief. The applicant’s account in this regard cannot be believed.

(Brennan, 2006, p. 6)

In this decision and in other decisions, Tribunal members make repeated judgements in the passive tense as to whether statements by applicants ‘can be believed’, ‘are plausible’, ‘are coherent statements’. These statements make judgements in a removed and authoritative

⁹ The decision is one of the eighty-three decisions issued by Brennan in 2006 in the archive. In total there are 734 decisions issued by Olive Brennan 2006-2018 in the ATA.

voice, but the statements are heavily subjective and active in their personal judgements.

Brennan concludes her decision by making a decisive judgement on the whole of the case and determining how the national law on refugee protections applies in this case:

The Tribunal is satisfied that the applicant has not given a truthful account of the facts related to his application. In both material and significant ways he has not discharged the appropriate burden of proof and therefore his appeal and application must fail. The applicant has not established that there is a reasonable degree of likelihood that he has a well-founded fear of persecution on any grounds set out in the Refugee Act, 1996, (as amended) and has not made out a case that he is a refugee for the reasons set out above. (ibid p. 8)

And with the completion of this document Brennan issues a decision refusing refugee status to the man from Somalia seeking asylum, a decision that denies him protection from *refoulement* and opens the legal possibility that the Irish state can deport him and return him to Somalia; he has become deportable.

When Brennan refused the man's appeal, she also affirmed a first-instance negative decision by ORAC, a decision made by civil servants at the Department of Justice and Equality, a decision made with less scrutiny than the tribunal setting of the RAT. The first-instance decisions on asylum applications issued by the DoJE are not available in the ATA, nor are these first-instance decisions available publicly in any other way. Brennan's decision is affirming a chain of actions by the Irish asylum determination agencies that are referred to but remain out of reach. I argue that the document of Brennan's decision as placed within the ATA is a violent document in two ways: the document describes and importantly reframes and reproduces the violent experiences that the man from Somalia testifies to, and also the document itself commits a type of violence, in rejecting protection to him and opening the legal avenue for the Irish state to deport him back to Somalia, engaging the force of the state's border enforcement apparatus.

By recognizing in the decisions in the ATA different types of violence, I refer to a 'landscape of violence' (Loyd, 2012), and how violence is 'built into the ground' of the bordering and border enforcement that is happening in the appeals tribunal. Conceiving of violence as structural has been important in geography and geopolitics for decades, and while "everyone seems to have his or her own definitions of 'structural' and 'violence'... structural violence is violence exerted systematically--that is, indirectly--by everyone who belongs to a certain social order" (Farmer, 2001). Galtung and Farmer both distinguish the categories of direct and structural violences, where direct violence can be categorized as acts that show up as "immediate, concrete, visible, and committed by and upon particular people" (Opotow 2001, p.151), and structural violence can be categorized as acts that are diffused and gradual, that can be more difficult to perceive. Loyd writes:

Galtung (1969) honed in on the embodied traces of structural inequities. For him, violence is not just about direct, intentional harm, incapacitation, or deprivation. Rather, societies are violent to the extent that "human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations" (168). Power relations that create and sustain the uneven distribution of life necessities constitute a daily "violence [that] is built into the structure and shows up as unequal power and consequently unequal life chances" (171). Thus, structural violence results in avoidable, or premature, deaths. (Loyd, 2009, p. 865)

Structural violence is a violence, and in identifying this violence it is often important to identify the groups and individuals contributing to it. While Tribunal members are not directly doing physical harm to asylum seekers, they are a crucial part of systemic state practices of violent border systems.

This violence must also be considered spatially, and violence has an inherent geography that must lie at the centre of any consideration (Blomley 2003, Tyner 2012, Tyner and Inwood 2014). This 'spatiality of violence' is an examination of where violence is

happening, but it is also a critical view of what qualifies as violence. The declaration of acts as violent is both an abstract and a political act and crucially where actions are “being produced by, and producing, sociospatially contingent modes of production” (Tyner and Inwood, 2014, p. 771). By declaring violence in these decisions, I bring explicit attention to the actions of the Tribunals, and bring attention to, as Galtung describes, the violence of ‘how things are done’, including whose voice is systemically heard or ignored (Galtung, 1969, 1994). As Opatow writes, “Structural violence does not maim and kill directly, but it has the potential to do so indirectly as a result of increased exposure to hardship and danger. Because structural violence blurs agency and no one person directly injures another, those harmed may themselves be seen as responsible for their own debilitation” (Opatow, 2001, p. 152). In the Appeals Tribunals, the border is enacted onto individuals based upon logics of deep-seated structural violence. Additionally, the decisions are also deeply intimate documents, telling the sometimes detailed stories and testimonies of asylum seekers and revealing sentiments and deep-seated worldviews of Tribunal members, the Appeals Tribunal, and the Department of Justice and the government as a whole.

This appeals decision issued by Brennan is one decision of the 44,837 decisions issued by the appeals tribunals since its first iteration in 2001, many of the decisions formatted similarly to this decision. Because of the size of the archive and the regimented format of decisions by the tribunals, the archive is both repetitive and complex, consisting mostly of dry language and repeated statements and also, I argue, fraught with the sentiments and anxieties of its writers. In between pages of copied legal statements, the decisions contain the intimate and personal testimonies of people most affected by the violence of state borders. State archives are records of the state performed, in the intimate moments of individuals encountering the state and state agents performing the state, and also importantly these archives are places where statecraft is performed and are sites of productive work of producing the state.

2.3 What kind of state are we in when we think about state?

There are many conceptions of what the state is, and how the state intersects with governments, nations, and other institutions. Calling anything ‘the state’ immediately gives a sense of power to that entity, even in defining what the state is. Jones very generally captures uniting themes of the use of the concept of the state in geography: “the most general feature of the state... is that it comprises a set of institutions concerned with the territorialization of political power” (Jones, 2009, p. 409). In this section of the chapter, I provide an overview of conceptions of state in studying the projection of state power, paying close attention to the contemporary everyday practice of state and the archives of state bureaucracy and operation.

Painter (2006) describes a narrative of conceptions of the state beginning with Weber’s classical organizational definition of the state as “consisting of more or less coherent matrix of institutions” (p. 756). Weber’s work from the 19th century deeply influenced work studying the nature of the state for many decades, including a series of problems stated in the 1970s and 1980s around the ‘legitimacy’ of states; the legitimate use of violence in states (Poulantzas, 1978); legitimate form of rule in states (Pierson, 1996); crises of legitimacy in states (Habermas, 1976); and other discussions on the ways to identify the ‘legitimate’ state (Giddens, 1979; Held, 1989; Mann, 2009). These conceptions of the state characterized the state as an entity with functions, mechanisms and spatiality; however, the major work that these theories did was to solidify the state as an entity in itself, as a recognizable institutional presence that either is parallel to a population or responds and reacts to one.

Abrams criticises the idea of the state as solid, characterising the state instead as an ideological construct (1988), and Mitchell focuses on how these constructions have material and structural effects in the world (1991). In the critiques of conceiving the state as a natural entity or institution, multiple metaphors and conceptions have emerged. Painter

(2006) defines the state as “an imagined collective actor in whose name individuals are interpellated... as citizens or subjects, aliens or foreigners” (p. 758). By ‘imagined’, Painter evokes Anderson’s ‘imagined communities’ (1991) of modern nation-states, in which routinized practices and beliefs organised by institutions create large ‘imagined’ communities with real material and bodily effect. Painter also delves deeper into how these imaginations are produced, using Bakhtin’s ‘prosaics’ lens to focus on everyday acts of ‘statization’ (Jessop, 1997, 2000; Painter, 2006) -- state as a process happening.

For example, passing legislation has few immediate effects in itself. Rather its effects are produced in practice through the myriad mundane actions of officials, clerks, police officers, inspectors, teachers, social workers, doctors and so on. (Painter, 2006 p. 761).

Using Bakhtin’s work, Painter contrasts the ‘prose’ work making the state in everyday repeated actions from the ‘poetry’ of immediate effect and dramatic actions. The prose of statization is a ‘dialogic language’ in which meanings arise from the interactions of characters or forces with different worldviews. The everyday, practical language is contrasted against poetic ‘monologic language’, which posits meaning in the language itself, and privileges ‘grand’ moments identified as having great importance (Painter 2006). Painter uses this contribution to make a call for empirical work studying the ‘prosaics’ of stateness, the everyday state.

Painter’s conceptions of the state are complementary to a concern for the biopolitics of state (Foucault, 1979; Foucault et al., 2008), emphasizing the production of bodies and populations by states as subjects of the state and a Gramscian conception of the state as an institution that works to ‘educate consent’ in a population defined and bounded by taxonomies and categories defined by state institutions (Gramsci, 1992). These approaches work against any approach that would uncritically reify the state as a ‘natural’

entity or uncritically privilege the scale of the nation-state, for example by analysing geopolitics as only politics between nation-states.

Agnew (1994, 2015) focuses on another common conflation, of the state with a physical and bounded territory in international relations theory – the ‘territorial trap’ – that can be understood as a framework that defines the state closely with the nation-state scale and within/along the borders between nation-states. This framework “territorialises power at the national-state scale and thus denies it to other spatial configurations involving place-making and spatial interaction” (Agnew, 2015 p. 779), erasing the different and competing conceptions of state and, in this way, a normalised conception of the nation-state as ‘the natural relationship’ is uncritically reified, shutting down other ways of conceptualising how power works and the relationships between states and territory. The territorial trap is primarily a critique of certain narrow type of scale-work—that of nation-states ‘interacting’ at the ‘international’ scale.

By 2006, Painter and Agnew were not the only scholars calling for this shift in the empirical focus of scholarship studying the state towards closer examinations of individual state actors and cultures. Two developing theoretical approaches contributed to a changing view of the state in political geography. One approach came from James C. Scott in his 1999 book *Seeing Like a State: How Certain Schemes to Improve the Human Condition Have Failed*. Scott presents the modern state as primarily the coordinator of modern projects to make society legible and points out that in major modern ventures -- either in nation-states or in colonies -- these modern projects often fail. Another approach came from feminist geographers, insisting that the field of geopolitics reckon with the theoretical developments from feminism. This approach, using feminist geopolitics, interrogates the notion of centring the state as an institutional structure and instead focuses a geopolitical analytical lens on people affected by the state. These two approaches called for a new attention to previously marginalised voices in political geography.

Scott, in documenting large state projects including forestry, modern cities, and villagization presents evidence that states are primarily concerned with making populations legible, and that this ‘legibility’ imposed upon society is enacted by states as exertions of state power. For Scott, the resulting ‘legible’ society is always different from the reality of what is happening. While Scott spends less time than Painter defining exactly what the state *is*, Scott focuses on how the documents, knowledges and practices the state enacts depend on how the state ‘sees’ the world: how the state sees populations, land, territory, nature. This vision makes simplifications of the world to accomplish their ideological projects. Scott compares these simplifications — representations of the world from the vision of the state — to ‘abridged maps’:

They did not successfully represent the actual activity of the society they depicted, nor were they intended to; they represented only that slice of it that interested the official observer. They were, moreover, not just maps. Rather, they were maps that, when allied with state power, would enable much of the reality they depicted to be remade. Thus a state cadastral map created to designate taxable property-holders does not merely describe a system of land tenure; it creates such a system through its ability to give its categories the force of law. (Scott, 1999, p. 3)

It was not new to understand the modern state as an institution that attempts to make populations legible, as Scott recognizes. Rather, the power of Scott’s work is in his recognition of some key factors in how these ‘projects of legibility’ work and their impacts. Scott categorises these state projects and efforts for legibility by the ways that state actors simplify lived realities.

Scott categorises state simplifications as having at least five characteristics: (1) the simplified information is of official interest; (2) they are often written documentary facts; (3) they are static facts; (4) they are aggregate facts; and (5) they need to group people to make collective assessment (*ibid*, p. 80). My interest in this categorisation of state processes

is in the outcome of simplifications, but also and more importantly the *how* of these simplifications. Primarily, I am interested in how these acts of ‘making legible’ are being made by people, usually state, civil or military bureaucrats, and how they are happening in a whole range of places, whether these places be state offices in a national capital, in interactions at state offices, in roadside stops or elsewhere.

Geographers have often employed Scott’s work and conceptions of state efforts to make populations and environments legible. In the field of political ecology, geographers have studied how states produce ecologies as legible places and landscape for environmental exploitation (Bixler et al., 2015; Boelens et al., 2016; Robbins, 2011). More relevant to this study is the work of geographers studying migration and borders and their use of Scott’s work. Reece Jones, for example, relies heavily on Scott’s work and conception of the state in his book *Violent Borders: Refugees and the Right to Move* (2016). Jones traces the history of border enforcement in the creation of the modern state and along the most visible and contentious sites of border control, including the borders to the EU and the US-Mexico border. Jones cites Scott as foundational to his work on the geographies of violent borders, in that Scott questions “why the state has always seemed to be the enemy of people who move around”; and Jones points out that Scott doesn’t fully address why this is, focusing instead on large state planning projects. However, there are further limits to the usefulness of Scott’s work in migration studies. While Scott’s work can be helpful in locating and mapping state efforts of legibility, and violence towards migrants, there must also be a consideration of scales other than nation-state operations and logics.

By the end of the 1990s feminist critiques of critical studies had amassed a group of concerns with the direction of how the state was being viewed and how research to study the state was being done (see Hart, 1991; Robbins, 2011). In the early 2000s, there was growing discontent with the marginalization of new ideas and scholars in political geography, “including feminist theory, queer theory, critical race theory, and micro-scale,

everyday understandings of political structures” (Desbiens et al., 2004, p. 241). This prompted new work, and in 2004 a special issue in *Political Geography* “Reconceptualizing the State” highlighted contributions from political and feminist geographers. In this issue, Hyndman (2004) set out to propose some of the fundamental tenets of the emerging field of feminist geopolitics at the time and proposed three general categories that focus on taking care and paying attention to the processes and productions of bodies in geopolitical contexts, and privileging scales of bodies. Firstly, feminist geopolitics centres security for people and those most vulnerable to state and extra-state violence through care towards bodies, which in geopolitics involves decentring security as the narrative of states remaining ‘in control’ of the movement and actions across territory. Secondly, feminist geography analyses scale as a normative tool of institutions and also as an analytical technique. In this way, a feminist geopolitics can rethink scale in mainstream debate. For example, the debate on ‘security’ in conventional geopolitics often ‘takes sides’ in privileging the nation-state scale. Feminist geopolitics decentres the nation-state and recentres the body and the people affected by and ‘doing’ statecraft. Statecraft thus emerges as the defining aspect of the state: the state is the result of the practices and cultures of statecraft. This approach creates new scalar dynamics that can recognise and resist violence and institutions. Thirdly, feminist geopolitics in situating knowledge as grounded at the scale of the body acknowledges that any knowledge framework is a partial perspective of the world, and that any knowledge framework is also situated in its place and context, as located in bodies and in societies.

While generally, geopolitics is considered the study of politics and conflicts at different scales and across space, feminist geopolitics privileges the scale of the individual, the body, and small groups, disrupting the ‘vision’ of the state ‘seeing’ populations and territories bounded by national boundaries. Geopolitics has a history in imperial conceptions of conflicts between empires and across land (see Kearns, 2009) but has recently emerged as a site of critical questioning of deep assumptions of imperialism and

colonialism. Feminist geopolitics unites different strands of radical critical geopolitics and feminist geography (Hyndman, 2004). Feminist geopolitics as Hyndman sets out, primarily interrogates the notion of centring the state as an institutional structure rather than people: “while the state remains a vital subject of interrogation in relation to security, it obscures fear and violence at other scales, beyond its purview” (ibid p. 308). With a strong conviction in centring the experiences of people, not institutions, feminist geopolitics aims to destabilize state narratives.

The feminist geopolitics frameworks provide an effective way to analyse how statecraft happens—as the practice of state as an everyday practice, in the production of state in ‘crises’, and in the active recordings of the workings of state. This practice is based in empirical research. These three tenets of feminist geopolitics, centring the care and security of vulnerable bodies, rethinking scale to de-centre the state, and situating knowledge at the scale of the body, draw on theoretical approaches but insist on research that asks what is happening in the world and engages with the world to answer these questions. In this way, it is also difficult to extricate these three tenets from each other, as when we enact these principles in the world, they become entangled into the actions that we take as researchers. In the following paragraphs, I present the findings and theoretical contributions from scholars and from empirical projects that use the framework of feminist geopolitics that I have outlined above to study the state. Mountz’s empirical work at border enforcement agencies in Canada (2010) ‘studies up’—uses ethnographic methods to study those in positions of power. The study up approach actively works to dismantle the walls and secrecy of practice at state institutions. Mountz’s research in Canada, including a placement at Citizenship and Immigration Canada (CIC), identifies an ad hoc process of ‘immigration policy on the fly’ during a moment of crisis partially manufactured by Canadian border enforcement agencies. In this moment of crisis Canada employed what Mountz dubs ‘the long tunnel’—visualising a ‘tunnel’ of ‘arriving at Canada’ but still in

‘not-Canada’. Mountz’s long tunnel theory expanded the state’s conceptions of territory and allowed for new interpretations of the Refugee Convention. Other countries, including European countries and Australia, have followed suit.

Writing as a strategy, for Mountz, emerges as a way of researching the state process of knowledge production, alongside a sustained engagement with activities of state officials, state agents, and people affected by state policies. This includes writing through how state agencies and agents employ secrecy, paperwork, and bureaucratic processes to project hegemonic visions onto populations. I quote here in full a passage mentioned briefly in the previous chapter:

While civil servants work furiously to manage human migration, social scientists must work equally hard to trace the changing nature of sovereignty and the many contradictions involved in its exercises in border enforcement. We must write to and through the state, to understand just what kind of state we are in (Mountz 2010, p. 168).

in investigating these state processes in the CIC in Canada, Mountz argued for the importance of ethnographic methods to study the state, ‘studying up’ to understand and undo state practice. In the writing practice of ethnography, whereby the ethnographer writes through the process of understanding their own position in their study, the feminist geopolitics practitioner writes to undo the actions of the people in their study (I further discuss using ethnographic methods for feminist geopolitics research in section 4.3.1).

Mountz’ work in emphasising the importance of a specific, detailed, located and mapped context can be seen as a critique of Agamben’s theories of the universal dimensions of zones of exception (Mountz, 2011, p. 387). In migration studies and work studying border enforcement, the work of Giorgio Agamben has at once been important and contentious. Centrally, this is because Agamben’s work does not engage in empirical fieldwork but uses different methods to create a framework of understanding the state. For

Agamben, times and places of emergency—when states can make exception from the rule of law—create some populations as outside the rights of the state (Agamben, 1998). ‘States of emergency’ then feed into the subjectivity of the territory of the entire nation-state. The exceptional time-period or the exceptional space creates the conditions for all citizens all the time. States can and do produce ‘bare life’, life without any protections in law, and, Agamben argues, if ‘bare life’ is possible here or now, it is possible anywhere or anytime; it is possible in other places and at other times. There are issues with Agamben’s conceptualisation, primarily in his characterisation of certain populations and individuals subjected to state violence as having no agency. I take from Agamben not the ultimate truth of the experience of the state—Agamben has not studied the empirical and lived experiences of those most vulnerable to state power and violence. I draw from Agamben an understanding of how states conceptualize populations and fundamental rights. The right to rights, Agamben reminds us from Arendt, is incredibly tenuous at all times, in all places.

Crucial in both Mountz’s and Agamben’s work are efforts to understand *where* the state is, and Conlon (2013) in an empirical project engages with and presents a use, with modifications, for Agamben’s approach. Conlon looks at a hunger strike organised by asylum seekers in Ireland against the reception conditions of the Irish ‘Direct Provision’ system, and specifically the poor conditions in the Mosney reception centre. Conlon finds some use of Agamben’s conception of ‘bare life’, and his conception of how states attempt to subject asylum seekers, beyond and against the protections and rights guaranteed by states. Conlon also challenges this framework and employs Foucault’s notion of ‘counter-conduct’ to perceive nuances that the ‘bare life’ framework often erases. The idea of ‘counter-conduct’ is from Foucault’s writing that develops governmentality in order to understand political protest. In the liberal state, conduct against government demands the right of those demonstrating and, Conlon argues, can also affirm a model of

governmentality that accepts the subject as 'governable'. In the everyday of social practices, governmentality also describes how power spreads and percolates into space at the scale of individual action and individuals. Conlon resists the view of asylum seekers as subjects without political rights and reframes the question of agency; by demanding, expecting and perceiving greater nuance in situations like migrant detention, there is the opportunity to break apart expected understandings of scale and perspective.

For Salter, nowhere is state more present than at the site of the border, where people--"citizens, foreigners, and refugees come to recognize themselves and the sovereign power of the state to define them" (2008, 374) and where the powers of the state are performed by those who are at the site of border, where state agents decide how these state powers will be performed and on whose bodies. The entry at the border is, according to Salter, a crisis, "a moment of absolute surrender to the sovereign power of the state, within a particular governmental machinery of border, customs, and immigration officers," (ibid, p. 371), and the border examination is dominated by anxiety, constant uncertainty, and alienation, because "there is no inside: there is no right of entry. The citizen is undone and the sovereign to ban reinscribed at every border, in every determination" (ibid, p. 369). For Salter, anxiety is the primary sentiment at the border, and the primary experience.

In the border examination, where decisions are made on whether individuals are admitted or not, where personal narratives are interpreted by state agents, and where their judgement and experience is used to adjudicate the truth claims of the traveler, this, for Salter "is a decision that is not grounded in fact, but solely in the power to decide"; and the decision of exclusion or exile is "the decision that the sovereign owes that individual no hospitality, no protection, no law, only violence. And all travelers pass through that moment of sovereign isolation, when, during the border examination, we perform both our citizenship and the state's sovereignty." (ibid, p. 370). When these state practices of border examination are considered through the scale and perspective of feminist geography,

feminist work, these kind of narratives of violence that Salter describes, narratives that are quiet or silenced, become important in “the work of taking apart dominant geopolitical scripts of ‘us’ and ‘them’” (Hyndman, 2007, p. 39) to recognize and reimagine the safety of some people when it “is built on other people's harms, and when dominant epistemologies of violence naturalize these harms (Loyd, 2009, p. 417).

Ferguson and Gupta write about these borderings at physical and political borders as “intimately tied to the policing Main Street in that they are acts that represent the repressive power of the state as both extensive with the territorial boundaries of the nation and intensively permeating every square inch of that territory, respectively” (2002, p. 984). For Gupta, ethnography is key in documenting the constructing, production and legitimation of state, and what is needed is “rich ethnographic evidence [that] documents what lower-level officials actually do in the name of the state” (Gupta 1995, p. 376). Importantly for Gupta, the practices of the construction of the state and opposition to the state, must be seen not as in opposition to one another but both as doing discursive work.

Feminist theoretical concerns have also influenced conversations around security, and in a special issue in the journal *Security Dialogue* in 2014, Cote-Boucher, Infantino and Salter called for a turn to the ‘practice’ of border enforcement, grounded within the observations of “specific agencies intervening in bordering spaces... [that take] into account the heterogeneity of everyday security practices and point the importance of nuanced local details and context” (p. 197). This approach, along with other work describing *where* the state is, focuses on the words that state actors and individuals in positions of decision-making word their decisions, and also “their understanding of the meaning of those discourses” (ibid, p. 197), and understanding the worlds and ontologies of border agents.

Also critically important in understanding statecraft is emerging decolonial work on the nature of the state. Harsha Walia’s book *Undoing Border Imperialism* (2013) deals explicitly

with the contemporary implications of colonial state practices, connecting global border enforcement regimes that have emerged from states in Europe, North America and Australia to the continued practice of imperialism and colonialism operated by those states. Walia is cofounder of the Vancouver, Canada, chapter of the Canadian activist group and movement No One is Illegal (NOII), and argues that the key work of the group has been to understand of the political systems of border enforcement as happening under the hegemonic forces of colonialism and imperialism, forces that dispossess indigenous peoples of their lands and enslave displaced peoples; the uniting of these two issues guides the organizing of NOII's chapters across Canada and their tactics and strategies. *Undoing Border Imperialism* is a far-reaching analysis of contemporary nation-states as part of a global system of imperialism focused on borders and includes the types of activism and resistance that NOII works towards.

Border imperialism describes a world order centred around the creation and enforcement of physical, ideological, and political borders that ubiquitously inhabit life in modern/colonial systems. Observing the connections of contemporary modernity and the legacy and continuation of colonialism (Mignolo, 2012) and crafting a critique of global modernity/colonialism as border imperialism unites the problems and oppression of Indigenous peoples and migrating peoples. Walia outlines four essential elements of border imperialism: displacement; criminalization and the carceral network; racialized hierarchies; and labour precarity. Each of these elements, enacted by the state at multiple scales, work to produce borders and boundaries to reinforce colonial and imperial hierarchies of humans, and to reinforce the core of colonial logics, white supremacy. Walia writes:

Decolonization is a framework that offers a positive and concrete prefigurative vision. Prefiguration is the notion that our organizing reflects the society we wish to live in—that the methods we practice, institutions we create, and relationships we

facilitate within our movements and communities align with our ideals. (Walia, 2013, p. 11)

Connected to Walia's call for decolonization in the framework of social justice movements is the critical research of political geographers in migration studies. The meanings and realities of borders have been a central focus of political geographers studying migration.

Political geographers studying migration have recently worked to integrate decolonial methods to understand geopolitics of migration and border enforcement. Gilmartin in Naylor et al. (2018) argues that Mignolo's conception of border-thinking can critically assess the normative and ideological work that border ontologies do. Gilmartin analyses and outlines how border thinking challenges border ontologies in three ways. First, border thinking challenges the hierarchies of humans that is a central tenet of borders, that is "evident in the politics of migration management, where people are distinguished on the basis of ascribed attitudes such as race, and on the learned behaviours such as 'highly skilled'" (Naylor et al., 2018, p. 207). Secondly, border thinking connects commonalities of "experience, emotions and thinking" (ibid p. 207) to undo hierarchies that would marginalize or erase certain local knowledges in the larger geopolitics of knowledge production. And thirdly, border thinking takes decoloniality into the possible future, a future in which the white European body gives, gives way, gives up to prioritize "the experiences, perspectives, and insights of those—like migrants—who occupy the colonial difference" (Naylor et al., 2018, p. 207).

If we understand the work of statecraft as performances to enact the state, in everyday actions, in bureaucratic filing of papers, in the debate and signing of legislation, and in other performances by state agencies and agents, then we can also understand the processes and performances of enacting state borders, and of enacting border imperialism. This work to study the state and study the process and production of state is an attempt to critically analyse and investigate the means by which states produce their own logics. These

are the processes of studying the state process of bordering. In Brennan's 2006 decision in the RAT, described earlier in this chapter, Brennan was enacting the state, doing statecraft and bordering, operating in the everyday actions that Tribunal members are trained to carry out and also issuing a single momentous decision with great ramifications for the person making their appeal for asylum in Ireland. It is clear that the Tribunal member is 'seeing' the Somalian man from the perspective of the state, yet how does this show fully the work of statecraft that is happening in the Tribunal?

To answer this question, I use a questioning of embodiment as performance as my primary departure from the literatures I have outlined, asking and examining 'who is doing the state?' Stoler, in her investigation of statecraft in Dutch colonial archives, focuses a key question of her work further on how doing statecraft fully occupies the agents of state and asks: "Why does that pairing of 'state' and 'sentiment' read as an oxymoron?" (Stoler, 2009, p. 70). Who is doing the statecraft is a central question to conceptions of how statecraft and the production of state happen, and critical to this interrogation is what kind of sentiments and feelings towards the states, towards populations, etc. are generated among state agents. In this process of bordering, sentiments of state agents emerge as central to the creation of state logics of inclusion and exclusion. As Stoler writes:

Sentiments are not opposed to political reason but are at once modalities and tracers of it. Here I treat sentiments as judgements, assessments, and interpretations of the social and political world. They are also incisive markers of rank and the unstated rules of exemption. How and to whom sentiments of remorse or rage, compassion or contempt were conveyed and displayed measured degrees of social license that colonial relations so inequitably conferred. To underscore this crucial point: expressions of sentiment depended on situated knowledge and thus relational know-how about rank—where and to whom one displayed one's range of official texts; in the biting critique reserved for marginalia; in footnotes to official

reports where moral assessments of cultural practices were often relegated and local knowledge was stored.” (Stoler 2009, p. 41).

While state knowledge may be presented by agencies, departments and officials as ‘logical’ actions to problems faced before them, it is essential to understand actions of statecraft as being deeply engrained in the emotional politics of who gets to enact the state and how state is performed. Situating knowledge demands situating the production of knowledge by states in the bodies of those doing the production of these knowledges and those experiencing it.

2.4 Studying statecraft and bordering

In order to understand these processes of statecraft and bordering, I now turn to how the state can be studied, reiterating that theoretical understandings of how the state works must be closely linked with empirical research studying the state. The concept of statecraft that I have developed and presented so far in this chapter attempts to effectively capture the complexity of understanding the state as practice. The state emerges co-constituted from acts of state, as a layering of work done to establish it (Coleman, 2005).

This production of state is especially apparent in the actions state agents and governments take on border enforcement. Coleman and Stuesse study immigration control far away from international borders in the United States:

The bordering practices that states engage in are not strategies of domination that emerge whole from ‘within’ the state, just as effects of these practices are not simply outcomes that emerge from ‘within’ immigrant communities.... [I]t is precisely this interface, or encounter, between ‘producers’ or ‘consumers’ of state which we understand as immigration statecraft. (Coleman and Stuesse, 2016, p. 529)

The main work that statecraft does is to establish that the state is something that has existed 'before' these acts of statecraft. Only through these actions does the state exist.

The work of border enforcement in state offices and agencies is enacted in everyday practices and in moments and places of crisis; from the point of view of a researcher looking at statecraft, some of the state actions of border enforcement are visible and some are not. In the bureaucracy of these asylum determination agencies, the violent acts of deportation and border enforcement become normalised as everyday occurrences, as paperwork or as evidence and absence (Amoore and Hall, 2010). Border control is also 'eventualized': state agents and other actors work to produce some border-crossings as events and not others.

Coleman and Stuesse (2016) show how researching state practice can sometimes become so hard for the research to see that the processes and practices of statecraft are invisible to a researcher, they cannot be seen. In internal immigration enforcement in the United States, Coleman and Stuesse investigate allegations of police targeting undocumented drivers for traffic stops in the United States South far away from any international borders. While the researchers found some statistical evidence of racial profiling, they encountered obstacles to investigating the prosaic geographies of traffic stops when they recognised that they could not be present for the actual event of the traffic stop. Coleman and Stuesse use the work of Povinelli (2011) on 'quasi-events' "to describe the fleetingness and fluidity of power" (Coleman and Stuesse, 2016, p. 527). Coleman and Stuesse describe the quasi-events of the state as the actions by state agents and state agencies that, from the point of view of the researcher, fall below the threshold of events. Put another way, state power happens, and it sometimes happens in ways that are hard to observe using the tools of the social sciences. The police departments in the study are constructed in such a way that they are "cloaked in a certain unsubstantiability and inscrutability which frustrates social scientific analysis" (Coleman and Stuesse, 2016, p.

527). Border enforcement that takes place physically further away from borders and borderlands takes different ritualized forms than border enforcement near international borders does.

State agents doing statecraft are also vulnerable to shifting priorities from governments and changes in agency culture from the hierarchy: from bosses, ministers or changes in government. For example, Gill studies asylum sector decision-makers experiencing the shift to neoliberal priorities in the UK (Gill, 2009). There has been a move towards regionalism that has removed the national government from culpability. At the same time, the national government has put time-pressures on regional asylum decision-makers to disengage in their interactions towards asylum seekers (ibid). Within cultures of institutions and environments of political and financial pressure, civil servants involved in the asylum determination process engage in border enforcement and produce the subject of the asylum seeker in certain ways. And in the archives of the asylum decision-makers, in the repetitive refrains, the hierarchies of credibility, the turns of phrase: these are not just evidence of the power of the state and the power of agencies; they are the doing of the state and the rituals and performances of state authority.

The work of studying the state is also important to share, in order to identify repeated difficulties and new strategies for studying statecraft. Maillet, Mountz and Williams (2016) describe the experiences of three researchers studying statecraft, focused on the statecraft of border enforcement. They describe doing fieldwork in airport detention ‘waiting rooms’, on remote islands that nation-states use to ‘offshore’ the detention of asylum seekers, and fieldwork on the European border protection agency Frontex in its migrant boat interceptions in the Mediterranean Sea. These cases show how feminist geopolitics by expecting situated knowledge from researcher and research subjects creates certain expectations for fieldwork to have clearly stated ethics, and to have clearly stated positions in space and in geopolitical issues.

The stories of the obstacles, challenges and solutions in the research of Maillet, Mountz and Williams (ibid) reveal interesting new facets of what it means to ‘do’ feminist geopolitics research studying the state. Language in casual speech in tightly contested areas becomes crucially important and becomes evidence of the fraught events of statecraft. Considering what it means to ‘get inside’ state facilities becomes an issue of making research possible, and considering whether ‘getting access’ should even be a priority becomes an issue as well, even when it is rejected. Researchers find it becomes impossible to leave behind ethical choices in the face of charged situations and moments after making previous commitments against a militarized society and towards the security of vulnerable people. In the moments of encounter ‘in the field’, researchers become at once vulnerable to the situations in which they are placed and have a certain power and privilege. These are issues that are not unique to work in feminist geopolitics; however, the approach of a feminist geopolitics towards that of contemporary politics of migration holds in it the unique promise of critical analysis to do the work of investigating practices of statecraft of dismantling security narratives and proposing new narratives.

2.5 Statecraft in the archives

I now turn to how archives can be seen as places of statecraft, and as places where work is done to produce the state. Stoler (2009) in her investigation of Dutch colonial archives proposes that archives are sites of statecraft: not only sites of knowledge retrieval, but of knowledge production, and that the form and the content of the archive can reveal the anxieties, notions and desires of colonial agents. Archives can tell us about the people and institutions that created them and are also *themselves* sites of knowledge production and statecraft.

Stoler’s approach of ‘studying along the grain’ of state practice in the archives echoes the tenet of feminist geopolitics I have outlined above. State archives have been

indispensable for scholars studying imperial and colonial knowledge production (Hevia, 2003; Johnson, 2014; Kurtz, 2009; Stoler, 2002). In Stoler's study of empire, the archive "was the supreme technology of the late nineteenth-century imperial state" (Stoler, 2002, p. 87). Archives are sites of knowledge production, 'monuments of states', 'sites of state ethnography'— "this requires a sustained engagement with archives as cultural agents of 'fact' production, of taxonomies in the making, and of state authority" (ibid, p. 87).

Stoler's approach emphasises that the archives contain and are sites of the production of the sentiments of the state. Sentiments are a crucial part of statecraft; how people feel about the state and what kind of affects the state has is central to what the state is. As Stoler writes: "Still, how sentiments have figured in and mattered to the shaping of *statecraft* has remained largely marginal to studies of colonial politics. What has been barely addressed are those habits of the heart and the redirection of sentiments fostered by colonial regimes themselves" (Stoler, 2009, p. 62). The state's assessments of feelings, attachments, senses of belonging "were not metaphors for something else. These administrative apprehensions were instrumental as 'dense transfer points' of power in themselves" (ibid, p. 63).

Stoler's comprehensive studies of the archives of the Dutch administrative communications with colonial governments in the East Indies in the 19th century reveal the assumptions, the beliefs, and the constantly changing 'common sense' logic of civil servants and colonial administrators. Stoler writes:

Here I treat archives not as repositories of state power but as unquiet movements in a field of force, as restless realignments and readjustments of people and the beliefs to which they were tethered, as spaces in which the senses and the affective course through the seeming abstractions of political rationalities. I take sentiments expressed and ascribed as social interpretations, as indices of relations of power and tracers of them. (ibid, p. 33)

Sustained engagement with the archive reveals the daily practices and productions of knowledge that produces a ‘common sense’ for the state, different from other data sources and methods. This sustained engagement includes critically examining the form of the archive, including the “prose style, repetitive refrain, the arts of persuasion, affective strains that shape ‘rational’ response, categories of confidentiality and classification, and not least, genres of documentation” (ibid, p. 20). This analysis of ‘archive-as-process’ views archives as places of knowledge production, where the language of the statecraft is crafted and honed.

Archives are still today a central part of the organization and administration of the modern state, and archives of contemporary states remain central sites of knowledge production and performance of statecraft. Contemporary state archives are now almost ubiquitously digital, and if they are accessible to the public, then they are online. In many ways, online and digital government archives are very similar, for those of us interested in them, to paper archives, but there are differences. In geography, studying these digital state archives has been part of what has been called the ‘digital turn’, a recognition by geographers that, as Ash et al. state, “the digital is reshaping the production and experiences of space, place, nature, landscape, mobility, and environment” (Ash et al., 2016, p. 11). For Ash et al., this recognition of the digital turn is also “underpinned by a turn to the digital as subject/object of geographical scholarship, and a profound inflection of geographic theory and praxis by the digital, whether understood as ontics, aesthetics, logics, or discourse, or an assemblage thereof.” (ibid, p. 11).

In studying archives of state practice, the differences in digital archives can include the work of noticing how the data is produced, preserved and shared (Ribes and Jackson 2013), and how this work can then lead to a recognition of how archives produce logics of the state and data as social practice. Databases and data structures are shaped by the questions that are asked, how questions are asked, how data collected is compiled and

stored. As Walford writes in relation to working with digital archives, “every archive is partial, and every partial and every partial archive has its own anxieties: incompleteness, redaction, mis-filings, duplications, obfuscations, ignorance, secrets” (2018, p. 109). This observation parallels engagements with historical data archives, in Stoler’s case with colonial archives.

Walford presents the problematic claims of total data knowledge in the example of the ‘GEO in Action’ website produced by the Group on Earth Observation (GEO), a partnership of 103 nations, the European Commission and 95 participating organisations around earth observation:

On one of the demos on the GEO website, called ‘GEO in Action’, we are confronted by the slogan ‘Countries have borders. Earth Observations don’t’, and told that ‘it is only in the last few decades that we have the tools to observe the entire planet ... By combing [sic] data over time, or by comparing data from different sources, intelligent decisions can be made about human development, wildlife protection and the effects of climate change’. ... Certainly, one can read archival totalising aspirations into such discourse that surrounds the GEOSS – there is no talk of the exclusions, frictions, subjugations or forgetting that such a databasing initiative will enact. However, it is also necessary to pay attention to how this archival form is reconfiguring ‘the enlightenment panoptic project of assembling all knowledge in one place’ (Walford 2018, p. 110)

Digital archives, especially those constructed by state and supra-state entities, often make these claims of being ‘full knowledge’, and a crucial part of critical data studies is identifying and critiquing normative assumptions of ‘stateness’ -- the territorial trap -- in these archives. Work done in critical data studies can thus offer an important connection to approaches in engaging with a contemporary digital state archive. Much of critical data studies has been focused on ‘big data’ (Dalton et al., 2016), and highlighting the nature and

uniqueness of big data as a form of archive and database (Richterich, 2018), scholars in this field have also been identifying the same issues in these big data databases as colonial archival scholars have been identifying in colonial archives. While there are differences in, for example, records of Facebook exchanges and advertisement data (Ben-David, 2020) from the state archives Stoler examines of Dutch colonial officials in Java reporting back to the Netherlands (Stoler 2009), or British correspondences back to London, in these cases scholars have identified in the ‘small’ or ‘large’ data the anxieties of the record-keepers and the productive work of ‘defining’ the world that these archives do. My work in the ATA parallels the work of some scholars working in critical data studies in critically investigating the ways that producing and maintaining data legitimates state knowledges, and also reveals the anxieties of state agents and agencies.

Weltevrede (2016) in her PhD work on digital social research ‘scraping the social’ and in collaboration with Marres (2013) explains an approach to engaging with digital and online archives using the tools of web-scraping. I describe these methods in greater detail in Chapter 4, and how I approach a contemporary digital state archive. For this section, I point only briefly to the similarities in how Marres and Weltevrede gather social data from online archives and how Stoler engages with the archives of colonial governance. In this quote, Weltevrede draws a distinction between “‘scraping the medium’ and ‘scraping the social’”:

[This distinction] seems to be at the heart of digital research. When the data’s medium-specific features are exploited instead of rejected, the question inevitably arises whether social life is studied or rather the media partly enabling it. But the difference between ‘scraping the medium’ and ‘scraping the social’ is probably best understood as a difference in degree: in some cases, digital devices play an noticeable role in the structuring of data, while in other cases a discernible empirical

object cannot readily be reduced to the medium-architecture enabling it.

(Weltevrede, 2016, p. 51)

I understand Marres and Weltevrede's framing of digital research as similar to Stoler's focus on studying the form *and* the content of the archive as rich data for sociological and ethnographic research. Scraping the medium is engaging deeply not only with the content of websites and online records but also the architecture that makes up these sites.

In Stoler's work, the state archives are thousands of letters, reports and manuscripts travelling between the colonial metropole and colonies—in the case of Stoler's work this was the Dutch metropole in Amsterdam to the East Indies Java and other territories mostly in what is now Indonesia. In these archives Stoler finds the evidence of the colonial state agents wrestling with how their state could function, which required making explicit and implicit decisions and judgements about what it meant to be Dutch, what it meant to be a Dutch colonial agent thousands of miles and also months of travel away from the metropole. The metropole was considered not just the centre of colonial military and administrative power, but also the centre of cultural power, and a central point in Dutch conceptions of 'Dutchness' and 'whiteness'.

Part of the cultural control over 'Dutchness' was border control. This was not always the customs and border checks that we may think of now. There was no presenting of passports at the passport controls at borders, since neither of these existed at the time. Stoler argues, however, that borders were constantly policed about what made 'European-ness' – abstract characteristics to be decided upon by state officials. Stoler describes other actions as policing borders:

Evidence of rationality, reason, and progress were invoked to affirm privilege and station, but European colonials policed their borders, imposing what Bourdieu referred to as "common principles of vision and division", by appealing to other criteria, attended to with equal and studied care. European legal status for the

Indies-born of mixed parentage, as I have long argued, was accorded based upon the display of a familiarity and proficiency with European cultural styles that required proofs of estrangements from other social kinds—evidences of feeling ‘distanced’ from that “native part of one’s being”. (Stoler, 2009, p. 64)

I have found more and more of these connections between how state is formulated in the archives Stoler outlines and in modern/present-day/21st century archives of border enforcement that we can access now. Part of Stoler’s power in examining the archives is in her presentation of the importance of sentiment in the archives:

[A]ffective knowledge was at the core of political rationality in its late-colonial form. Colonial modernity hinged on a disciplining of one’s agents, on policing the family, on Orwellian visions of interventions in the cultivation of compassion, contempt, and disdain. (Stoler, 2009, p. 98)

Statecraft is based around sentiment: how do people feel about that state, what kind of affects does that state produce and how that kind of affect come about because of production of state by groups and powers and institutions. This sentiment is important to understanding these archives; sentiments -- including the anxieties, fears and desires that I discuss further in section 5.4 and 5.5 -- make up the prosaic geographies of the state in the archives. The connection of contemporary border regimes to past colonial state archives is also important; the work tracing the genealogies of state archives producing state knowledges must continue, because the archives we find the state producing – archives of border enforcement, archives of state control – these acts of statecraft are continuing a legacy of the state, continuing from lessons learned for building state legitimacy from the past.

2.6 Conclusion

In this chapter I have argued that the state should be understood as something that does not exist as a single entity, but rather is produced through the practice and performance of statecraft. I have also argued that archives are a key tool of state practice, and that the different forms that archives have taken at different times have been important to how state functions. I have also argued that state is sentiment from actors of statecraft, that state is tied inextricably to the affective emotions and feelings of state agents, cultures of state bureaucratic agencies, etc., and is therefore deeply entangled with the productive emotions and emotional knowledge taught by states and state culture.

In the next chapter I address the context for this project and provide a longer context for researching the Appeals Tribunal Archive. The example of Brennan's decision at the beginning of this chapter illustrates something deep not just about the archive and about the findings of this project, but also about how much the operation of modern/present-day/21st century states in the regime of nation-states echo and reflect the practices of 18th and 19th century imperial/colonial/modern states as seen in the work investigating border enforcement, both in this project and in the work of others.

I take this moment of conclusion to reflect on the process of this project, and the experience of being part of the state. Movement is such a crucial part of the way that we experience the world, but in the recent history of the nation-state certain movements have become criminalized, vilified, and besmirched. This project is an attempt to question why, and how nation-states, and communities create walls and create hate. "If we pause for a moment," Judith Butler writes, "on the meaning of 'states' as the 'conditions in which we find ourselves,' then it seems we reference the moment of writing itself or perhaps even a certain condition of being upset, out of sorts: what kind of state are we in when we start to think about the state?" (Butler and Spivak, 2007, p. 3). I find myself completely *in* the state in the investigation of its failings to uphold the responsibility to care and to love people.

The condition of being in state is one of vulnerability, and vulnerability should engender care and respect for others, not fear or shadows--rituals of understanding, not of exclusion.

3 Chapter 3: Context

3.1 Introduction: Ireland international law and migration policy

The asylum seeker in Ireland, a person migrating from violence, fear, tension, finds themselves deeply part of the systems and conditions of the Irish asylum process. In this chapter, I describe the systems and conditions of seeking asylum in Ireland; I describe the network of policies, legislation, agencies and treaties that constitute the unique refugee, asylum and international protection application determination process in Ireland. The conditions of seeking asylum in Ireland are multi-scalar, and not only dependent on this one scale of analysis – the nation-state. I describe how the asylum determination process in Ireland is in some ways unique, but also dependent and entangled in a web of global, international, inter-regional and local and personal/community scales.

In section 3.2 I describe this multi-scalar approach that critically analyses the epistemology of the state instead of reifying the centrality of the state. In this process I describe the historical context of migration in Ireland, including before Ireland's independence from the United Kingdom in 1922, and the connections that continued between Ireland and the UK. In section 3.3 I introduce the Refugee Convention of 1951 and the Protocol of 1967, and how Ireland, once it became a signatory to these treaties, worked to fulfil its Convention obligations. I also address how Ireland's refugee and asylum determination regime changed in the 1990s and the 2000s parallel to the emergence of European Union moves towards a Common European Asylum System (CEAS). In the final section of this chapter, 3.4, I present the asylum determination process in Ireland as it operates now; the practices of the asylum agencies as set out in their policy documents and legislation; and I describe some of the key elements that the asylum agencies employ in assessing asylum claims. The asylum determination system in Ireland may not be very much different than the conditions in other 'western' nation-states. However, the politics

and realities within each agency, each department of justice and each set of individuals in charge of these processes in each country make for a range of differences.

3.2 A multi-scalar approach to understanding refugee law

As detailed in the previous chapter, migration studies scholars have a responsibility not to reify the centrality of the state in the movement of people, and to critically examine the epistemologies that states produce to understand and categorise people and groups. One important method in doing this work is the work of de-nationalising migration studies. Anderson (2019) describes de-nationalisation as a methodological choice to not normalise or presume as ‘real’ the categories that states use to label and categorise people based upon nation, citizenship, or immigration status. Instead, Anderson investigates states’ imposition of these categories upon individuals and groups, while also understanding the real power and impact that this state labour has on people, especially people who precariously migrate. As Anderson writes:

By methodological de-nationalism I mean an approach that does not assume difference between state differentiated categories and seeks to investigate what this does for theory, politics and practice. It makes visible and investigates the workings of state-imposed categories of migrant and citizen in all their differentiations, their impacts on the experiences of individuals and groups, and the management, governance and accountability of national(ised) territories and international/global relations more generally. (ibid, p. 6)

Even in describing migration regimes, an approach ignoring the privileged status of the nation-state risks reifying this privilege.

In investigating how nation-states are the privileged scale in migration studies, methodological de-nationalisation also works to investigate other scales of migration and migration enforcement, namely how migration regimes have become increasingly restrictive

in similar ways across continents and regions, and how these enforcement regimes have focused on micro-scale policing through surveillance and racialising of migrant bodies. Anderson asks the question: “if everybody moves, when does movement become migration, whose movement counts as migration and why?” and remarks that while wealthy people who move are often ‘expats’ or ‘returning’, “in political debate, a ‘migrant’ is a person whose movement, or whose presence, is considered a problem.” (ibid, p. 4). As I address in the section below, the categorising of certain people’s movements is also a racialised process and relies on colonial logics of racial hierarchies and white supremacy.

By investigating across the spaces and scale of the state, there is the opportunity to include specificity that reveals and challenges or critiques how the Irish state positions asylum seekers against the state and its citizens. This is what it means to do multi-scalar work – to investigate the *politics* of scale alongside investigating the geopolitical and empirical realities at these different scales of analysis. Many people seeking inclusion into Irish society must work within Irish-specific rules and regimes -- in Ireland there are details and peculiarities at the national scale that have material effects on the experience of all people based on their location within Irish territory. What is also clear but perhaps less obvious is how the Irish immigration regime is inextricably connected to other national immigration regimes. One clear example of this has been the Common Travel Agreement (CTA) between Ireland and the UK, which allows for freedom of movement between the two countries. In one exchange on the effect of Brexit in Ireland, the DoJE had expressed fear that the change in migration and asylum laws in the UK could increase the number of applications in Ireland, such that these changes could “literally sink the asylum system putting massive pressures on other State services” (DoJE, 2017, accessed via Foxe, 2018).

Immigration regimes also rely on a global hierarchy of passports (Achieme, 2019), in which people with European passports can often travel freely; people with passports from countries such as the US, Australia and Japan face a ‘softer’ regime and may have no

need to apply for international protection, even if they were to face ‘well-founded fear of serious harm’. People with ‘less-valuable’ passports often face exclusion by state officials. In Ireland, those with passports from countries with visa-free travel agreements, such as the USA, usually may pass uncontested through border control and seek permission to remain later, while those with passports from other countries are often stopped and detained at customs or refused entry altogether, and people with passports from some countries are targeted for these detentions (Pollak, 2018). For example, in July 2020, a Chilean woman arriving in Ireland was refused entry and detained in solitary confinement for more than a week in a state prison (TheJournal.ie, 2020). The categorisation and construction of certain types of migration is a series of political acts, and uncritically using state categorisations of migrants’ risks reifying state logics of borders, migration and control.

In legal studies, scholars exploring and discussing other ways of framing belonging, citizenship and sovereignty are hard-pressed to find laws and legal frameworks that reflect belonging outside of narrow understandings of the nation-state. As Achiume points out, in international and domestic law, “the territorial nation-state is the privileged vehicle for the collective self-determination of peoples: Political community at the nation-state level enjoys the strongest legal and political recognition, and sovereignty at this level is, at its core, about the capacity and right to self-determine collectively on grounds established by citizens or political insiders” (2019, p. 1515). For critical geographers exploring belongings against the grain of the nation-state, understanding the rules and administration of these laws are crucial to understanding the material conditions that migrants face, especially for migrants travelling without privileged passports or travelling under duress.

Achiume and El-Enany both argue that this structure of international law, which emerged in Europe after World War II and became a global force among anti-colonial struggles and independence, is the most recent grasping by colonial and former colonial

countries to retain the wealth of colonialism amassed and collected in metropole territories (Achiume, 2019; El-Enany, 2020). They both use the example of British anti-immigration policies in the 1970s, after a period during which the British government encouraged movement within British colonial and former colonial territories and the metropole. These new measures excluded and rejected formerly colonial subject nations' access to these 'plundered' resources. Before the independence of colonised territories in the 20th century, colonial states encouraged 'economic migrants' from Europe to travel and settle in colonial territories; after the independence of most of these territories, these same colonial states restricted the definitions of membership, including the ability to be "British" (El-Enany, 2020). The transition in the 1970s to the exclusion of imperial subjects racially coded as non-white excluded formerly colonised people from the wealth moved from colonial territories to Britain, and the wealth was claimed as only for 'British citizens', a continued and final act of keeping the spoils of colonialism. These arguments by Achiume and El-Enany position the international law agreements that emerged after World War II and since then as the inter-national agreements between racialised nation-states, privileging the nation-state's sovereign right to define who was included in the community of the nation.

For Achiume (2019), the privileging of the sovereign right of nation-states to exclude non-nationals is at the core of how nation-states achieve their sovereignty and self-determination as entities. The privileging of a nation-state community also involves the creation of the 'political stranger', the person that the nation-state does not have a responsibility to admit or include. From the view of the nation-state, the 'political stranger' is not part of the community of the nation is what Ronit Lentin dubs the 'deportable body' (Lentin and Lentin, 2006; Lentin and Moreo, 2015). Even the most-used international human rights protections for migrants, centrally the Refugee Convention, "holds fixed the nonnational's status as a political stranger, instead making the case for why she is nonetheless worthy of discretionary exemption from the full force of the right to exclude"

(Achiame, 2019, p. 151). For Achiame, this conception of the political stranger is central to contemporary conceptions of migration:

The refugee category exemplifies this political stranger exceptionalism. States that have ratified the 1951 Refugee Convention and its Protocol have dramatically limited the exercise of their right to exclude where refugees are concerned, recognizing legal claims to admission and inclusion for political strangers whose migration is driven by fear of certain forms of persecution. (ibid, p. 1515)

The refugee is availing themselves of a final chance available to them to seek inclusion in the nation-state. These complex processes of migrant enforcement make the categories of ‘asylum seeker’ and ‘refugee’ even more fraught, as these categories include a long story of exclusion that one has faced sometimes before one has even considered making a claim for international protection.

In broad generalities, applying for asylum in European countries shares similar characteristics (Gill and Good, 2019)-- the process is complex; the interpretation of international law often happens at the personal level of the decision-maker; and increasingly the process takes longer and longer, stressing the reception conditions states construct for asylum seekers. And so, it must be the work of migration scholars studying these differences and commonalities to investigate how we can find solidarities across different nations – how we can investigate and experiment with ways that can subvert these borderings by state agents, and tactics and strategies in order to think and write through how to act against these violences of and by the state.

3.3 The refugee regime in Ireland

In the early 1990s, people began to apply for asylum in Ireland in higher numbers; for the first time Ireland began receiving more than five or six asylum claims a year. This was during a time when globally migrants were more likely to avail themselves of refugee

protections and the number of people immigrating to Ireland for reasons other than refugee protection was increasing. However, this time period was by no means the beginning of migration to Ireland but was part of a larger picture of migration since the time of Ireland’s independence in 1922. While public perceptions in Ireland and elsewhere depict Ireland as historically a country of net emigration, there had always been significant immigration to Ireland, notably from Britain. Up until 2011, the largest immigrant group in Ireland were people from the UK, although there has historically been a perception that British people were not immigrants. This assumption has invisibilised much of the immigration to Ireland before the 1990s, and problematised later categorisations of ‘good’ or ‘bad’ migrants to Ireland (Gilmartin, 2015).

Within Ireland, the global conditions of racial border hierarchies described by Achiume are present entangled with historical context and legislation that present some notable differences from other places. In Ireland in the 1990s, asylum seekers and immigrants became a central focus of political debates, as the economic growth of the

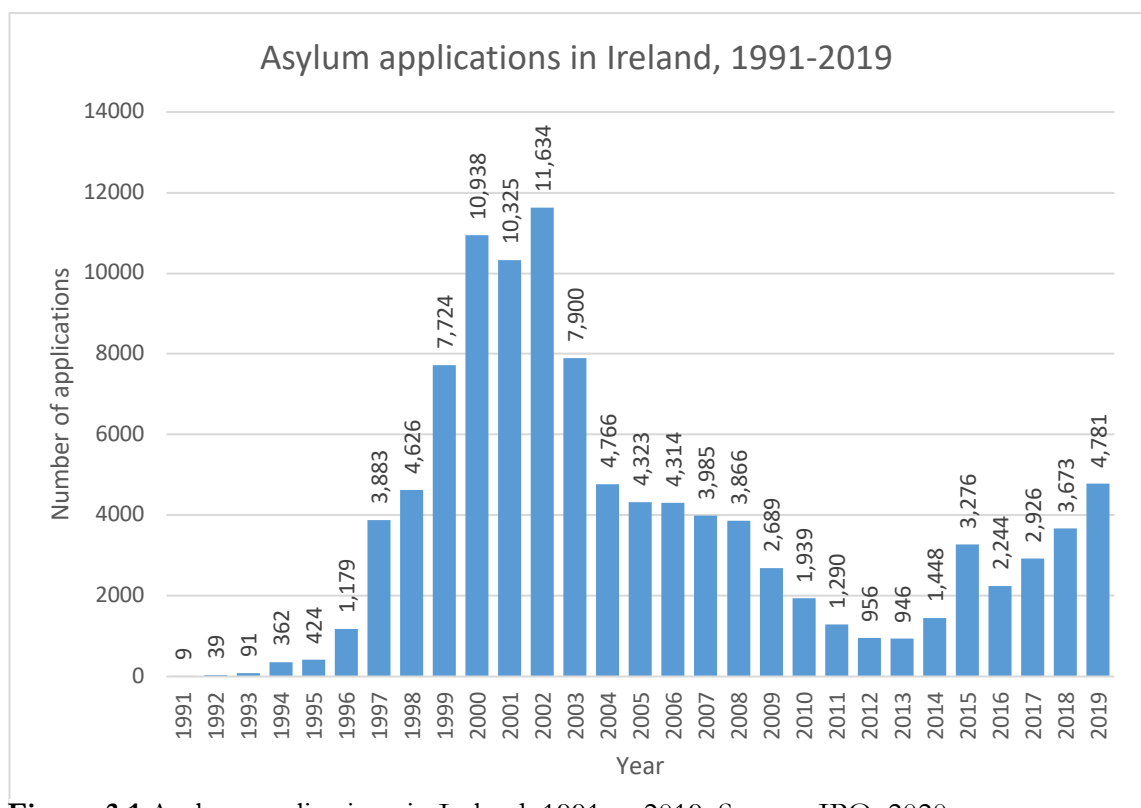


Figure 3.1 Asylum applications in Ireland, 1991 to 2019. Source: IPO, 2020.

'Celtic Tiger' necessitated and attracted labour from outside of Ireland. Lentin and Lentin note that with the arrival of this number of immigrants, small relative to the Irish population, the Irish state and state officials situated the country as both an accepting country, a country in need of migration to sustain economic growth, and also as a country under pressure from immigration, that necessitated its "commitment to restricting immigration and increasing deportations of those not deemed 'useful' to global Ireland" (Lentin and Lentin, 2006, p. 11). Central to understanding how the debates around immigration were framed in Ireland is an understanding of how the Irish state treated race, and the racialisation of migrants in this time. Lentin and Lentin highlight Ireland as a 'textbook case' of a contemporary 'racial state':

Though a former colony, the Irish nation-state has imagined itself as based on a racialised notion of identity and on a desire to demonstrate that the claim to statehood was in part based on the assertion that the Irish nation was not different from other European nations and did therefore differ from subaltern non-European peoples. (Lentin and Lentin, 2006, p. 11)

When immigration to Ireland increased in the 1990s, most notably from countries outside of Europe, the framework of 'Irish-ness' had already been constructed as similar to and comparable to other European national identities - 'English-ness', 'French-ness', etc. - such that the community of the Irish nation-state was ethnically and racially defined. When Ireland faced substantial immigration for the first time, racism was perceived to have been brought to Ireland by migrants, rather than the product of state policies "enacted by white, Christian, settled Ireland" (ibid, p.11). Through this conception of the nationalism, the Irish state used, and continues to use, racism in an attempt to defend 'its own' population from a perceived 'outside threat', exercising this state racism in policies and state practices directed towards the Irish population and placing blame on migrants for this racism.

For example, while Minister for Justice Michael McDowell was making statements in 2003 that Ireland “has been remarkably free from racism” (O’Regan, 2013), he also proposed and campaigned for the 2004 Citizenship Referendum. This referendum amended the Irish constitution to change Irish citizenship from a birth-right for those born in Ireland to explicitly based on descent, and when this referendum passed, citizenship became explicitly linked to descent and ethnicity. Minister McDowell had argued that the referendum was “both rational and necessary” to end what he called a ‘loophole’ in the Irish constitution guaranteeing citizenship to anyone born on the island of Ireland. As White and Gilmartin write:

This ‘loophole’ had facilitated the development of so-called “citizenship tourism”: women coming to Ireland solely for the purposes of giving birth to a child who would then be entitled to Irish citizenship. In this way, particular groups of pregnant women were charged with exploiting Ireland's constitutional guarantees for citizenship; and mobile pregnant women in particular were constructed as a threat to the state. (White and Gilmartin, 2008, p. 39)

In the Citizenship Referendum, migration to Ireland, and seeking to be included in Irish society once in Ireland, was framed by the Irish state as an assault on Irish borders and as people taking advantage of the generosity of the ‘Irish welcome’.

This type of policing of the borders of ‘Irish-ness’ is similar to the policies that have emerged in other European and western countries, in which immigration, and certain types of immigration, is ‘an assault on the state’. As Walia writes:

Migrants, particularly undocumented migrants or asylum seekers arriving irregularly, are punished, locked up, and deported for the very act of migration. In order to justify their incarceration, the state has to allege some kind of criminal or illegal act. Within common discourses, the victim of this criminal act is the state, and the alleged assault is on its borders. The state becomes a tangible entity, with its

own personhood and boundaries that must not be violated. Butler describes the policing of the state and its national subject as a “relentlessly aggressive” and “masculinist” project. (Walia, 2013, p. 54)

The construction of types of immigration as criminal and the construction of the state and its borders as the victim of the crime produces both the state and the migrant as fixed entities, and as figures and entities closely tied to the production of borders and the crossing of defined borders. International refugee law explicitly sets a precedent in the certain and specific circumstances of people seeking asylum of a responsibility and requirement on states to allow the inclusion of migrants. While this power is ostensibly located in international law, in practice it is mediated and enacted by states.

3.3.1 *The 1951 Refugee Convention*

The primary document defining the international refugee regime is the 1951 Refugee Convention. Ireland has been a signatory to the Refugee Convention since its drafting in 1956 and is obligated by the Refugee Convention and the European Charter of Human Rights (ECHR) to assess all claims for asylum. International law clearly positions the nation-state as the arbiter of refugee status except in some unique cases, mostly in large refugee camps, where UNHCR assesses refugee status. In the unique case of Palestinian refugees living in territories surrounding Palestinian territory, UNRWA, the UN Relief and Works Agency for Palestine Refugees in the Near East, assesses claims. 148 countries are signatory to the Refugee Convention or Protocol (UNHCR, 2015).

The Refugee Convention has its own political history. The Convention was approved at a special UN conference in 1951 and provided for the protection of individuals identified as refugees most importantly with the protection of *non-refoulement*, or protection from involuntary deportation to their identified nation of citizenship. Article 1 of the Convention defined a refugee as follows:

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. (UN General Assembly, 1951)

The language of the 1951 Convention initially defined the category of refugee narrowly within the context of the large displacement of people from European countries in the aftermath of World War II. The initial narrow temporal and geographical definition of the refugee eligible for protection further highlights that this protection was not initially meant as a universal right, but rather that the 1951 Convention was designed to solve specific problems in the rebuilding of a Europe with ‘new’ European nation-states created after World War II (Moyn, 2012). More generally, the Refugee Convention was one of multiple new human rights documents at the time, including the Universal Declaration of Human Rights, that used the language of universality but that were designed to solve specific problems emerging because of the new forms of nation-states after World War II, and because of the new geopolitical milieu of the ethno-state as the central container of identity and citizenship.

In the years after 1951, the first UN High Commissioners for Refugees¹⁰ (UNHCR) worked to make the Convention refugee definition a universal definition, to include “any future groups of refugees” (Lewis, 2012, p. 27). The office of the UNHCR worked to provide assistance outside of its direct geographical and temporal limit, and Félix Schnyder,

¹⁰ UNHCR refers both to the office to the individual High Commissioner for Refugees, and the office that the Commissioner runs within the UN structure.

the High Commissioner from 1960 to 1965 explicitly took on the role of providing assistance to refugees outside of Europe. By the mid-1960s, most refugees assisted by the UNHCR were not recognised as refugees under the 1951 Refugee Convention (Lewis, 2012). The office of the UNHCR had been developed to address the ‘new’ refugees in the new model of post-colonial states and ethno-states in Africa and Asia. Under UNHCR Schnyder, the office proposed that the 1951 refugee ‘be liberalised’, and the UN ratified the Refugee Protocol of 1967, which embedded in international law a ‘universality’ of the refugee definition. The Protocol removed the temporal and geographic limitations on the definition of a refugee and cemented the category of ‘refugee’ in international law among signatory states (UN General Assembly, 1967). Countries signatory to this refugee regime are signatories to the Convention and/or the Protocol; generally, those countries signed onto both or only one of the treaties interpret the definition of refugee the same as other signatory states.

3.3.2 *Ireland refugee regime by 1990s*

Ireland acceded to the 1951 Refugee Convention in 1956 and to the 1967 Protocol in 1968. There are few records of people applying for refugee status or international protection in Ireland in the years after this. A small number of refugees from Hungary, Chile and Vietnam were admitted into Ireland as part of organised reception programmes in the 1950s to the 1980s (Mac Éinrí and White, 2008)¹¹. By the 1990s, refugee protections had become an entrenched, if not very visible, part of international law. Before 1996, refugee claims were administrated by the Refugee Agency, a statutory body under the Department of Foreign Affairs established by the government in 1991 (Spring, 1995).

¹¹ Ireland accepted 541 Hungarian refugees in 1956 following the Soviet invasion (O’Brien, 2006, Ward, 2009), 212 refugees from Vietnam in 1979 and fewer numbers of people from Chile and Iran (O’Regan, 1998).

There was no domestic legislation on the administering of refugee status decisions before 1996, and it appears that most applications were successful in the time period 1990-1996. In 1995 then Minister for Justice Nora Owen wrote: “A total of 355 applications for refugee status were received in 1994; one applicant was refused recognition as a refugee; 22 applications were withdrawn and the remainder are being considered in accordance with [the Refugee Convention]” (Owens, 1995). Minister Owens also notes that “the number of applications in 1994 shows a significant increase over the previous years and it is no secret that the increase is due primarily to a large number of applications by Cuban nationals, of which there are 239” (ibid).

In Ireland, international human rights law had its strongest reinforcement in law with EU agreements that placed human rights laws at the centre of its founding documents. Both the Treaty on the Functioning of the European Union (TFEU) and the EU Charter of Fundamental Rights explicitly reference Refugee Convention and set in European law the principles of non-refoulement. However, Ireland before 1996 did not have any domestic legislation recognising the Refugee Convention or on compliance with the treaties.

3.3.3 *Regulating the refugee process – The Refugee Act 1996*

International refugee law was first codified in Irish domestic legislation with the passage of the Refugee Act 1996 which gave statutory effect to the Irish state’s obligations under the Refugee Convention and Protocol. The Act put responsibility to carry out the legislation in to-be-established agencies in the DoJE, agencies that were to administrate the new refugee statutes. The Refugee Act (1996) also set out the process that these agencies would engage in to determine and decide applications for international protection. However, these agencies were not established by the government after the initial legislation was passed. From 1997 to 1999, the Refugee Act 1996 remained mostly unimplemented. In

1996, shortly after the Act passed, four staff made up the asylum division of the DoJE (Quinn, 2009), and as the number of applications for international protection increased, “long queues developed outside asylum processing centres, calls were made for emergency accommodation for applicants and backlogs in the processing of asylum applications drew significant media attention” (Quinn 2009, p.22). The Act had to be significantly revised to accommodate the changes in the responsibilities of the agencies and their offices, in the Immigration Act 1999, the Illegal Immigrants (Trafficking) Act 2000 and the Immigration Act 2003.

The Office of the Refugee Applications Commissioner (ORAC) was established in 2000. The ORAC had the responsibility to process asylum claims and issue first-instance decisions granting or denying refugee and subsidiary protections. The Refugee Appeals Tribunal (RAT) had the responsibility of assessing appeals to negative decisions for international protection. The Reception and Integration Agency (RIA) was also established in 2000 to administer reception for asylum seekers, including housing and basic needs, and in 2000 the government implemented the system of direct provision of these reception needs. This system, called the Direct Provision System, still in existence today, excludes asylum seekers from entitlement to social welfare and provides accommodation, often in privately owned and privately run centres in remote parts of the country (see Thornton's project “Exploring Direct Provision” for an extensive record and description of conditions in Direct Provision). These three agencies administrated the asylum process in Ireland until 2016, when the Refugee Act 1996 was replaced by the International Protection Act 2015.

Within the Refugee Act there are two general categories of recognised refugee, as the government understands it. Most refugees enter Ireland and seek international protection and refugee status in Ireland or at the borders, but Ireland has also since 1998 run a resettlement programme with UNHCR. In refugee resettlement programmes, individuals or families who the UNHCR have already deemed a refugee and are living in

refugee camps with a UNHCR presence are resettled in the ‘receiving’ country. Between 2000 and 2019 over 3,000 refugees were resettled to Ireland (UNHCR, n.d.).

In 2003, the Irish political parties of Fianna Fáil and the Progressive Democrats in government, took on immigration and border enforcement as a top priority. In addition to the Citizenship Referendum in 2004, mentioned above, this agenda also included what became the 2003 Immigration Act. This legislation instituted a large number of changes to the refugee regime and generally in its amendments to the Refugee Act 1996 tightened and regulated the restrictions on applying for asylum, and the assessments that asylum decision-makers in ORAC and the RAT make. The details of this legislation are further addressed in Chapter 5, including the specific requirements on asylum decision-makers to assess credibility of asylum seekers and asylum seekers’ claims.

3.3.4 *EU Qualification Directives and the Irish exemption*

The Irish refugee asylum process came about through legislation alongside EU efforts to unify and regulate states’ asylum systems in the Common European Asylum System (CEAS). This includes the Qualification Directive, the Asylum Procedures Directive and the Dublin II Regulation. The CEAS is an EU effort, a legislative framework, beginning in 1999, to “harmonise common minimum standards for asylum” (European Commission, 2016) across the member states of the EU. When the Treaty for the Functioning of the European Union (TFEU) came into effect in 2009, the EU developed binding legislation to implement the CEAS into states’ asylum policy (Arnold et al., 2018). This system, which relied for its foundation upon foundational EU human rights documents including the EU Charter of Fundamental Rights, is harmonised throughout the EU through a series of five legal instruments from the European Parliament and

CEAS legislation type	EU Directive or Regulation	Ireland Opt In/Out (Year)
<i>Asylum Procedure</i>	The 2005 Asylum Procedures Directive (2005/85/EC)	In (2011)
	The 2013 Asylum Procedures Directive (Recast) (2013/32/EU)	Out
<i>Reception Conditions</i>	The 2003 Reception Conditions Directive (2003/9/EC)	In (2018)
	The 2013 Reception Conditions Directive (Recast) (2013/33/EU)	In (2018)
<i>Qualification</i>	The 2004 Qualification Directive (2004/83/EC)	Partial*
	The 2011 Qualification Directive (Recast) (2011/95/EU)	Out
<i>Dublin Regulation</i>	The 1990 Dublin Convention (in effect 1997)	In (1997)
	The 2003 Dublin Regulation - Dublin II (Regulation 343/2003)	In (2003)
	The 2013 Dublin III Regulation (604/2013)	In (2013)
<i>Eurodac Regulation</i>	The 2000 Eurodac Regulation (2725/2000)	In (2000)
	The 2013 Eurodac (Recast) Regulation (603/2013)	In (2013)

* Initial partial opt-in in 2006 with additional provisions in 2011, 2013 and 2015.

Table 3.1 The Common European Asylum System (CEAS) Directives and Regulations by category, and the status of Ireland's opt-in or opt-out. Sources: (AIDA, 2018; European Migration Network, 2015).

European Council, including three directives on asylum procedures, qualifications, and reception conditions and two instruments of the Dublin Regulation (the recast Dublin Regulation and the Dublin II Regulation) for determining which member state is responsible for processing an asylum application (Arnold et al., 2018). These five legal instruments include (1) the Asylum Procedures Directive; (2) the Reception Conditions Directive; (3) the Qualification Directive, which clarifies the grounds for granting international protection; (4) the Dublin Regulations, which generally clarify which EU state

is responsible to assess asylum claims; and (5) the Eurodac Regulations, which qualifies the access of law enforcement to an EU database of asylum seekers (European Commission, 2016).

However, some states have an exemption from mandatory adoptions of these Directives. Ireland, along with Denmark and formerly the United Kingdom, have not been mandated to adopt these Directives as part of their opt-out negotiated on joining the EU. While overall, Ireland has adopted some EU Directives some years after their first adoption, this right to opt-in has meant there has been some divergence in asylum policy between Ireland and other European countries that do not have the right to opt-in and are bound by EU CEAS Regulations and Directives (See table 3.1 for the Directives and Regulations for the current EU Directives and Regulations for each category, and Ireland's opt-in status).

One additional role of the EU in asylum and international protection in Ireland is an expansion to the definition of conditions for eligibility for international protection, generally called Subsidiary protection, that was set out in the original Qualification Directive (2004/83/EC). Subsidiary protection expands the right to international protection to also include someone who does not qualify as a refugee in according to the Refugee Convention or Protocol definitions and "would face a real risk would face a real risk of suffering serious harm if s/he returned to the country of origin" (2004/83/EC). Serious harm is defined as "(a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reasons of indiscriminate violence in situations of international or internal armed conflict" (ibid.). People eligible for subsidiary protection have access to the same rights and protections as a refugee, including non-refoulement.

3.3.5 *The International Protection Act 2015*

In December 2015 the International Protection Act was passed into law in Ireland in a last-minute ‘guillotine’ session of the Oireachtas before the end of the legislative session for the year. The legislation brought in a wide range of changes to the legislation on the assessment and processing of asylum claims and the treatment of asylum seekers. The main change was the dissolution of the ‘bifurcated’ system under the Refugee Act 1996 (amended) in which applications for refugee status were considered separate from applications for subsidiary protection, and the introduction of a ‘single procedure’, in which applications for refugee status (under the Refugee Convention) and for subsidiary protection (under the Qualification Directive of the Common European Asylum System) are considered together, under one application (Irish Refugee Council, 2015a). The new legislation also made more technical changes that have had a varied effect on the asylum determination process, and on how people applying for asylum experience this process.

3.3.6 *The current application process*

In this next section I outline the process for applying for international protection, and the process, in legislation, by which the DoJE and the Irish state processes application for international protection. There are some differences in the asylum process set out in the Refugee Act 1996 and as set out in the International Protection Act 2015. This section generally describes the current process, and highlights some of the major changes and differences to the process under the Refugee Act 1996 (See figure 3.1).

Applications for international protection can be made anywhere in the state. While the IPO no longer reports the location where people make their application, in 2016 the ORAC reported that 88 percent of applications were made at their offices, 9 percent in airports and 3 percent in other locations (ORAC, 2016). According to the International Protection Act (2015) once someone has made an application for international protection,

a preliminary interview is conducted by an officer of the Minister or immigration official to ascertain the reasons for seeking protection and basic information about the person. The person applying for protection is then fingerprinted by an IPO officer and their fingerprints are checked against the Eurodac fingerprint database. If their fingerprints are detected in the system, the IPO attempts to determine if another European country has the responsibility to process the applicant's claim as part of the Dublin Regulation. After this step, there is a second, substantive 'Personal Interview' conducted. Personal interviews are conducted by an international protection officer at the IPO. This is usually a longer process than the first interview, and the officer questions the applicant about all parts of their asylum application.

In the case of a normal procedure, the applicant declares if they are seeking refugee status, subsidiary protection under EU law, or both, and these claims are considered simultaneously by an IPO officer. The IPO officer also simultaneously considers if an applicant may not be eligible for international protection but may be granted 'permission to remain' on a discretionary basis by the Minister for Justice and Equality. In the asylum determination process under the Refugee Act 1996 (amended), applications for subsidiary protection and leave to remain were each considered separately, often after a negative

Overview of the application process under the International Protection Act 2015

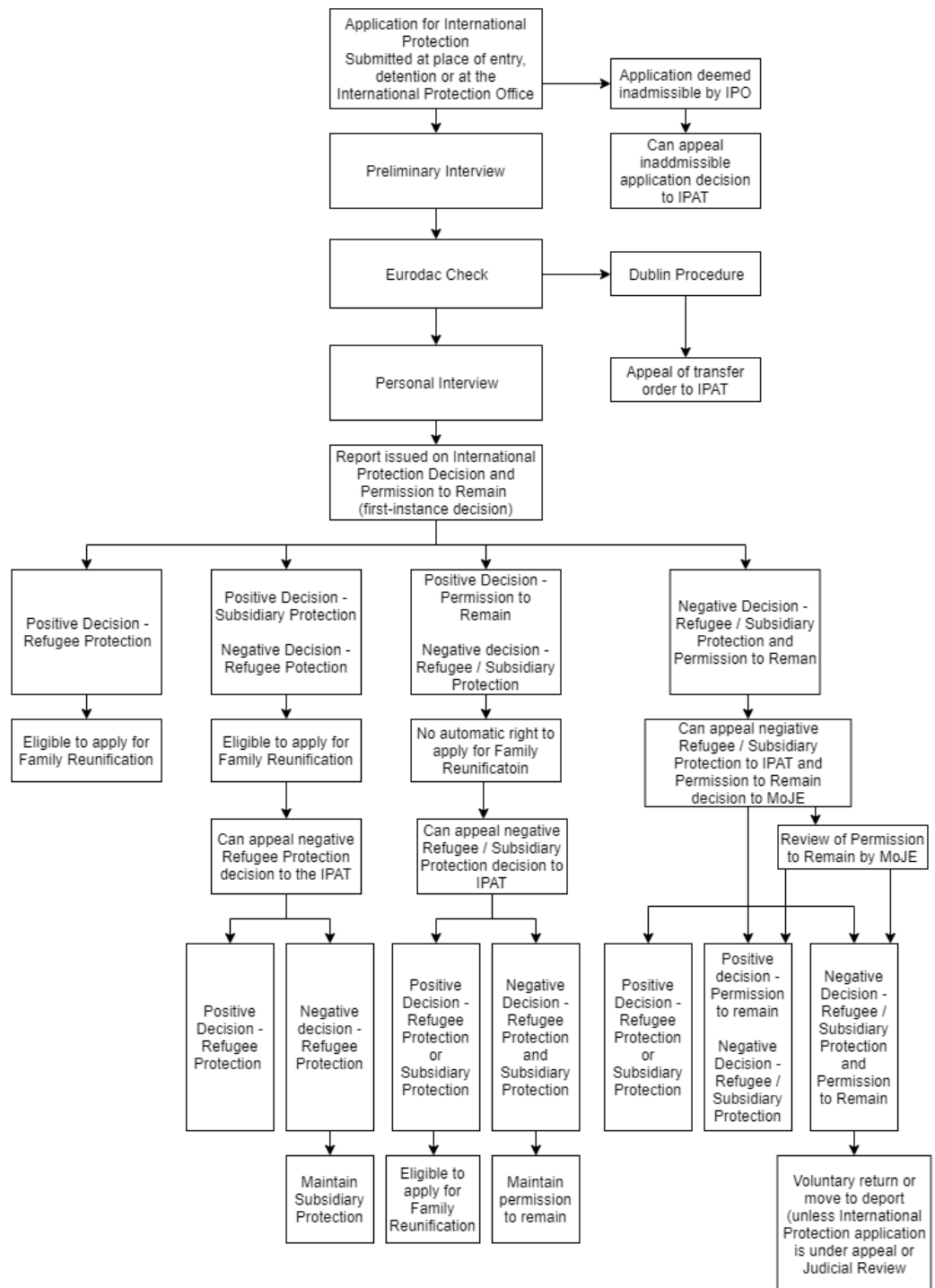


Figure 3.2 Overview of application process under International Protection Act 2015, adapted from Arnold, 2018.

decision for refugee status was issued. The IPO observed that assessing applications for leave to remain simultaneously with international protection streamlined the process (Arnold et al., 2018). As mentioned above, this was one of the major changes introduced in the IPA.

The International Protection Office then issues a report, often referred to as the first-instance decision, recommending that the Minister for Justice and Equality grant or deny refugee status, subsidiary protection, and/or permission to remain. An asylum seeker may seek to appeal a negative decision of this first-instance decision to the International Protection Appeals Tribunal (IPAT). The IPAT is a quasi-judicial body that operates somewhat independently from the DoJE ((IPAT, n.d.)). These appeals are processed by the IPAT, and a Tribunal member is allocated to an appeal. The Tribunal member in many cases, although not all, is required to hold an oral hearing to hear arguments from the applicant arguing against the first-instance decision, and from the IPO, if they choose to argue the merits of their decision. The Tribunal member then issues a decision recommending granting or denying the appeal, which is processed by the DoJE. The appeals process did not change dramatically with the introduction of the IPA, although the IPA did establish the IPAT to replace the responsibilities of the RAT (see Figure 3.2 for an organisational chart of the Irish asylum agencies). The chairperson and many of the Tribunal members at the RAT before it was disestablished took on similar roles in the newly formed IPAT. Tribunal decisions may be appealed for Judicial Review in the Irish High Court, and these reviews may be appealed up to the Irish Supreme Court and the European Union Court of Justice. In the asylum law, judicial review is limited in scope, and judges may only issue a decision on technical grounds or in the case of errors in the

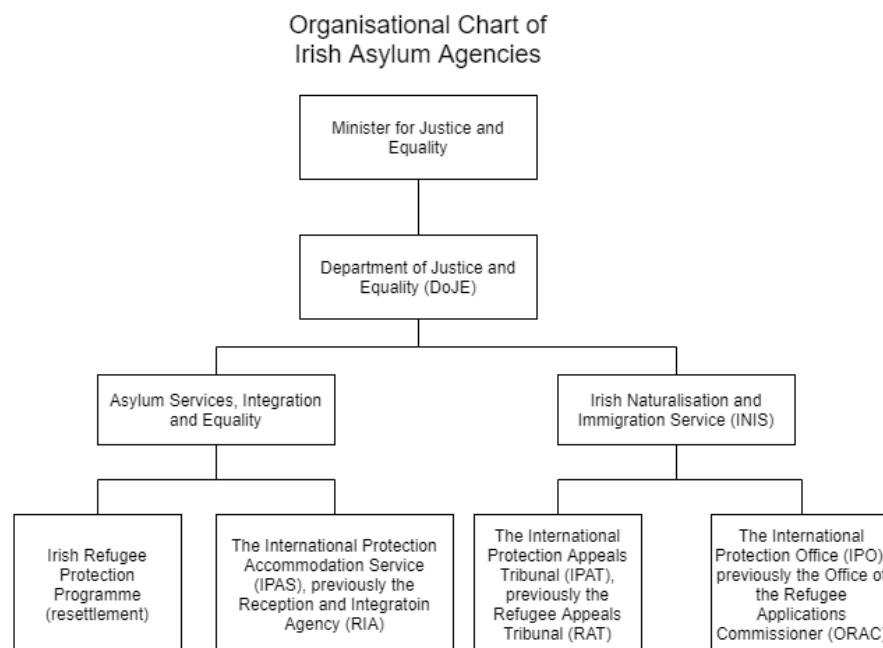


Table 3.3 Organisational chart of Irish asylum agencies (Source: DoJE 2019).

Tribunal judgements. However, judicial review judgements critical of the Irish state’s asylum determination practices have often been the impetus for changes in the asylum process.

While the procedural steps in the asylum process are laid out in legislation, much of the work done by the asylum agencies in processing applications for international protection and issuing decisions is hidden or obscured from view. Since 2006, there has been an active conversation in public media, in the courts and among NGO, advocacy and community solidarity and activist groups about the opacity of the Tribunal, the asylum determination process and of the practices of Tribunal members.

In 2006, three asylum seekers and their legal counsel sought judicial review because the RAT and the ORAC refused their requests for access to previous relevant decisions issued by the Tribunal and to guidelines issued by the Tribunal. The asylum seekers and their solicitors pointed out that “the presenting officers who act as advocates on the appeals on behalf of the state are located in offices within the tribunal building and are granted access through what is known as the Tribunal’s “*master file*”” (Irish Supreme Court,

2006, p. 4) The Supreme Court judged that “the refusal of [the Tribunal] to make available to the applicant relevant tribunal decisions as requested by the applicant is an unlawful exercise of the discretion afforded it” (ibid p.17) . In the decision Mr Justice Geoghegan writes that “such a secret system is manifestly unfair” (ibid, p. 12) and raised issues of “equality of arms”, since the presenting officer had access to facts and relevant previous decisions that asylum seekers and their solicitors did not have access to. Justice Geoghegan also stated that “it is not that a member of a tribunal is actually bound by a previous decision, but consistency of decisions based on the same objective facts may, in appropriate circumstances, be a significant element in ensuring that a decision is objectively fair rather than arbitrary” (ibid, p. 11). The decision made it clear that while the Tribunal was not necessarily obligated to operate in public, the Tribunal decision making process cannot be a secret system, and information furnished to one side could not be refused to the other.

The Supreme Court issued in this case, usually referred to as the Atanasov case, a judgement in July of 2006. The RAT in their 2006 annual report declared that they “commenced providing a system of access to a data base [sic] of previous decisions of the Tribunal for the purposes of bona fide legal research in connection with specific Appeals ... [that] complies with both the letter and the spirit of the Supreme Court Decision in the Atanasov case” (RAT, 2006, p. 3). This system was initially called ROMDA - Refugee Office Members’ Decisions Archive, and now is the Appeals Tribunal Archive (ATA) that archive that is the focus of this project. And as I set out in Chapter 4, in this project I analyse how Tribunal members assessed asylum claims, and how the policies of asylum and refugee law are enacted by the statecraft of state agents in the DoJE and other Irish agencies and departments.

3.4 Elements of assessing asylum claims

In the legal study of refugee protections internationally, each of the clauses within the definition of a refugee have been deeply explored with extensive case law on each aspect. Asylum decision-makers, including IPO officers, IPAT Tribunal members and judges hearing judicial reviews, are expected to be familiar with the case law and legal understanding of the meaning and proper application of refugee and asylum law. This section provides a brief overview of the interpretations of eligibility for refugee protection and interpretations of the refugee definition.

The ‘backbone’ of the refugee definition is that of *well-founded fear*. A well-founded fear is generally accepted to mean that there must be an objective as well as subjective basis for the fear. This fear is based on “the assessment of the predicament that the applicant would have to face if returned to the country of origin” (UNHCR, 2012). As discussed further in Chapter 5, the situations that precipitated an individual to come to a country and seek asylum often makes proving these objective grounds much more difficult. Many scholars (see Cameron, 2010) argue that there must be an extensive benefit of the doubt given to asylum seekers based on the difficulty of collecting and providing evidence that will be accepted by the agency, tribunal or court assessing their claim. The well-founded fear definition also individualises claims of refugee status. By placing the requirement of refugee on the individual well-founded fear, the definition of a refugee becomes strongly placed within the individual.

Persecution is the second necessary qualification and is further qualified that the persecution must be on the basis of certain grounds: race, religion, nationality, members of a particular social group or political opinion. Each of these bases have extensive case law in multiple countries, and courts and decision-makers often draw upon courts, opinions and scholars in other countries (see Chapter 5 section 5 for an example in Ireland). It is

important to note that while states have the de facto burden of assessing refugee claims, this is not set out in the Convention. Lauterpacht and Bethlehem write:

Article 1A(2) of the 1951 Convention does not define a ‘refugee’ as being a person who has been formally recognized as having a well-founded fear of persecution, etc. It simply provides that the term shall apply to any person who ‘owing to well-founded fear of being persecuted. ... In other words, for the purposes of the 1951 Convention and the 1967 Protocol, a person who satisfies the conditions of Article 1A(2) is a refugee regardless of whether he or she has been formally recognized as such pursuant to a municipal law process. (Lauterpacht and Bethlehem, 2003, p. 116)

Refugee status, as set out in the Refugee Convention and Protocol, is descriptive of a condition – the condition of well-founded fear. Decisions by state agents in applications for recognition status do not *make* someone a refugee, but rather recognise that the person was already a refugee. However, because only states can grant the protections and rights afforded to refugees, individuals must avail of the refugee protections *from* the state, centrally placing the state in the asylum process.

In these determinations, the evidence of claims often rests heavily on the decision-maker’s assessment of the credibility of evidence presented, and assessing credibility in applications is a central topic of case law and legal opinion in asylum determination. The UNHCR Handbook on Determining Refugee Status states:

as regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant’s country of origin. The applicant’s statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant’s country of origin –while not a primary

objective – is an important element in assessing the applicant’s credibility. in general, the applicant’s fear should be considered well-founded if he can establish, to a reasonable degree, that his continued stay in his country of origin has become intolerable to him for the reasons stated in the definition, or would for the same reasons be intolerable if he returned there. (UNHCR, 2019, p. 12)

Assessing and deciding the credibility of the evidence that people present in seeking asylum is central in how decision-makers make decisions in determining refugee status. I describe further the issues of credibility in asylum claims in Chapter 5 and show the political nature in the decisions that assessors make in evaluating credibility.

3.5 Conclusion

The label of asylum seeker is a fraught category. Some individuals seek asylum at the border on their entry to Ireland. and other Individuals and groups become defined as asylum seekers often as a last resort. Appeals to human rights and protections in international human rights law are appeals for the last protections available against deportation. Claims for protection against deportation and state removal on the grounds of being a refugee are very often the last protection available: protections availed of after other attempts to be part of the community of the nation-state have failed.

In this chapter I have presented the legal regimes of applying for international protection in Ireland, and I have also argued that while there are some aspects that make applying for asylum in Ireland unique, it is important to critically assess the work that the state is doing to produce the *bordering* process of the asylum determination process. To understand the reality of the state as produced, it is important to study the work state agents and agencies do to produce the asylum and refugee regime; however, it is also important to recognize other scales, including local and individual circumstances, agency

culture, and continental and international regimes and forces that are always also central in the power-geometries of the asylum regime, and the state constructions of refuge in Ireland.

4 Chapter 4: Methodology

4.1 Introduction

The previous chapter set out the context of the international refugee regime and the position of refugee, asylum and international protection in international, European and Irish law and the asylum determination process in Ireland and briefly introduced the Appeals Tribunal Archive (ATA), a digital online archive of international protection appeals decisions issued 2001 to the present, produced and maintained by the IPAT (and formerly the RAT). The chapter also set out the different ways to critically assess the role of the state in assessing applications for asylum and international protection and the scale-work that state agents and agencies do in producing the state as a victim of migration and restricted by international obligations. In this chapter, I set out a way that we as researchers can ‘see’ this work of statecraft and bordering by state agents, and reveal what is obscured, hidden, secret and invisible in this process. I set out the methodology of this dissertation project and detail how I approached and investigated the ATA for evidence of statecraft and state practice in the asylum determination process.

By finding a way to study the asylum process and study the ATA as a place of knowledge production within this process, this project aims to investigate practices of statecraft, to examine how these archives are places where state agents and agencies produce knowledge and meaning. This project also broadly engages with the ATA as a place where state happens.

The methodology employed in this project is designed with the interest of encountering the archive where it is. This methodology includes the iterative application of skills that are pulled from several facets of social research, including ethnographic sustained engagement with colonial archives of state; web scraping of websites and digital archives and qualitative social research including qualitative coding and knowledge exchange forums

with stakeholders and organised groups including communities affected by state policy. This framework calls for time and resources in the face of fast-moving changes that work to undermine researchers' understanding and power to share this understanding. State agencies and state bureaucracies make fast-moving changes in how they perform the bordering acts. These frequent changes make the process more disorienting, as the rules change and information is often hard to access for asylum seekers. A radical framework that recognizes archives as sites of state bordering brings a temporal power to the research – the long stretch of the archive into the past allows for, in this project, an extended reflection of the practices of statecraft over time.

This project works to radically re-envision the problem of oversimplification of state processes of bordering, offering a praxis of productive exploration and re-visioning the state archive. The methodology employed in this project is designed with the interest of encountering the ATA where it is. The architecture of the ATA with its own history and story is a profound and important part of this framework. In section 2.2 I outlined how, for Stoler, tracing the practices of statecraft and the 'doing of the state' is also an examination of the sentiments of states, and how archives are sites of state production of knowledge. The archive is also a place of the production of state sentiment: anxieties, notions and desires of state agents. Stoler took an ethnographic approach, investigating the practices of the Dutch colonial state in the Java colonies in the 19th century through the colonial state archives. For Stoler, this involved sustained engagement with the archive, spending time among the paper archive, mainly stored in the Hague in the Netherlands. This project, in following Stoler's ethnographic approach to the archive, also involves a sustained engagement with the ATA, and this engagement was shaped by the form and context of the archive, including its nature as an online, digital archive produced by the DoJE. This approach is designed to understand the statecraft of bordering in Ireland in the 21st century and works connecting these state practices to the colonial practices and the

way that 19th century colonial states, as they enforced and produced their own borders. In this way, the project studies ‘along the grain’ of the digital neo-colonial state, attempting to understand the knowledge production that the state agencies and individuals engage in.

In the introductory chapter, I set out the three primary goals of this project: to contribute to geographical theory on asylum determination as border enforcement; to create useful outputs for those affected by these policies; and to theorise on the roles of state archives in the state practices of bordering. The methodology used in this project was set out to accomplish these goals, including the use of ethnographic methods.

Ethnographies should be “sensitive to the political relationships and ethical responsibilities associated with framing, generating, co-creating and representing knowledges” (Till, 2009, p. 626). The methods used to carry out this ethnographic research of the ATA were designed to be dynamic in order to adapt to the ways that the archive could be studied. Taking this approach, I designed what I call the curated research stream, in which methods were carefully chosen and informed along the way by what I was finding in the ATA, by my own experience engaging with the form and content of the ATA, and by inviting participation and consultation with advocacy groups and groups affected by Irish asylum determination practices. This approach worked to accomplish the goals of the project as set out, and also to create room for the project to change based upon what I was finding in the project. Like a stream, upon hitting an obstacle in this research I could try to work through the obstacle or find a different way to progress and to work towards the research goals. These choices were iterative and I tried to be especially attentive to take care in the archive, a place of violence, and a place where voices and testimony are, as a practice, transformed and manipulated by Tribunal members. The methods I used in this research stream can be described in three major categories: (1) scraping the archive; (2) reading the archive; (3) participation and the knowledge exchange forums. The methods and work in each of these

contributed to the work in other categories and informed the choices and findings of each other.

In section 2.2 I tell the story of the archive and describe how I approached the archive as a focus of research. In section 2.3 I describe my processes of engaging with the archive as an ethnographer and engaging with the archive in the context of the international refugee regime. In this section I describe the process of using archival ethnographic methods to study the state. I also discuss the ethics of this project and the role of my position in doing this research and the importance of asking and answering the question 'who is studying the state?'. This section goes on to describe how this project came about and the process of engaging with community groups, involved stakeholders and asylum seeker groups as part of this project. There has always been a community interested in the potential of the ATA. The intent of this project has always been that the investigation of the ATA would provide theoretical contributions to studying bordering as acts of statecraft and would also work to provide material resources for those most experiencing the effects and the actions of bordering by the state.

In section 2.4 I describe in detail each of the three categories of the curated research stream. In this section I describe the process of using web scraping to interpret and examine the ATA; the process of engaging with the archive by reading decisions; and the role of the knowledge exchange forum I carried out in this project. The knowledge exchange forum shared preliminary results of the project in November 2018 with members of community and solidarity groups affected by and supporting those affected by the Irish policies of asylum determination and border enforcement. In section 2.5, I conclude this chapter with reflections on how communities may be interested in this potential of the archive as a space for radical thought, and on the opportunities in this project for repurposing the archive from a relic and artefact of the violence of state policy to something revealing the evidence and the absence of evidence of statecraft. There may be a

way to radically repurpose the archive, I propose, to create a framework for this work and for other work that can empower vulnerable people.

4.2 The story of the Appeals Tribunal Archive

The ATA was created in 2006 to comply with the Atanasov case, as set out in section 3.3.6. The archive was made available to legal representatives on the 31st of October 2006 and provided tools for solicitors to research previous decisions by the RAT. There were strict terms and conditions for this use such that research only be carried out for “bona fide legal research”; would not be published to the public; and would not reveal the identities of anybody protected under privacy laws (RAT, 2006).

This archive of decisions remained inaccessible to all but practitioners advocating cases until 2014. The opening of the archive followed a decision by High Court Judge Maureen Harding in 2014 that directly criticised a Tribunal Member in a Judicial Review case. Harding writes that “the only conclusion which the Court could draw for the Tribunal’s decision not to recommend that the applicant should be declared a refugee is that the Tribunal Member simply did not like the applicant” (Irish High Court, 2014, p. 4), and demanded in the decision that the RAT do more to create transparency and accountability within the Tribunal. The Chairperson of the Refugee Appeals Tribunal then opened the archive to public researchers. While the archive of decisions does not allow a full vision to see through the secrecy in the Department of Justice and Equality, it does provide an opening for researchers to further investigate the practices of the state agents and cultures of the bureaucratic agencies carrying out the asylum determination process in Ireland.



Figure 4.1 The IPAT website, protectionappeals.ie. Screenshot by author, 2020

I came to the archive to explore it as someone investigating the archive as a place of bordering and as a place of productive acts of statecraft. The first step to gain access to the ATA is to navigate to the website of the IPAT, where there is a link to the archive. Approaching the Appeals Tribunal Archive from the website involves a long navigation through explanatory text, as the IPAT website and the ATA web domain have multiple pages explaining the ATA. The IPAT website was created in 2016 in preparation for the IPAT to replace the Refugee Appeals Tribunal on 31 December 2016 in accordance with the International Protection Act (2015).

The IPAT website is a basic, static website with a white background and a grey margin. The IPAT logo appears in the header of the page, in the top-left -- a gold harp set in a green oval, with the Irish name of the Tribunal “An Binse um Achomhairc I dtaobh Cosaint Idirnáisiúnta” in gold letters and below this in green letters the English name, “The International Protection Appeals Tribunal”. Above this logo, much smaller, is the Department of Justice and Equality logo, a golden harp next to the department name in Irish in bold green and in English in non-bold green. The website states that the Tribunal is

a “statutorily independent body and exercises a quasi-judicial function under the international Protection Act 2015” (IPAT, n.d.).

The website has a menu bar of the different pages on the website on a blue background on the left-hand side, and on the right-hand side there is a search bar and contact details for the Tribunal, including the address of the Tribunal in Dublin, the email address, telephone, the Lo-Call 1890 number (which can be called anywhere in the country at local rates) and the Tribunal’s fax number. The middle of the page contains updates and latest news from the Tribunal. The website appears to be meant as a port-of-call for all those involved with the Tribunal and includes information on how to submit appeals to the Tribunal, updates on the operations of the Tribunal, and also includes links to the legislation and other responsibilities of the Tribunal, such as responding to Freedom of Information requests and providing reporting on the operating of the Tribunal.

One of the menu items on the website is a link for the Tribunal Decisions Archive. Following this link leads to a ‘welcome’ page for the International Protection Appeals Tribunal Decisions Archive¹², a page with a green colour scheme of headings and without the menu to continue navigation of the Tribunal website. The welcome page provides information about the archive, describing how the archive contains “decisions (granted and refused) issued by the Tribunal from 2006 to date. It also contains all set aside (granted) decisions for 2000 to 2005” (RAT, n.d.).

The welcome page also describes the change in status of the archive in March 2014, when it was allowed that any person could access the archive, and that “due to the structure of the Archive a username and password is required by all users. To become a

¹² The Appeals Tribunal Archive is not consistently named in government documents and webpages, and is also referred to in government documents as the Refugee Appeals Tribunal Decisions Archive, the Tribunal Decisions Archive and the Refugee Appeals Tribunal Database of Decisions (ROMDA). These terms all refer to the same archive and the same database. For consistency, in this project the archive is referred to generally as the Appeals Tribunal Archive (ATA).

Registered User please contact the International Protection Appeals Tribunal [sic]” (ibid). Interestingly, there are multiple typos on this page that appear to be from the transferring of this page from the RAT webpage and are present when the name of the new Tribunal is mentioned. The welcome page also includes a description of how legal representatives for asylum seekers can use the archive to submit previous decisions to the Tribunal “in support of their clients’ appeal applications” (ibid). Below this description is the contact information to request a username and password, and a hyperlink to continue to the archive.

Following this link leads to the log-in page for the archive. The archive is still hosted on the Refugee Appeals Tribunal website at <https://decisions.refappeal.ie>. Refappeal.ie is the now defunct web address of the Refugee Appeals Tribunal, and now redirects to <https://protectionappeals.ie>. The log-in page has the RAT logo in place of the IPAT logo, and on the right side of the banner is a blurred picture of people moving across a bridge. The log-in page allows for logging into the archive database and requires entering username and password and ticking a box to agree to terms and conditions, with a link to the terms and conditions below. The terms and conditions document remains unchanged since before 2014 and includes a confidentiality agreement and an agreement that the access to previous decisions is “being sought solely for bona fide legal research in respect of appeal applications made to the Tribunal” (ibid). These rules do not necessarily still apply now that the archive is open and accessible to any person.

The decisions are accessed through this login portal, and once login credentials are obtained by contacting archive@protectionappeals.ie and becoming a registered user, the user can access the database of the archive. It’s important to note here that after logging in, the user is personally identifiable by their login details, and the archive states that your actions on the archive database can be tracked. Research in the archive begins by encountering a ‘research’ page, where decisions you have recently accessed decisions are

displayed along with a section where individuals representing appellants can submit individual decisions in argument for their case. Clicking on “New Research” leads to a new page and clicking again on ‘Search Archive’ leads to the search tools provided in the archive.

4.2.1 *Searching the ATA*

Without knowing the unique reference number assigned to a Tribunal decision, this search page is the only way of accessing decisions in the ATA. This page provides seven different qualifications by which to search the decisions. Five of these search qualifications are based on the metadata for each decision, and two search qualifications are search boxes for common terms and text in written decision documents. Metadata generally refers to data that provides information about other data. Each decision is a long document in a PDF format in the ATA; however, the database includes some descriptive categories.

The five search qualifications— which I refer to together as the metadata of each decision – are as follows:

1. Country: This dropdown menu references the country of origin identified for the appellant in the decision. This dropdown menu provides 148 different options to select, and searches for the country as indicated in the decision. In some cases, country names are written in different or ambiguous formats. For example, the options include a selection for “Congo”; “Congo, the Democratic Republic of The”; “Congo, the Republic of The”; and “DR Congo”. There are also multiple entries in the case of contested labels. For example, the options include “Palestine” and “Palestine (Egypt)”. There are also some typos that make for additional labels, such as options for “Equatorial Guinea” and for “Equalorial Guinea [sic]” and separate options for “Guinea-Bissau” and “Guinea Bissau”.

2. Year: This dropdown menu references the year that a decision was issued by the Tribunal. The menu provides options for years inclusive of 2001 to 2020.
3. Appeal Type: This dropdown menu references the type of appeal being made to the Appeals Tribunal. The menu provides for nineteen options of type of appeal. The Appeals Tribunal makes distinctions in these types of appeal between appeals that the classify under certain conditions. For example, the appeal types include appeals of decisions to deport someone to another EU country as part of the Dublin agreements, and the appeal type is listed as pertaining to Dublin II or Dublin III regulations (see Table 4.1). There are also classifications of substantive appeals, accelerated appeals, inadmissible appeals, and appeals pertaining to International Protection or specifically to Subsidiary Protection.
4. Decision/Outcome: This dropdown menu references the outcome of the decision by the Tribunal member decision-maker, either affirming the initial decision and refusing the appeal or setting aside the initial decision and granting the appeal.
5. Reference: This is a search box which can be used to search for specific decisions based on their reference number. The DOJE assigns a number to each application for international protection, which is referenced in each decision on an application, including on appeals.

The two search qualifications for common terms and text are as follows:

1. Common Terms: This is a dropdown menu with a range of options for ‘common terms’ in decisions. There are 161 options in this menu for a variety of terms, including, for example: “Citizenship”; “Committed a crime”; “Language analysis”; “Riots”; “Torture”.
2. Free Text: This is a text box that allows for searches of specific text.

Types of Appeal
Accelerated
Accelerated IP Appeal
DC
Dublin 111
Dublin II Reg
Dublin III
Inadmissible Appeal
Inadmissible Appeal
Legacy – Asylum Appeal
M/U
No Appeal Type
SP Appeal
Stream Acc
Subsequent Appeal
Substantive
Substantive IP Appeal
Substantive IP Appeal –Asylum only
Substantive IP Appeal –SP only
Substantive (15 day)

Table 4.1 The types of appeal to the RAT and IPAT, as listed in the ATA.

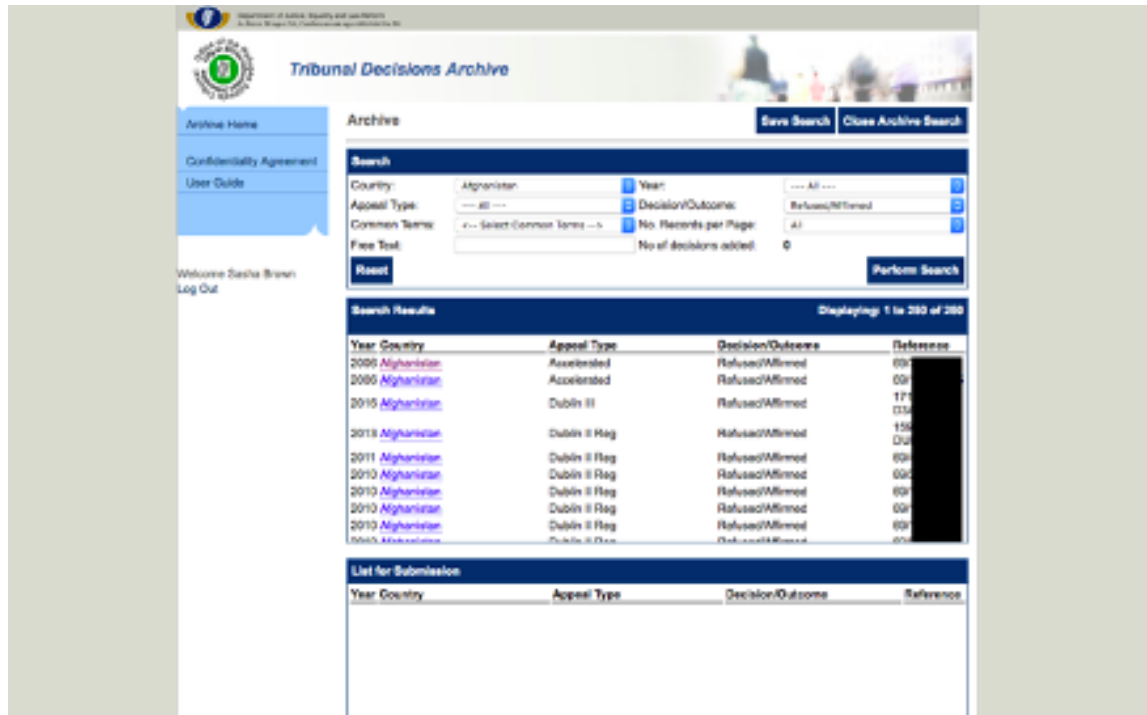


Figure 4.1 Screenshot of the ATA search page showing the results of searching for decisions with Afghanistan listed as country, and with a "Refused/Affirmed" decions/outcome.

Once the search terms are selected, clicking on “Perform Search” sends the search terms to the database and the search results are displayed in a box below, in a table format with the five metadata variables listed: Year, Country, Appeal Type, Decisions/Outcome and Reference. Clicking on a decision leads a page where the same details are displayed as well as a download link for the PDF of the written decision.

Every decision in the ATA includes the written document of the decision written by the Tribunal member. These PDFs are the decisions issued by the Tribunal members to people appealing their international protection decision. These decisions have been issued over a twenty-year period, and there are substantial differences in the format of these decisions. Mostly, however, they are documents ranging from three pages to twenty-five pages, although some decisions are considerably longer, up to 150 pages. The beginning of a decision has the name of the Tribunal, either the Refugee Appeals Tribunal or the International Protection Appeals Tribunal, and includes the reference number of the decision. The name of the person appealing is listed at this point, although the names are

redacted with black XXXXXXs for decisions in the ATA and listed as the ‘Applicant’. The decision may list the country of origin of the appellant as stated or identified by the Tribunal, and the decision may also list other details of the case, including the name of the Tribunal member. The document then contains the writing of the evaluation of the appeal, and at the end of the decision, the Tribunal member writes if they affirm or set aside the initial recommendation. The decision document ends with the typed name of the Tribunal member, mimicking a signature on the document, and their title as member of the RAT or IPAT. The document concludes with the date the decision was issued.

4.3 Sustained engagement with the archive

The methods of this project used the archive as a site of investigation and also engaged with the archive as situated in the world. This approach is an ethnography of a contemporary archive, following Stoler’s insistence “In treating archival documents not as the historical ballast to ethnography, but as a charged site of it,” (2009, p. 47) and calling for a methodological shift to move away from extractive practices of archival research to an ethnographic one, engaging and immersing in the archive. Ethnography as a method of social research is an engagement with power structures by personally embedding oneself, as researcher and socially positioned individual, in situations, and engaging in a process of “fundamentally interrogating the work done within fields of inquiry, including radical geography, to produce legible and legitimate objects and subjects of knowledge and action” (Asher, 2019, p. 123). Ethnographic methods require intensive experiencing and learning from the situations of the research itself. Ethnographies also involve what Marilyn Strathern calls ‘immersement’ (1999), which can mean “constructing a mode of enquiry which will enable a return to fields of knowledge and activity in the hindsight of unpredicted outcomes, and which will thus enable recovering of material that investigators were not aware they were collecting” (ibid, p. 25). This ethnography becomes, according to

Strathern, “a moment of immersement that is simultaneously total and partial, a totalising activity which is not the only activity in which the person is engaged” (ibid, p. 25)

For the researcher doing this ethnography of state archives, they are positioned such that they can identify and examine the logics and sentiments that state actors enact in their acts of statecraft. For Stoler’s ethnography in and of the colonial archives, she writes that this method “attends to processes of production, relations of power in which archives are created, sequestered, and rearranged.” Stoler explicates that archives can be treated “not as repositories of state power but as unquiet movements in a field of force, as restless realignments and readjustments of people and the beliefs to which they were tethered, as spaces in which the senses and the affective course through the seeming abstractions of political rationalities.” This ethnography allows sentiments in the archives to be seen not just as social interpretations but, powerfully, “as indices of relations of power and tracers of them.” (Stoler, 2009, p. 32)

The ethnographic immersement in these types of archives is therefore not primarily about an investigation of how the documents are stored -- although this can be a partial focus of inquiry, but rather into how the archiving of documents, in their creation and preservation, are “‘rituals of possession’, ‘relics’, ‘ruins’ and sites of contested cultural knowledge” (ibid, p. 31). Just as ethnographic immersement in communities is an observation of daily life, an ethnography of the archives of state can be an immersement in reading along the archival grain; as Stoler writes, “reading along the archival grain draws our sensibilities to the archive’s granular rather than seamless texture, to the rough surface that mottles its hue and shapes its form... to enter a field of force and will to power. It calls on us to understand how unintelligibilities are sustained and why empires remain so uneasily invested in them. (ibid, p. 53). This ethnographic immersement allows for a powerful way to read along and within the logics and sentiments of the bureaucrats, state agents, state agencies and departments.

Ethnographies of state archives can also position the researcher to identify and examine the logics and sentiments that state actors enact in their acts of statecraft, and as such recognizes what Stoler calls for as an:

Emergent methodological shift: to move away from treating the archives as an *extractive* exercise to an ethnographic one. That call has been taken up differently: sometimes hotly pursued, other times merely a nod in that analytic direction. For some it represents a turn back to the powerful 'poetics of detail.' To others the archival turn provides a way to cut through the distorted optics of colonial historiography and the distinctions that cordoned off fiction from authorized truths" (Stoler, 2009, p 47).

There are many approaches to ethnography, one of which is ethnography of the state, which shares an interest in power relations/dynamics with 'traditional' ethnography but differs in specific ways. Ethnography methods designed and employed to study the state reveal the constructed nature of any conception of what the state is and reveal the production of these constructions as always planned but also ad hoc. Ethnography cannot be used to simply attempt to 'discover' what the state is, but to reveal complex power geometries and the deployment of 'state' and bureaucracy into relationships between institutions and individuals. In this way, studying up ethnographies of the state contribute to our understanding of how vulnerable individuals, groups and communities become politicised into narratives about state control and the responsibilities of the state.

An ethnography of the state also dwells inside the bureaucracy. It traces the daily struggles of civil servants charged with policing borders and exposes the political nature of this work. Archives are central to the organisation of state bureaucracy. Ethnography of archives is an encountering of the archive where it is to develop both a deep understanding of the archive and its processes and to develop a series of methods to analyse and interrogate the archive. As Gracy writes:

Archival ethnography is distinct from other ethnographic approaches in that the researcher is positioned within an archival environment to gain the cultural perspective of those responsible for the creation, collection, care, and use of records. (Gracy, 2004, p. 337)

The ethnographer engages with records in hopes of gaining an understanding of the conditions in which the records were made, and were stored, and why some documents are archived, and some are missing from the archive. Gilliland, in investigating post-conflict archives in Croatia, positions archival ethnography as an inherently political way of doing research. As Gilliland writes:

Records and recordkeeping processes are not glamorous. They are, however, powerful and have consequences in both their presence and their absence. For nations recovering from devastating conflicts, records do not just document those conflicts, they reflect and project the history and conditions to which the conflicts were responding, as well as the programmatic aspects and human dimensions of how those conflicts were conducted. Records also have direct implications for and impact upon individual lives, and at various moments in those lives, therefore, every individual must interact with the archive. This challenges the archival community to figure out not only how to anticipate and meet immediate needs for records, but also to do this in a way that can take into account individual circumstances, motivations and emotions. (Gilliland, 2014, p. 251)

To do archival ethnography is to attempt to find the evidence of the importance of the records, and also to understand the significance of the *archiving* of these documents.

I first came to study the ATA in 2015 as the Master's thesis for an MA in Geography at Maynooth University, in which I read a sample of decisions from the archive for appeals from asylum seekers from South Africa, Ukraine and Afghanistan. This

Master's thesis was about exploring not only the ATA, but also the interests and priorities of the community of people affected by and engaging with the bordering practices of the Irish state and the Irish asylum determination process (Brown, 2016). In the course of this Master's thesis, I engaged with groups of self-organised asylum seekers; solidarity and community groups working to support these groups; and immigrant advocacy groups and NGOs around the issues that people faced in their encounters with the Irish bordering state. These interactions also included interviews with people working at the Irish Refugee Council around the different issues that they encountered in their work to advocate for asylum seekers and an exploration of their research priorities. I found that the research by NGOs into the asylum process had been productive, especially in the case of a 2012 project and report by the Irish Refugee Council entitled "Difficult to Believe: The assessment of asylum claims in Ireland", and that they had identified opportunities for systematic research but did not have the institutional capacity to regularly engage in this type of research on top of their daily advocacy, legal representation and policy work. I discuss this report in more depth in section 6.1. The Master's thesis identified key actors in the asylum determination process and their goals, and how research into certain aspects of the process, and the ATA specifically, could provide systematic evidence of practice and policy at the DoJE where before limited evidence was available. This thesis also informed and seeded the research goals for this PhD dissertation project. The methods in this project, including the archival ethnography approach and the curated research stream, were then designed to accomplish the overall goals as mentioned in the introduction of this chapter. These goals came out of a deep engagement with what geography can do, how geography as a discipline can contribute to ongoing debates around justice and borders and came out of how I can contribute to debates within geography around studying the state and studying borders and border control.

The nature of the ATA itself allows for a readjustment for and re-seeing of the narratives of state in time and allows for ongoing processes of state bordering to be informed by narratives of harm that have been obscured or hidden. The archive is a site of records of past practices by the appeals tribunals and is also a living site where records are being added and removed. There are immediate priorities in research of asylum determination, around identifying decisions that are illegitimate or erroneous in assertions that they make and identify if there are legal recourses and/or systemic errors in the practice of these tribunals. These decisions are fraught and have high consequences when, for example, an erroneous decision refusing international protection for someone seeking asylum risks opening the avenue for the Irish state to deport someone to a country where they will face harm or persecution. In this context of urgency and relevance, I now describe how this project addressed each goal of the project.

This project aims to achieve the first goal of the project to contribute to geographical theory on asylum determination as border enforcement by carrying out an approach and methods set out by Mountz and others to study the state and to study immigration and bordering practices. Mountz, in *Seeking Asylum: Human Smuggling and Bureaucracy at the Border* (2010), carried out an ethnography of the Canadian immigration and customs office and captured the quotidian experience of state. This work dwelled inside the bureaucracy, as Mountz writes:

It traces the daily struggles of civil servants charged with policing borders and exposes the *political* nature of this work. My ethnographic findings depict a performative that excels at cultivating crisis and creating response. Crisis, in turn, creates grounds for exclusionary practices that appear exceptional by nature.

(Mountz, 2010, p. xxxii)

This goal of the project involved identifying that these performative acts take place not only in the daily practices of civil servants in office towers, places where I found I could

not access or at least could not access in a way to gain this type of deep ethnographic knowledge, but in the produced archives of these agencies, and in the performative work of the written decisions of the appeals tribunals and the performative 'everyday' violence and bordering of the collecting and storage of these decision in the archive. The methods of study up ethnography were used in this project to find how practices of the state are enacted day-to-day and how these practices are recorded in the ATA. This project uses these methods and others to investigate the content of the ATA, the form of the ATA, and the processes of archiving in the online database. This investigation includes analysing patterns in Tribunal member practices; the language of asylum and migration employed by Tribunal members in their re-narrating of asylum seeker testimony and in their evaluation of asylum cases in appeals.

This approach also aims to achieve the second goal of the project, to create useful outputs for those affected by these policies, by joining a community effort for justice for the vulnerable group of asylum seekers, who are made other in Ireland, racialised and excluded from Irish society. As stated in Chapter 2, the asylum determination process is part of and in the context of bordering and statecraft in Europe. Border enforcement at its core works to criminalise certain types of migration and label some people as 'legitimate' migrants and others as 'illegitimate' by creating the state as a victim of 'criminal' migration (Walia, 2013), and the international legal regime of asylum, refugee and international protection law has increasingly become a prominent part of border enforcement (Darling, 2014; Gill and Good, 2019). The asylum determination process has become in recent years a key part of the bordering of states, in addition to the 'neo-refoulement' of border enforcement states engage in outside of their sovereign borders. In Ireland, the treatment of asylum seekers both in their applications for international protection and in the reception conditions are explicitly designed as a punitive process, and ministers of justice have repeatedly advocated for these punitive policies in the narrative of 'minimising push

factors', and to present an image of Ireland as an 'inhospitable place' (O'Reilly, 2012, 2018) while still ostensibly complying with international law. This research project has thus included finding how research and specifically the methods of political geography and feminist geopolitics can be helpful and useful for these groups.

Specifically, this project is designed to investigate and interrogate systemic practices by the DOJE in the asylum determination process, and to produce systematic evidence of this state practice through investigating the archive. A systematic study of one part of the asylum determination process, in this case the Appeals Tribunal Archive and the practices of the appeals tribunals, contributes to this overall understanding of how the state agencies, civil servants and state apparatuses in the form of bureaucracies, departments and ministers have constructed a system of labelling certain migrants as 'undesired', denying them entry to the state in a variety of ways, applying punitive conditions and treatment upon those seeking asylum in Ireland and applying the violent act of deporting people from the state.

This approach also aims to achieve the third goal of the project, to be able to theorise on the roles of state archives in the state practices of bordering, which includes examining how 'new' digital state archives are different than past archives of the state, how they are similar, and how archives such as the ATA – archives reluctantly opened up, reluctantly maintained, and online and digital – echo the practices of state archivists of past nation-states and colonial state archives of governing. These archives are also part of a new way that state archivists collect, store, and retrieve information. New approaches to studying digital archives may offer the ability to produce different types of evidence. The methods employed in this project can allow researchers to simultaneously investigate small-scale singular issues, as fine as the word choices Tribunal members use in their decisions, and large-scale systematic patterns, such as the distribution of Tribunal members and decision rates over time or large word searches of all decisions in the archive. Valuable insight emerges that can generate explorations leading to radical forms of idea sharing.

Archives today, also, are themselves echoes of the archives states have always produced and are essential to how states (re)produce knowledge and produce and (re)imagine citizens and non-citizens, or more generally, how states see.

These three research goals for this project are designed to be radical, aspirational and doable. They define the boundaries of a project that is at once tracing the production of the state with limited conversations with those performing the state and that is also setting out to investigate and explore the nature of the everyday practices of the tribunals and Tribunal members, to re-think the archive as a productive and useful resource for changing the asylum process. These goals are also crafted, honed, and designed from an understanding of what can be done and what is revealed in the research itself.

4.3.1 *Ethics and positionality*

Just as important as these goals for this project and entangled within and throughout these goals are the ethical concerns and considerations and commitments of doing social research. I attempt to find the ways that this project can complement other empirical approaches and representations of border enforcement and can potentially ‘clear the fog’ from these obscuring practices, to reiterate and elucidate commitments of justice within the research into a framework beyond the cramped place of the archive itself where organizations of power are not necessarily legitimate but remain so if uncovered. These concrete forms of governance interact with the lives and bodies of people seeking asylum within the Irish state; those involved within the study of this project are often highly vulnerable within the governance of the Irish state in its asylum processes.

The ethics of this research recognize that subjects appear through discourse in new ways and must therefore be placed in a context of care and justice. This ethics requires a commitment to a continuing process of interrogating the dynamics of power in everyday lives and in regimes of institutions, where we see politics of difference that express

themselves in in myriads of ways, from access to housing, health care, work, [etc]. Within the acts of seeing and participating in these dynamics, this ethical commitment leads us to those ways that allow for demands to undo these differences through a deep critique of power that stays with the obligations to vulnerable people while recognizing forces that continually act to contain or constrain these obligations. The work has been and continues to realize the current unequal and unfair processes of the asylum process itself and to stay with the ethical responsibility to investigate the implications of state policy and practice.

This project also works within institutional frameworks of ethics. There are ethics frameworks and responsibilities that I follow as set out by Maynooth University, by the geography professional community, and an ethical agreement in the ‘terms and conditions’ that I have agreed to in order to access the ATA. Each of these institutional frameworks of what constitutes ethical research are slightly different and take a different perspective on what are the most important aspects in order for research to comply with the ethics framework of each institution.

Within Maynooth University, I applied for and received ethical approval for this research project from the Social Research Ethics Sub-Committee (SRESC), part of the University Ethics Committee that “reviews research projects that involve human participants and personally-identifiable information about human beings in order to ensure that the proposed research is ethically sound” (Maynooth University, n.d.). Interestingly, almost all of the research of this project technically did not fall within this stated purview of the sub-committee, as the research investigating the ATA does not directly involve human participants and the ATA expressly states that all personal identifying information of appellants in the decisions is removed before decisions are added to the archive. The project did involve formalised parts of the project that invite people to participate, including a knowledge exchange forum held in December 2018 with stakeholders, and steps were taken to ensure that participants involved in this forum were informed about

the knowledge exchange forums and research and gave consent for the use of their contributions. The entire project was submitted to the SRESC for ethical review and received ethical approval from the sub-committee in April 2018.

My ethics for this project also is informed by a general code of ethics within geography as a professional and academic discipline. While there are multiple documents laying out ethical conduct, the American Association of Geographers Statement on Professional Ethics (2009) is generally considered to be a good standard of ethics within the discipline and has been integrated into my research. This statement document provides guidelines on ethical behaviours with one another, in the carrying out of field work and for the ethical production and dissemination of research. Importantly for this project, the document outlines that research with politically vulnerable or marginalised groups “raises special challenges and requires special care” (ibid), and outlines the dangers of data collection and data dissemination, and that research should be conducted “with foreknowledge of appropriate protocols and the social, cultural, and even legal pitfalls that may arise” (ibid). It is this particular aspect, the legal pitfalls, that is worthy of some extra focus. While it may be lofty to expect this project to create dramatic changes in the practices of the asylum determination offices, investigation into a source like the ATA with the intent of gathering systematic evidence of practice may have an effect and influence these offices or activities around them. It is important in the context of this study to be attentive to and aware of unintended consequences of such research.

The ATA itself also has a Terms and Conditions document that must be agreed to (by ticking a box) in order to access the archive and this document couches another ethical framework in guidelines and rules on the use and interaction with the archive. This document hasn't been updated since at least the 2014 court decision mandating that the ATA be made available to the public and is misleading in its requirements. The document includes the agreement to “limit the disclosure of the decisions solely to those who have a

legitimate bona fide right of access to Tribunal decisions” (Refugee Appeals Tribunal, n.d.); however, since 2014 this has included “all people”. Of the seven items in the Terms and Conditions checklist, five are outmoded by this court-mandated change of policies in 2014. These inconsistencies and anachronisms in the Terms and Conditions reflect the overarching feel and presence of the archive as a ‘forgotten space’ or a ‘reluctant space’, where civil servants do the minimum required under the requirements of judges’ orders and otherwise the archive languishes. The only condition on access to the ATA that do still apply are the conditions that mistakes in the ATA anonymisation process not be distributed, and requires users of the archive to ensure anonymity when the archiving process has not effectively done this.

These institutional ethical frameworks of the university, the discipline of geography and within the structure of the ATA show the complex power dimensions involved in social research and studying statecraft and bordering. The inconsistencies and differences demand that a researcher engage with a personal ethical responsibility in doing this work. For myself, I follow in the footsteps of Maillet, Mountz and Keegan (2016) in this conversation of ethics “to question and complicate notions of vulnerability” in discussions of research ethics, especially around migration and state narratives of migration. As they write,

Many institutional bodies – such as university research ethics boards designed to protect human subjects – construct migrants, asylum seekers and detainees in these places as ‘vulnerable’. At the same time, the same people are treated as security threats by authorities who, ironically, construct citizens as vulnerable. These shifting constructions of vulnerability intersect and collide with complex debates surrounding representation and voice. (Maillet et al., 2016, p. 3)

This discussion leads to the iterative questioning of who is listened to, how voices are framed and produced, and the need for constant engagement with these issues. These

questions of ethics are fraught and messy and involve our whole selves and demand that we engage fully in our research. In archival research there is often the temptation to go along with the narratives of the archival corpus. I argue that engaging with contemporary archives also demands engaging with communities of ‘the archived’ to honour this process.

In this project, I engaged with each of these institutional ethical frameworks. However, this research isn’t just carried out by an institution or just by an individual researcher, or even a team of researchers. This project was an active project that I proposed and carried out in a constant engagement with these institutions and others, groups and actors. The project is as much about my engagement with institutions of research, with state institutions including the Department of Justice and Equality, as it is about any of these individual actors. Positioning myself in the research and continuously recognizing how I come to the research and what I bring to the research is an important part in explaining what form these engagements took.

Recognizing positionality and the effect that I as an embodied person and researcher have on research and the production of knowledge is rooted in the feminist, postcolonial and decolonial critiques of Cartesian and objectivist knowledges and epistemologies (Haraway, 1988, 1996; Spivak, 1988). Cartesian and objectivist frameworks of knowledge present the world as equally and similarly knowable by everyone, and that researchers claim authoritative knowledge and power by removing or minimising their differences to provide an ‘objective account’. By erasing the position of the researcher, these frameworks erase the power relations embedded in embodied experiences.

Dimensions of culture, class, gender, age and political or social identity extend into how we are able to see the world and also how we are treated by research subjects, institutions, and people around us (Collins, 1986). Haraway (1988) argues that claims of objectivity need to be grounded in where and how the knowledge and expertise is gained and/or produced. This positionality also includes the opportunities that the academic

researcher has in working within structures that historically hold tremendous resources, that the opportunities offer possibilities for redistribution of knowledge—from libraries and archives, for example, to PhD candidates such as myself in our own precarious situations, to communities that stand outside of academia and are in need of the kind of data/knowledges that can be offered through the deep, embedded research that can be funded by universities. Embeddedness both works within and resists the speed and pace of the academy (Graziani and Shi, 2020).

My position as someone not in need of international protection and not in receipt of international protection is an important part of this project. This position allows for some privilege or latitude for myself, with concrete issues and experiences that I may grapple with in a less vulnerable realm; someone who has gone through this process or needs international protection will have concrete experiences and responses that inform a vision that I consider from where I am, acknowledging that difference, and constantly questioning whose voice is heard and how the power to represent is used or challenged. When I then engaged with the institutions necessary for this project, I engaged with them as myself, and I position myself thusly for this research.

4.4 The curated research stream - An iterative process

Archival research is often spoken of as a lonely and solitary affair and conjures images of the researcher spending long hours in dark corridors and institutional buildings. Archival research is now often different than this conjured image because of the growing digitisation of many archives. New material being archived is often now only produced digitally, without an analogue original. In the case of digital archives and repositories, the archive is often further distant than before; the archive distant physically because we can no longer visit the physical sites and places where archival documents are stored, but also because there are few opportunities for interaction with the archivist. Many archival

researchers highlight the importance of these interactions with archivists and those who maintain and physically operate archives, and also speak to the importance of the ‘misplaced object’ misfiled (Basu and De, 2016; Gracy, 2004; Johnson, 2014).

The Appeals Tribunal Archive is fully online, and with a limited and non-responsive helpline number there is little opportunity for communication with the ATA archivists when using the ATA. The project methodology was designed with this limitation in mind, and designed to be socially engaged to ground the archive in the events and contexts of the practices of the Department of Justice and Equality and to involve participants in the process of investigating the archives.

As I set out in Chapter 2, I came to the research with deep preconceived tenets around the research problem that I wanted to inquire. These tenets draw heavily from feminist geopolitics and Hyndman’s work on bridging feminist geographical methods and critical geopolitics, and place importance on interrogating the notion of centring the state as an institutional structure, prioritising research that asks what is happening in the world and engaging with the world to answer these questions. The methods were also iterative and necessitated that the project be agile, inclusive and able to change focus and priority as conversations continued and as the research yielded preliminary results, leading to a methods framework of the *curated research stream*. Often methods are written as a clear narrative, belying the fact that research, especially for long-term and multi-year projects, must always involve assessment and reflection by those involved on the progress of the research and if any changes should be made. The research methodology described in this approach led to the design of a research plan of investigating the ATA and allowing for the research to develop over the course of the carrying out of this project.

4.4.1 *Scraping the archive*

I first encountered the Appeals Tribunal Archive in 2015 and was initially disoriented by the architecture of the online archive itself. As described above, the online archive has tools to search for individual cases by country, year, appeal type, outcome and commons terms, with all of the misspellings, repeated categories and opaque descriptions as I have outlined; however, it provides no way to ‘see’ the size of the archive, to see patterns in the tens of thousands of decision in the archive, such as decisions over time, or by the country of origin identified for each person, or by individual Tribunal member in their decision making. The architecture of the archive makes this kind of systematic analysis difficult and inaccessible.

This architecture and form of this archive is embedded in the history and story of the archive. The first mention of the ATA in the public record was in 2005 in the *Atanasov* case, when solicitors for the asylum seekers in the case described to the court the Tribunal’s ‘master file’ (Irish Supreme Court, 2006). It was clear that the Refugee Appeals Tribunal at the time had some sort of filing system, perhaps an electronic database. This may or may not have taken the form of the ATA that is now public. The ruling in the *Atanasov* case mandated that the Refugee Appeals Tribunal make past appeals decisions available to solicitors representing asylum seekers, and in 2006 the RAT debuted the Refugee Office Members’ Decisions Archive (ROMDA) on their website, refappeals.ie.

The archive has taken the same form, as described in section 4.2, since this debut, and is built upon the database and office workflow software HCL Notes and the server-side software HCL Domino¹³. Notes and Domino software were IBM products from 1996 to 2019 and have a “long market history and large installed base” (Library of Congress,

¹³ It is clear that the database runs on Notes because of the file formats in the URL, “.nsP” files. Notes and Domino were acquired by HCL in 2019. They had formerly been called IBM Notes and IBM Domino and, before that, Lotus Notes and Domino.

2018). The Notes system is still popular among government agencies because of its encryption capabilities including the ability for full database encryption and because of the http add-on that allows for the ‘publication’ of password-protected databases as webpages (ibid), because the ATA hasn’t changed since its debut, it may be running on a version of the Notes system from 2005 or 2007¹⁴. Originally the archive was encrypted with password protection, and access was limited to solicitors of appellants. The archive is still encrypted, and the welcome page states that “due to the structure of the archive a username and password is required by all users” (RAT, n.d.), and the document still references the RAT. It is clear that this archive remains static, and the Appeals Tribunal takes as its duty only to update the archive with recent decisions.

The ATA allows for the lookup of decisions issued based on the metadata categories listed above (see Figure 4.1) and allows for the search of decisions by reference number or by ‘free text’. However, there is no way using the built-in archive tools to ‘see’ the extent of the ATA. The IPAT does not release any information on the total number of decisions in the ATA. Any search with more than 250 results will only show the first 250 resulting decisions, so there is no way to see more than these decisions in a single search. This project aimed to do systematic research on the ATA, and to investigate the scope and size of the archive as one part of the evidence of the practices of the appeals tribunals in asylum determination, and within the larger framework of bordering in the DOJE towards asylum seekers. To get around these restrictions, a method of web scraping the online archive was designed to collect all the entries of appeals decisions in the database.

Web scraping involves writing a computer script or program that when run queries a webpage and extracts the desired data from the webpage. While web scraping can be done manually, the process, also known as web harvesting or web data extraction, usually

¹⁴ It is not possible to know for certain the version of Notes and Domino running on the archive server, but the lack of any aesthetic changes suggests that there has not been a migration of the server to a new version.

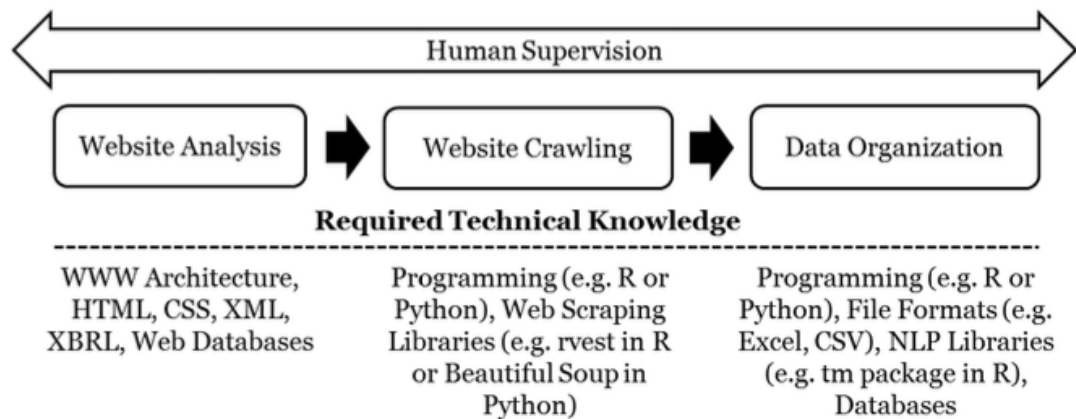


Figure 4.2 Web scraping. Figure by Krotov and Silva, 2018.

refers to a process of automatically gathering structured data in some way, and a web scraping script can accomplish this ‘scraping’ of information on the web quickly and repeatedly. This approach works because of the nature of data on the Web. Krotov and Silva write:

The data available on the Web is comprised of structured, semi-structured, and unstructured quantitative and qualitative data distributed in the form of Web pages, HTML tables, Web databases, emails, tweets, blog posts, photos, videos, etc..

(Krotov and Silva, 2018, p. 1)

This automated web scraping of web data is most effective when a target webpage or series of webpages contain structured data that can be extracted in a structured way. A common example of this process is extracting content from Wikipedia, which is often presented in simple and structured formats. The Wikipedia page for “World population” contains an HTML table entitled “Population by continent (2016) estimates”, presented with column headings for the continent, density, population, etc. This formal and structured HTML table is easy to extract with its structure using web scraping tools. Web pages with unstructured data, such as web pages with blocks of text, using JavaScript or other dynamic web tools, and other modern web site features such as CAPTCHA, make this process more difficult.

The methods of web scraping are notably not ‘native’ to social research, and are imported from a sphere of work separate from the social sciences (Marres and Weltevrede, 2013). The techniques of web scraping have been used since the beginning of the internet by web crawlers that made up the first web indexing (“Search Engine History.com,” 2020). For example, search engines like Google obtain their indices of websites and web pages by web scraping using ‘spiderbots’ and ‘crawlerbots’ -- scripts to automatically gather all information and media on a web page and gather all the hyperlinks to other web pages and ‘crawling’ those pages as well.

Using web scraping for social research presents an exciting opportunity, including the ability to mass-collect structured and semi-structured data on the internet. As Krotov and Silva write:

The Big Data available on the Web presents researchers and practitioners with numerous opportunities. For researchers, these opportunities include leveraging this data for developing a more granular understanding of various old and new social phenomena in more timely fashion.” (Krotov and Silva, 2018, p. 4)

Much attention in this respect has been given to efforts such as scraping Facebook, Twitter and other social media sites for a kind of ‘mass-polling’ or attempting to view the mass effect that these platforms have. And this attention comes with an understanding of a multi-faceted nature of web-scraping, whether it is understood as a socio-technical device (Marres and Weltevrede, 2013) or a “technology of tools for automatic extraction and organization of data” (Krotov and Tennyson, 2018, p. 2). Web scraping requires an understanding of web architecture and the languages used (HTML, CSS, XML and often JavaScript) and also the range of programming tools for performing the scraping, often involving varying degrees of human intervention (see Figure 4.2).

Marres and Weltevrede argue that this importing of methods risks introducing unknown and different assumptions, while also offering new ways to do ethnographic and

‘social science’ research (Marres and Weltevrede, 2013). As they set out in their paper, “Scraping makes available already formatted data for social research. We [...] argue that this makes possible a distinctive approach to social research, one which approaches the formatting of online data as a source of social insight, and which we call ‘live’ social research” (ibid, p. 315). Just as Stoler argues for a focus on the way that archives produce knowledge “as monuments of states as well as sites of state ethnography” (Stoler, 2002, p. 87), Marres and Weltevrede argue that web scraping for social research can reveal the organization of the knowledge within the html structure. Marres and Weltevrede write:

First and foremost, scraping solves a problem that social research shares with many other digital practices: it offers a solution to the circumstance that data out there on Web pages and platforms is not offered in a format that is at once usable. This is why scraping has been said to do no less than to unlock the ‘sociological potential’ of the Web: scraping promises to make available for social research the very large quantities of user-generated data that currently are being amassed through online platforms. (Marres and Weltevrede, 2013, p. 322)

Web scraping when used in social research allows for the analysis that Stoler sets out, of analysis of the form as well as the content of state archives such as the ATA.

Additionally, because this web scraping process, at least in the case of the ATA, is a programmatic extraction of publicly available data, the scripts for this extraction can be made available, making the research process accountable and transparent. A significant amount of social research is based on non-disclosed data sets, and there have been important arguments, especially in the free and open source software (FOSS) community, for accountability and transparency in online social research. One of the aims of this project is to add to a body of work analysing and investigating the practices of the Department of Justice and Equality and the asylum determination process, so it is also taken as important to share the web scraping scripts and process in this project.

4.4.2 *The two web scraping scripts*

In the case of this project, web scraping involved writing a script to automate all the tasks of searching the archive, extracting the metadata of the decisions in the search results, and downloading the PDF documents of the written decisions issued by the Tribunal. I was able to integrate all of these steps into one function, making it possible to design a series of searches by year, country, decision type and outcome, with no single search result returning over 250 decisions. This web scraping process allowed for every decision to be recorded, and every decision PDF to be downloaded.

Creating web scraping scripts is generally a trial-and-error process of design and testing to determine if a scraping script has met all the required specifications to be able to work. In the case of the ATA, this process was complicated by the requirement to log in to the archive with the username and password. Normally, web scraping scripts written in any variety of programs and languages can make http requests directly through the program that they are running from. For this project, scripts were written in R, a programming language and software environment used for statistical computing and graphics (R Foundation, n.d.), and the R programme can make direct requests to websites through http and https (secure) requests, just as other common data science software environments that are commonly used for web scraping can, including Python, Ruby, node.js and others. However, logging in to the archive database server, made using the Domino software, requires a full browser environment such as cookies, unique IDs and browser sessions to be able to log in to the encrypted section of the website. Therefore, a virtual browser environment has to be created to act as a person logging in to the database using their credentials. For this project, I used the programme Docker to create a virtual environment or ‘container’, and installed Selenium WebDriver – a set of tools to automate browsers – alongside Mozilla Firefox. Thus, I could completely control the Firefox browser in the environment through commands in an R program, replicating a fully complete browser and

environment. Using my login credentials to the ATA, I could fully access the archive database and the database search functions.

With this framework, the final version of web scraping designed to extract data from the ATA consists of two scripts: one for extracting metadata on each decision and a separate script to download every decision PDF and record what decisions did not include a PDF. These scripts are separate because running the scripts takes a considerable amount of time and supervision. In the first script, the series of web requests are as follows: The first request is a search for decisions issued in 2001, the first year for which decisions are included, for appellants with an identified country of origin of Afghanistan, the first in the list of countries. When the search is performed and the results are returned, the results are recorded to a table saved locally (offline) and another search is made for the decisions issued in 2001 and the second country in the list. This search is then repeated for each country listed in the archive search menu and with the year 2001, and these searches are then repeated for each year listed, spanning from 2001 to the present year. With twenty years (2001-2020 at the time of publication) of decisions and 148 options listed in the country category, this method requires executing 2,960 searches to cover every combination of country and year. Many of these searches yield zero results as the combination of year and country yield no results; however, the search must be done to cover all possible decisions.

Additionally, in eight of these searches, there are over 250 results. The archive search tool displays a maximum of 250 decisions, so when searching for decisions issued with the Country-Year combination of Albania-2019, Pakistan 2019, or Nigeria and the years 2006, 2007, 2008, 2009, 2010, and 2011 some decisions are not included in the result. To carry out searches to include all possible decisions with these Country-Year combinations without exceeding 250 results for each search, it is necessary to use the other search functions by searching for decisions by Decision Type and Outcome. For each

Country-Year combination, there are 228 combinations of searches for each listed Decision Type and Outcome, and with the eight Country-Year combinations with over 250 results, this step requires 1,824 search requests. Combined, this script overall requires 4,784 requests from the server.

These requests are sometimes returned quickly from the server, and other times the ATA database returns the results more slowly. It was important as part of the project that the web scraping did not overload or otherwise adversely affect the ATA server and database. To prevent the overload or placing a burdensome internet bandwidth request on the ATA, and especially to not impede access to the archive for others searching the ATA, I included a short wait time in the script before every request to the server. Additionally, there is a 'timeout period' of time on the server after which a user is forcefully logged out and it is necessary to re-login. The web scraping script includes a function for logging out of the ATA and re-logging in to the archive; however, sometimes the session logs the browser session out of the archive unexpectedly and the web scraping script stops working. All of these factors mean that running this first script can take a full day or multiple days and requires supervision if the script stops unexpectedly because of an error to restart the script at the point it is stopped. I ran this first script multiple times over the course of this research, approximately three times a year in the years 2016 to 2020 for a total of fifteen scrapings at the time of completion of the dissertation project. I carried out these multiple scrapings to assess the Tribunal's practice of adding and removing decisions to the archive, to include recent decisions added to the archive and add these decisions to the project records for analysis.

The second script was designed to retrieve and download the PDFs of the decisions in the ATA and to save them locally. Retrieving a PDF of a decision in the results of a search consists of clicking on the decision hyperlink, which leads to a page for that individual record, and clicking on a hyperlink to the decision PDF. In web scraping an

archive on the magnitude of the ATA, each click and each request to the server is carefully planned, since these extra steps are performed for each individual decision. These extra steps in the PDF scraping script add over ten times the number of requests to the server compared to the first script. Because of these extra steps, running this second script can take a week or more to run.

I first ran this second script over the course of three weeks in November and December 2016. This scraping downloaded 10,251 individual Appeals Tribunal decision PDFs. The script also recorded the metadata of each decision including the unique Reference ID, the filename of the PDF, and recorded the decisions for which the decision PDF was removed – often a decision PDF will be removed from the ATA because the decision was quashed on Judicial Review and vacated by the courts, and the metadata entry remains.

Fortunately, it is not necessary to run this full script again over time to download all decision PDFs from the ATA multiple times. It can be assumed that decision PDFs are not updated or changed once they were uploaded, so it is only necessary to check the results from recent scrapings using the first script. The metadata of the decisions in the ATA at the time can be compared against previous records of decisions and decisions newly added to the ATA can be identified and searched for directly using their reference number. As of a most recent scraping in April 2020, these scripts have recorded over 18,707 decision records in the ATA and have downloaded 17,917 decision PDFs.

4.4.3 *Purpose of web scraping and analysis*

The web scraping gave a view of the ATA that was not possible before. From running the first script, I had a local dataset of each decision in the ATA with information including the year the decision was issued, the decision type, the decision outcome, the country of origin of the appellant in the decision as identified by the Tribunal, and the

unique reference number for the decision. Moving from the ability to access a single decision through the ATA website, what became available was all the decisions that were in the ATA at that moment of the scraping, essentially a catalogue, that can be searched and analysed using any tools available to me.

Before web scraping, access to the ATA mimicked the type of access available for physical archives, where one could request an individual document based upon certain criteria or wander from one document to the next. With this dataset of decisions and with the full collection of PDFs of the decisions saved locally using the second script, there is a level of access that allows for the use of tools from data science and the analysis of large datasets. This access has wide-ranging consequences. With the dataset from the first script, I could now break down the number of decisions for each country, the rate of decision-making in the Tribunal, and other simple data analysis. And with the collection of all the PDFs of the decisions more sophisticated data analysis tools can be used. I could extract the text from all the tens of thousands of decisions, which could now be collected and analysed using text-mining and text-analysis tools. Some text in the decisions are saved as images within the PDFs, and OCR – optical character recognition – can be used to identify and extract these sections, which opens a way of looking at the ATA corpus as it is saved and in the form in which it is communicated – in structured html and unstructured PDF files and 'packets'. If the ATA were a physical archive, this kind of analysis -- including analysis of all decisions in the archive -- would not be possible.

In scrapings of the ATA in March and June of 2016, I found that there were a substantial number of decisions missing from the ATA, and that RAT were adding old decisions from up to ten years prior that previously were not in the ATA (see figure 4.3). In the course of the three-month period from March to June of that year 5,147 decisions were added to the ATA, almost doubling the number of decisions in the archive (Brown, 2016).

Also, it was discovered during the analysis of the subset of decisions that, in some cases, two decisions with unique reference numbers are identical. This muddies the clean lines of the chart in Figure 4.1, and disorients to some extent these views into the archive. Disorientation is part of the archival structure, just as it is a part of the experience of asylum seekers in Ireland. (Brown 2016, p. 53)

The extraction of the ATA from the website and ATA database allowed for further analysis, including this meta-analysis of the ‘completeness’ of the archive.

During the course of this project, as mentioned earlier, I completed an additional thirteen scrapings of the metadata of the ATA and found a continuing change and fluctuation in the decisions in the archive.

Figure 4.4 shows these fluctuations over the four years from 2016 to 2020 in a select set of scrapings performed over this course of time. This table shows the degree to which the Tribunal was maintaining, adding and, importantly, removing decisions from the ATA over time. For example, from 2016 to 2018, many decisions issued in the time period 2006-2011 were being added to the ATA. These years were notably a time of increased applications for international protection, and the Tribunal issued the most decisions per year during this time period. However, after 2018 and up to the present, 2020, the number of decisions in the ATA from this time period has decreased. It is intriguing to note the sometimes drastic fluctuations in the number of documents available in the ATA, although it is difficult to know why these fluctuations were happening, and what actions by the administrators of the ATA caused this.

Refugee Appeals Tribunal Decisions 2001-2015 and the Number of Decisions in the Appeals Tribunal Archive in March and June 2016

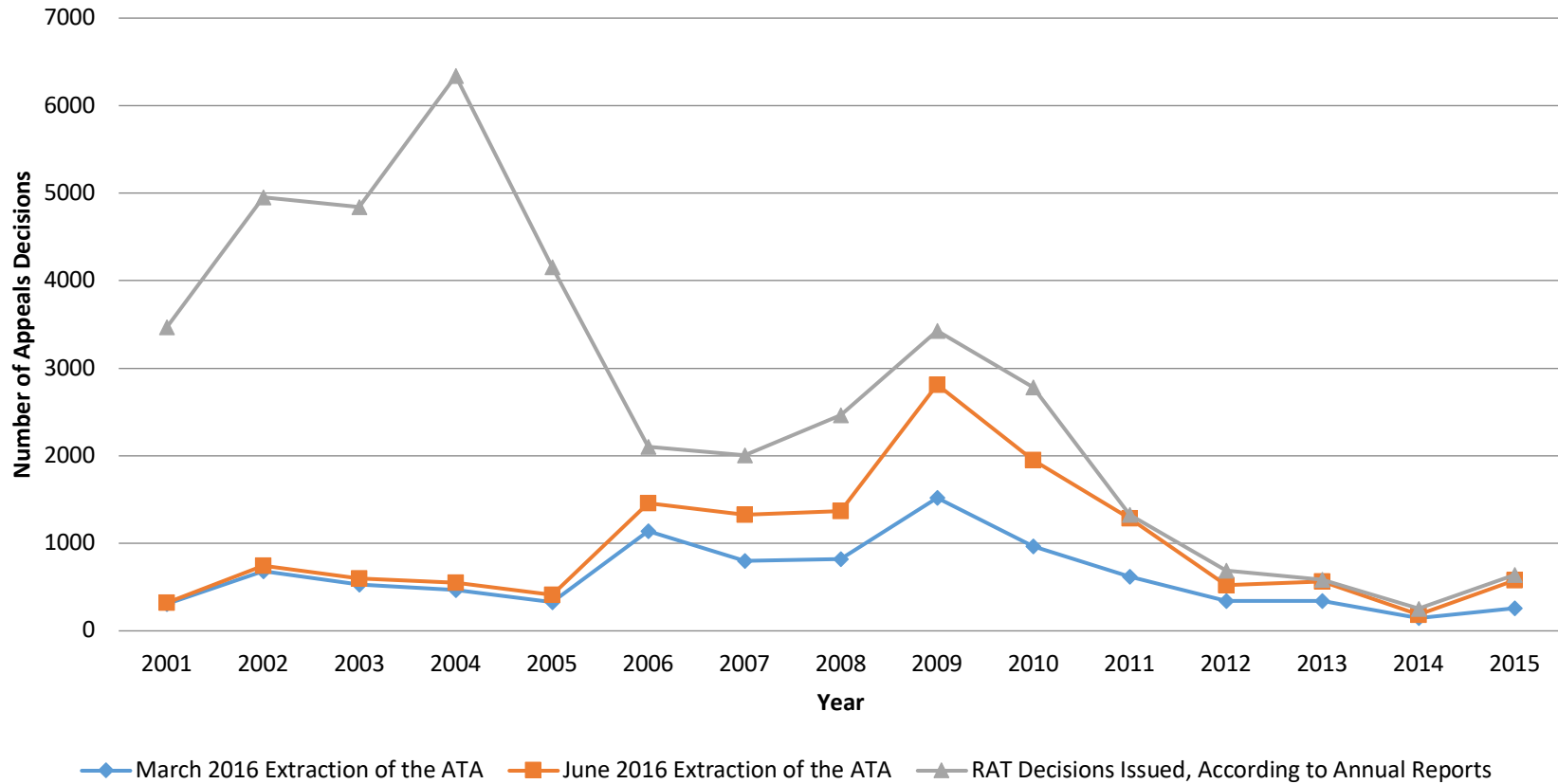


Figure 4.3 Differences in scraping results from two scrapings of the archive in 2016, compared to annual reports.

Year Issued	2016_03	2016_06	CHANGE	2016_11	CHANGE2	2017_07	CHANGE3	2018_05	CHANGE4	2020_04	Change5
2001	309	322	↑	321	↓	321	↑	350	↑	322	↓
2002	679	744	↑	733	↓	733	↑	756	↑	744	↓
2003	526	602	↑	562	↓	562	↑	604	↑	602	↓
2004	466	548	↑	282	↓	529	↑	548	↑	548	↑
2005	328	410	↑	195	↓	399	↑	406	↑	410	↑
2006	1137	1455	↑	1491	↑	1491	↑	1777	↑	1493	↓
2007	798	1327	↑	1299	↓	1303	↑	1582	↑	1328	↓
2008	823	1370	↑	1633	↑	1513	↓	1763	↑	1649	↓
2009	1519	2813	↑	2706	↓	2322	↓	2989	↑	2762	↓
2010	966	1951	↑	1683	↓	1856	↑	2120	↑	1895	↓
2011	618	1282	↑	1216	↓	1232	↑	1665	↑	1283	↓
2012	344	522	↑	502	↓	502	↑	568	↑	522	↓
2013	340	566	↑	531	↓	531	↑	616	↑	566	↓
2014	146	186	↑	177	↓	177	↑	249	↑	186	↓
2015	262	580	↑	536	↓	536	↑	626	↑	580	↓
2016				387	↑	909	↑	1065	↑	991	↓
2017						284	↑	440	↑	460	↑
2018								1	↑	771	↑
2019										1414	↑
2020										181	↑
Total (Change)	9261	14678	↑	14254	↓	15200	↑	18125	↑	17112	↓

Figure 4.5 A table of the number of decisions in the archive from a selection of web scrapings completed by the author between 2016 and 2020, broken down by year the decision was issued. The even columns indicate the date of the scraping period in format ‘Year_Month’, and the ‘CHANGE’ indicate the change in the number of decisions from the previous scraping.

4.4.4 *Reading the archive*

Reading an archive is clearly an essential part of any sustained engagement with an archive, and while web scraping offers a unique view of the ATA, it was still essential in this archival ethnography process to engage with the ATA texts. The texts of the ATA are the Appeals Tribunal decisions, written by the individual Tribunal members. They are stored in PDF format and can be downloaded from the ATA. After the most recent scraping of the archive using the second script to download all of the decision PDFs locally, I had over 17,000 unique decision PDFs saved, amounting to almost 300,000 pages of decisions written by Tribunal members and issued by the Tribunal.

This stage of the curated research stream involved devising a method of reading decisions in a way to create robust and systematic evidence of the practices of the appeals tribunals and of patterns in decisions. There was also space and time created in this project for ‘wandering’ through the ATA documents that, while producing a different type of evidence, allows for more serendipitous moments of discovery in the ATA. The curated research stream reflects the integration of all of the overarching project goals into the methods used in this stage of the project – producing systematic evidence of bordering from the ATA; providing resources from investigation of the ATA to make the asylum process more transparent; and engaging with the singular way that this statecraft is performed in an archive and in the unique archive setting of the ATA.

The corpus of the ATA began to be available in this process, slowly revealing the way individual decisions and groupings of decisions speak a language of its own, rich with interpretation of the asylum process by Tribunal members and the anxieties that this interpretation included. This process began with careful reading that allowed for the texts to reveal their small phrases of information and story, demonstrations of the gestures and structures of the state, and the observations of them that would lead to more profound investigations. In its most basic form, the method of reading began with a clear set of

impressions and analysis, allowing for the exploration of categories of focus with which to read the decisions, while also recognizing and learning from the archive what was less easy to find, what might need prodding and disruption.

In order to make effective work of reading the ATA, I designed a sampling method to choose a subset of decisions representative along the identified variables and method designed to robustly and systematically investigate broad patterns and practices in Tribunal decisions, and to focus on previously identified and prioritised issues. In previous work in the ATA (Brown 2016) I identified two major themes of focus for reading of decisions, derived from an exploratory coding of the ATA and from consultation with Irish NGOs. These two categories were: (1) Tribunal members' process assessments and judgements of the credibility of asylum seekers and of the credibility of the statements made by the applicant, and (2) the use of Country of Origin Information (COI) documents and documentation in assessing asylum seekers' claims and cases. This earlier study found a deep disconnect between the legal foundations for asylum determination and the practices of the RAT:

These demands [of the asylum determination process] create anxiety and vulnerability for the asylum seeker who may or may not be privy to these rituals and forms. The rituals and forms of the asylum process are often secret, in shadows, and disorienting. While the basis of international asylum law may seem clear, there is often little connection between the legal foundations and the practices of the Refugee Appeals Tribunal. We can't know for sure from this study, because of how much is still hidden, but we are concerned with how far asylum process at the RAT is from an unbiased process for asylum seekers, and how close it seems to be to predetermined process that sees asylum seekers as 'bogus', and the Irish state and Irish sovereignty needing protection. (Brown 2016, p. 79)

The findings from this earlier project demonstrated the need for further analysis, and for an expansion of the focus of the investigation. I completed this earlier project in July 2016, and in September 2016, I began the work of this current project. The themes from the earlier project were used as the basis of the initial exploratory analysis for this project, along with other concerns and topics from consultations with legal academics, NGOs and community solidarity groups. These themes were then used in an exploratory qualitative coding session from a sub-sample of decisions.

From this process I developed a coding system of ten major categories of codes. Within these categories were 31 total 'parent' codes, including broad categories each with a set of sub-codes, totalling 166 codes. The ten major categories of codes included all of the major themes that I set out to focus on in reading the decisions in the ATA (see Table 4.2).

These ten categories included coding for (1) structure of decisions; (2) discussion of the gender of the appellant in decisions; (3) discussion for the asylum application and appeals process in decisions; (4) discussion and assessing of the grounds of an appellant's applications and the nexus of their application to the Convention grounds for refugee status and the subsidiary protection grounds for protect; (5) mentions of explicit and/or physical violence in the decisions; (6) discussion and assessment of evidence in decisions, including Country of Origin Information (COI), other evidence submitted by an appellant, by the ORAC, IPO or by the Tribunal member, and discussion of law and legal theory; (7) personal details about appellants, discussions about appellants' age, family, travel to Ireland and conditions in Ireland; (8) discussion of concepts and use of metaphor by Tribunal members in decisions, including discussions of absence, inside and outside and memory; (9) details concerning the asylum officials, including about ORAC or IPO officials, Tribunal members, and judges and courts; and (10) passages of note or that brought about a strong personal reaction. A full list of parent codes and sub-codes can be found in Appendix 1.

Category	No. of Parent Codes
Structure	1
Gender	1
Application and Appeals Process	2
Grounds and nexus	5
Violence	1
Evidence	4
Personal details	5
Concepts and metaphors	3
Asylum officials	6
To note and personal reaction	3

Table 4.2 The ten categories of top-level codes used in qualitative coding.

4.4.5 *Threaded sampling and coding*

From preliminary analysis I identified certain ‘threads’ in the decisions in the ATA and in the first analysis of a sample of decisions. For this project, I devised a sampling system designed to tug on these threads to learn more about the issues I have raised as important and to explore other different and maybe new variables, patterns and threads in the ATA. This threaded sampling goes beyond random representative sampling. From previous analysis, country of origin of asylum seekers in the decision and the year the decision was issued have been important aspects for identifying patterns and practice in the ATA. By selecting a sample that represents the overall existing archive of decisions—representative by these variables that I identified as important in my analysis and that have available from the metadata in the ATA—I can work through some of these differences - ‘find the end of the thread’ - and also identify other important threads.

Unlike a random sampling of the decisions, this method gives importance to identifiable variables to create a ‘representative sample’: and building off the findings of my preliminary study, in this project I assume a difference in how decisions are issued and written based on the year the decisions was issued and the country that the DoJE identified as the applicant’s country of nationality. The calculation is designed to create a sample size

that is approachable to begin reading -- a sample size of around one hundred to two hundred decisions for the first group of decisions.

From a cross-tabulation of all the decisions in the archive by 1) the year the decision was issued and by 2) the identified country of origin of the applicant, I calculated a representative sample of decisions by discrete country/year categories based on the formula below.

$$\textit{Threaded Sample} = \textit{Round Down} \left(\frac{\textit{Decisions in category}}{\textit{Total Decisions}} * 300 \right)$$

This formula calculates the number of decisions in the country/year category per 300 decisions in the total archive and rounds the result down to the closest integer. I chose the constant value of 300 so that the resulting sample would be approximately 130 cases. This sampling process resulted in a sample of 128 cases from 59 different country/year categories. The calculation creates an approachable sample size, favouring country/year categories that have a larger number of decisions, while also including at least one decision from each country/year category with 61 or more decisions. This sampling process does exclude all decisions issued for people in which the country/year categories with fewer than 61 decisions issued. One option to include some of these could have been to aggregate decisions from countries with low decision counts, for example to aggregate all decisions issued for people from countries in South America with fewer than 61 cases in a year, and then choose a random sample of the threaded number of cases from this aggregation. While this option would have captured some decisions issued for individuals from countries in this 'fewer than 61' category, this aggregation was not done for the first sample batch, as in consultation it was decided that it was a priority to focus on applications by people from these countries that were represented with higher numbers in the particular years.

Decisions	Year																
Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2015	2016	2017	Grand Total
Nigeria		1	1	1	1	8	9	9	10	9	9	1	1	1	1		62
Congo, The Democratic Republic Of The	1	1	1			3	1	2	5	3	3		2	1	1		24
Pakistan									3	2	2		1	1	3	2	14
Somalia						2	1	1	1	1							6
Sudan						1	1		1	1							4
Georgia						1	1		2								4
Afghanistan						1			1		1						3
Iran						1	1		1								3
Romania		1				1											2
Ghana									1	1							2
Iraq									1								1
Bangladesh															1		1
Moldova									1								1
Cameroon									1								1
Grand Total	1	3	2	1	1	18	14	12	28	17	15	1	4	3	6	2	128

Figure 4.5 Decisions chosen for the first sample, by year and country.

To select individual decisions from this threaded sample, I assigned each case a random number between 0 and 1 using the Excel random function. I then filtered by country and year, sorted by the random number largest to smallest, and selected the number to be sampled from the cases by the highest random number. I then used the codes from the exploratory coding section and read, analysed and coded this first sampling of 128 cases over the course of three months in Summer-Fall 2018. I coded each of the decision documents using the 166 codes created in the exploratory coding session (see Appendix 1 for a full list of codes).

I coded each document for structure first, identifying the lines in the document outlining the structure of the document, including the title, section headings and the final outcome of the decision. In coding the structure, I also identified if the decision document was deciding the appeal of multiple people, as is often the case when families apply for asylum. Decisions usually follow a formulaic structure. There are some changes to this overall structure over the years that the appeals tribunals have issued decisions, and in recent years decisions have become notably more uniform, closely following a prescribed template. Each of these sections sets out a different aspect of the decision, and in each section I code for all of the themes and codes. Particular sections usually address specific issues or include certain themes, and in the following paragraphs I outline the general structure of most of the decisions and common codes and themes that I coded for in each section of each decision.

An introduction section usually identifies the applicant appealing a decision and the type of appeal, and often in the first sentences of the introduction Tribunal members identify some demographic information about the person(s) in the appeal. I coded statements on demographic information when mentioned, including gender, age and sometimes family information such as if the applicant has children, a partner or other family members in Ireland.

The introduction section of the decision is usually followed by sections titled ‘Grounds of Appeal’ and ‘The Applicant’s Claim’. In these sections, Tribunal members usually describe the case and appeal as presented to the Tribunal member by the applicant appealing, and I often coded lines in these sections for the substantive descriptive details of the case an applicant is making to the Tribunal. This work included coding for the basis of their claim, including, if an applicant in a decision is seeking refugee status, what Convention basis they feared they would face persecution if they were to return to their country of nationality (i.e., on the basis of race, religion, nationality or membership of a particular group). This section also often included applicants’ descriptions of conditions that forced them to migrate, and often includes descriptions of violence, medical issues such as injuries and travel. I coded for each of these topics in this section. I coded stories of violence under categories, based on the recurring themes in the stories of violence. These recurring themes include state violence, torture, sexual assault, police protection, female genital mutilation (FGM), violence in the military, abduction, violence done to family members, and violence related to an arrest or being arrested. I coded for other topics in this section in the same way, with categories for recurring themes related to descriptions of medical issues and related to travel. Tribunal members received the testimony by applicants that they describe in this section from multiple sources, including an applicant’s questionnaire, transcripts from interviews with an applicant and testimony that applicants give in Tribunal hearings, often in response to questions from the Tribunal member, the representative from ORAC or IPO and from the applicant’s lawyer. I coded any direct quotes from an applicant in the decision and any mention of the source of applicants’ testimony in decisions when they were mentioned. I also coded when no source was mentioned. I also generally coded for evidence of other aspects of the application process when mentioned in the decision, such as details about the oral Tribunal hearing, if there was no oral hearing, if any additional witnesses gave testimony, or if there were any

issues or difficulties raised around translations and/or translators. I specifically coded for Tribunal members describing or interpreting what Tribunal members refer to as the ‘demeanour’ of an applicant when they gave testimony, as Tribunal members often judged applicants’ testimony based on their assessment of ‘demeanour’ in hearings.

Following these sections there is a section on the submitted documentary evidence, titled ‘Submissions’, ‘Documents Submitted’ or ‘Evidence’ and includes a list of the documentary evidence submitted by the applicant and by ORAC/IPO. The most common documents submitted by applicants document the applicants’ identity, such as passports and ID cards, and country of origin information (COI) from various sources. The officer from ORAC or IPO at the Tribunal hearing also submits documentary evidence, usually COI information. I coded for identifying documents for the type of ID proof they provide, and COI documents are coded for their source. The most common COI sources coded include UK sources, mainly the UK Home Office, that provide country reports – reports on human rights and political conditions in each country, and news media sources. Often the source of COI is not mentioned in the decision, in which case the information is coded as COI with no source.

The next section is usually a section describing the applicable laws and legal principles for appeals decisions. These sections are almost always identical to the corresponding sections in other decisions issued in the same year, and there was often little to code in this section except in rare cases when different legal sources were presented.

The next section is ‘Analysis of Applicant’s Claim’, and this section is usually the longest section and the most varied section across decisions. Here, Tribunal members present their analysis of the appeal, and issue judgements on a range of aspects of the case. This section spans a wide range of topics, aspects and themes, and a wide range of codes are used in this section. Much of Tribunal members’ analysis of applicants’ claims in this section revolve around Tribunal members assessing ‘nexus’ and assessing credibility. Nexus

refers to the relation of applicants' claims to the standards for recognition for international protection as set out in international law. In appeals for refugee status, this assessment centres around if an applicant has established the 'well-founded fear of persecution' the threshold for refugee protection. In this section of decisions, Tribunal members describe this nexus, and assessments and judgements of basis are coded based upon the decision and the basis. Tribunal members' assessments of credibility are also coded in detail. In this section, Tribunal members often pass judgement on if they believe the testimony and evidence presented to them, and if they judge this testimony and evidence to be credible. These statements and judgements are coded in detail based on a range of themes, including the thresholds and justifications that Tribunal members use, when they judge a statement to be credible or not, when they judge an applicant or witness to be credible or not and when Tribunal members declare that they believe or don't believe statements or evidence.

Other themes commonly coded for in this section include personal details such as age, family, travel, the conditions they experience while living in Ireland and medical issues, and also include coding for Tribunal member judgements that relate to other judgements made by ORAC or IPO, under Judicial Review by the High Court or other court, and other information relevant to the practices of the RAT or IPAT.

The final section of the decisions is a conclusion section, stating the final appeals tribunal decision on the appeal, which is coded as decision under structure. Additional codes that are used throughout the coding process include coding for abstract concepts and themes that emerged and coding for notable passages. Abstract codes included coding for themes of Absence/Void, Inside/Outside and around memory. Codes for notable passages included a code for passages of special note to be re-examined, and a code for statements that evoked an especially strong personal emotional reaction from the researcher, coded 'wtf'.

4.4.6 *Knowledge exchange forum and presenting preliminary results*

Following on from this initial digital and qualitative analysis of a sample of the ATA decisions, I organised as part of the project a knowledge exchange forum. The framework of a knowledge exchange forum is similar to a focus group in some ways. As in a focus group, a forum space was established and research participants could discuss and debate issues around the research (Secor, 2009). However, rather than just an information-gathering activity, the knowledge exchange forum was a space to give participants access to preliminary research results. For this forum, I invited stakeholders in the asylum determination process and NGO and community organisations. Some of the individuals had been part of discussions around the direction of previous research around the ATA, and the forum was also established as a place where previous conversations were continued in a formalised space, as well as conversations were welcomed to be continued after the forum. I presented the methods of this project to the forum group and invited them to discuss and assess the usefulness of the project for their own work. This forum was integrated to be part of the iterative process of knowledge sharing and knowledge production from the analysis of the ATA and hearing feedback.

I held the forum in December 2018 with five attendees, and the forum consisted of the presentation of preliminary findings including a handout describing the project and preliminary results from the project, including findings around themes of (1) memory in the Tribunal decisions and assessments; (2) time and timing; (3) the treatment of children in Tribunal decisions; (4) the burden of proof; (5) Country of Origin Information (COI) in the decisions; and also (6) specific evidence around the mis-quoting of legal sources and use of Wikipedia as a source in some Tribunal decisions (this handout is included as Appendix 2). The forum was then opened up to feedback and participation from all the attendees, and attendees contributed thoughts on the project so far, questions and personal opinions about the project, and possible avenues for the future work in the project. The

knowledge sharing forum was held for two key reasons: (1) to identify the priorities of research into the practices and culture of the asylum determination agencies for the pursuit of a more just asylum determination process for asylum seekers in Ireland and (2) to identify indicators to find proof of systemic practices in agencies that are otherwise opaque and difficult to research. This process also formally recognized the importance of voices from organisations working with asylum seekers and to hear from asylum seekers who had been through the process themselves.

Feedback from the forum was integrated into new questions, potential indicators, and foci in continued analysis of ATA decisions. Field work and research in the ATA after the December 2018 knowledge exchange forum focused on two aspects that emerged as important from the forum: (1) reading and coding further samples of decisions based on factors identified in the forums that needed more focus, for example decisions granting refugee or international protection status and decisions issued since the changes in the Tribunal structure at the end of 2015 and (2) using Optical Character Recognition (OCR) and other data science tools to extract the names of Tribunal members issuing decisions and further specific details using text searches of all decision documents in the ATA. A full description of this second process is in the following section.

4.4.7 *Further digital analysis tools*

In the knowledge exchange forums, participants expressed interests in the practices of individual Tribunal members, in addition to the collection of evidence on general practice in decisions. At the bottom of each document Tribunal decision document is a 'signature' of the Tribunal member issuing this decision. This signature is not handwritten, and is an image of the name of the Tribunal member, typed out. The information on which Tribunal member issued a decision is not included in the decision metadata in the ATA, and so to gather a record of which Tribunal member issued each decision it was necessary

to design a method to identify the Tribunal member signature at the bottom of each document. With 17,917 PDF decision documents, it is necessary to devise a programmatic way to identify the Tribunal member.

There are two ways that text is stored in files in the PDF format. One way that PDF files store text is as a text element. This element is a string of characters with instructions to draw the characters at a specific position on a page. These text elements can be copied into a different format, or extracted using tools for analysing PDF documents. PDF documents are formatted specifically for exact layout in a reproducible and usually print-friendly way, and so when text elements are extracted to a different software, they may not preserve formatting or preserve all the characters. Most of the text of the ATA decision documents are in the form of text elements, and can be extracted into a simple text format with few inaccuracies. This extracting or copying allows for the carrying out of detailed, systematic and/or programmatic searches of the Tribunal decision documents texts. However, the Tribunal member signature text is not stored as a text element. Instead, this text is formatted as only an image of the typed name of the Tribunal member, meaning that the tools for extracting text elements cannot extract the Tribunal member name from the decision PDFs. To read the Tribunal member signature text, I used a method of Optical Character Recognition (OCR) to convert the image of the text into machine-encoded text, which could be added to a database. I used the R software and the packages `pdftools` (Ooms, 2019a) and `tesseract` (Ooms, 2019b) to programmatically import decision PDFs, used a variety of techniques to attempt to locate the screen position of the Tribunal member signature, and then used the Tesseract OCR engine, a popular open source OCR engine that is also one of the most accurate (Smith, 2013), to convert the image of the text.

Additionally, the text-element components of the decisions, including almost all of the text of the decisions, were converted into machine-encoded .txt files. These files could be efficiently and programmatically searched for specific words and phrases. Additionally, I

sometimes constructed programmatic searches to identify the number of documents in which a certain word or phrase appeared and the number of times the word or phrase appeared. These programmatic searches were useful in some individual circumstances, when findings from qualitative coding and other methods could be quickly compared or used to identify similar documents among all of the decisions in the ATA.

6. CONCLUSION

The Tribunal has considered all relevant documentation in connection with this appeal including the Notice of Appeal, correspondence dated 16 June 2010 1 August 2010, 13 April 2011 together with the attached submissions, correspondence from XXX XXX dated 16 February 2010, Applicants status as a minor, paragraphs 213-219 of the UNHCR Handbook, all documentation, country of origin information and correspondence on file, Applicant's Asylum Questionnaire and the replies given in response to questions by or on behalf of the Commissioner on the report made pursuant to section 13 of the Act.

Accordingly, pursuant to section 16(2) of the Act I affirm the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act.

Signed _____

Michelle O'Gorman

Member of Refugee Appeals Tribunal

Dated the **day of** **2011**

Figure 4.5 An example of a Tribunal member signature at the end of a decision document, after the Conclusion section of the decision. The highlighted (blue) text is formatted as a text element, and can be copied or extracted. The Tribunal 'signature' is an image of typed text.

4.5 Limits of archival research in the ATA

There are, of course, limits to the type of research I engaged in as part of this project. Some of these limitations are limitations in studies of any state archives, in which not all can be known about all aspects of the topics and individuals presented in the archive. In this project, there are plenty more places to look and study and understand.

This project is not a traditional ethnography that immerses the ethnographer in the physical everyday life of decision-makers. Archival research looks to find the logics of state in a different way from these approaches, even while physically immersed ethnographies are rewarding for researching bordering in different ways. It could be helpful to consider what parallel research might contribute further to the research in this project. Future interviews with Tribunal decision makers, for example, backed up by the research in the archives, could provide further view into the lifeworlds of decision makers.

Other factors limited this project in ways not affecting all research into state archives. This research has been limited in time, especially when compared to Stoler's decades of immersion in Dutch state archives. Additionally, many documents are still hidden and not available for research. These hidden documents include, to name a few, the operating policies of the Appeals Tribunals and other asylum agencies in Ireland, and the first-instance decisions in international protection decisions. And the archive is continuing to be added to, so any time that this project has chosen to end is separate from the temporal boundaries of the archive itself. These limitations provide an important context for what can be found in the archive, and what practices of asylum determination and bordering in Ireland must be sought using different research methods.

4.6 Conclusion

The Appeals Tribunal Archive is a site of and evidence of the production of the asylum system by successive Irish governments from 2001 to the present. In this chapter, I have described how I set out to study the ATA, and how I designed a curated research stream, using mixed ethnographic, digital and qualitative methods to investigate the ATA. The appeals decisions and the ATA are part of a bordering process by actors of the state that reinforces certain logics of state bordering, denying international protection and even in positive decisions reaffirming the state's right to determine the how and where people

lead their lives. This is the experience of being subject to the bordering logics and the ‘fortress Europe’ epistemological framework and approach by the Department of Justice and Equality in Ireland. The ATA, together as a collection of over 18,707 decisions from 2001 to present and as a material presence of the Tribunal’s actions, policies and cultures, shows and produces the bordering actions of the state by instituting certain cultures of logics to deny appeals and deny the inclusions of a wide range of experiences as evidence.

I have highlighted the importance of creating an innovative method that enables me to work with the ATA and to study the multiple scales in which bordering is happening. I do this work in the hopes that these methods can destabilize the often static and unmoveable forces of oppression and violence of the state on those most vulnerable. In the analysis of the ATA I identified multiple facets of the systematic patterns of bordering by Tribunal members and the appeals tribunals. In the following chapters, I present the findings from my research in this project and the evidence I have produced from the archive of a system designed to discredit asylum seekers and the stories they tell.

5 Chapter 5: Anxieties in the archive

5.1 Introduction

By engaging closely with the archive I show state practices that selectively scrutinize some of the events of the asylum seekers' narratives and also selectively obscure other events of the asylum seekers' narratives. These practices reveal the Tribunal members themselves as state actors and producers of state knowledges. This approach of sustained engagement with the ATA draws heavily on Stoler's archival ethnographic methods to 'study along the grain' of state cultures and knowledges. As Stoler writes, "navigating the archives is to map the multiple imaginaries ... that elevated something to the status of an 'event'" (Stoler 2009). How state agents and state agencies create knowledge in the archives both informs how the state is produced and is an act of producing the state.

As these state practices are revealed or incompletely obscured in the documents of the archive, sentiments are conveyed—as the questioning, interpreting, assessment and reproduction of knowledge—by the tribunal members who face the demands of their situation, who express their judgements as logical and moral actions in response to the decisions they face, and the asylum seeker and asylum seeker's story that they face. These sentiments conveyed are both in statements and in the traces of these statements, in the expression of the hierarchy of the state and in who speaks, or writes, for the state. Stoler writes that this sentiment by state actors is "the negative print of the colonial archive's reasoned surface, the ground against which the figure of reason is measured and drawn" (ibid, p. 101), and I argue that the common sense logics, the reasoned surface that the Tribunal members express in the ATA are full of sentiment and contain an anxiety that can be traced and seen as evidence of statecraft. This anxiety explicitly frames migration as a form of violence to the state, that damages the state, one and one that frames refugee law and obligations as a burden that agents of the state must bear.

In the previous chapter, I set out how I did this research and described the curated research stream that I crafted using mixed digital qualitative methods to investigate the Appeals Tribunal Archive. I argued that the ATA is a site of and evidence of the production of the asylum system by successive Irish governments from 2001 to the present, and in this chapter I set forth evidence that I found in the ATA revealing cultural and individual anxieties. I show systemic patterns of decision-making in the presentation and evaluation of evidence by members of the appeals tribunals in their issued decisions. I also show how these patterns produce a collectivized experience of asylum determination for asylum seekers in Ireland – asylum seekers, while a disparate group from all over the world and with a wide range of experiences and claims, are in the asylum process all subject to a process of being interpreted by the Irish state, of being subject to the logics and sentiments of the actors of the state.

The appeals decisions and the ATA are part of a bordering process by actors of the state that reinforces certain logics of state bordering, a process that usually denies international protection and even in positive decisions reaffirms the state's right to determine how and where people lead their lives. This is the experience of being subject to the bordering logics and the 'fortress Europe' epistemological framework and approach by the Department of Justice and Equality in Ireland. The ATA, as a collection of 18,707 decisions from 2001 to present and as a material presence of the Tribunal's actions, policies and cultures shows and produces the bordering actions of the state by instituting certain cultures of logics that work to deny appeals and deny the inclusions of a wide range of experiences as evidence.

When a Tribunal member from the Refugee Appeals Tribunal (RAT) or International Protection Appeals Tribunal (IPAT) issues a decision they are deciding to grant or to deny an asylum seeker's appeal – they are either overturning the negative first-instance decision by the ORAC or IPO or reaffirming the negative first-instance decision.

This decision by a Tribunal member comes in the form of a document written by the Tribunal member setting out the evidence and justifying his or her decision. The document begins and opens with a header that states the issuing body, either the RAT or IPAT; a form including the country of nationality of the person or family making the appeal; the reference number for the application; and other details (see Figure 5.1 for an example first page of a decision issued by the RAT). The decision document concludes with the Tribunal member's decision, written formulaically. While these decision sentences are not always completely identically, they have only small variations between them. These decisions issued by the RAT, under the Refugee Act 1996, decisions concluded by referencing the act itself. Positive decisions generally are stated as:

Accordingly, pursuant to section 16(2) of the Act, I set aside the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act.

Negative decisions issued by the RAT generally are stated as:

Accordingly, pursuant to section 16(2) of the Act, I affirm the recommendation of the Refugee Applications Commissioner made in accordance with section 13 of the Act.

APPENDIX

REFUGEE APPEALS TRIBUNAL

Country: Nigeria

Reference No: 69/6/06

Applicant: XXXXXX XXXXXX

Decision

Date of Hearing : 18 June 2008

Counsel for the Applicant: XXXXX XXXXX XXXXX XXXXXXX in attendance at the Hearing.

Appearing for Refugee Applications Commissioner: XXXXXXX

Nationality: Nigerian

Interpreter: N/A

1. INTRODUCTION

This is an appeal against the recommendation of the Refugee Applications Commissioner ("RAC") that the Applicant should not be declared to be a refugee.

The Applicant claims to have a well-founded fear of persecution in Nigeria on the grounds of her Religion/ membership of a particular social group.

2. GROUND OF APPEAL

The Applicants appeal is based on the following grounds including the Applicant's evidence, the written Submissions received and heard at the

Figure 5.1 The first page of a decision by the Refugee Appeals Tribunal, issued in 2008, as it appears in the Appeals Tribunal Archive.

Decisions issued by the IPAT, after it replaced the RAT in 2017 under the International Protection Act 2015, have a slightly different language, reflecting the change in legislation and the slightly changed process of the IPAT. Decisions issued by the IPAT explicitly mention whether their decision is for an appeal for refugee status, subsidiary protection, or other types of appeal, such as an appeal against Dublin regulation decisions ordering an asylum seeker to be deported to a different EU state (see section 3.3 and Figure 3.1).

Positive decisions for refugee status issued by the IPAT generally are stated as:

For the reasons given the Tribunal sets aside the recommendation of the IPO, that the Appellant not be declared to be a refugee, and the Tribunal recommends that the Appellant be given a refugee declaration.

Negative decisions for refugee status issued by the IPAT generally are stated as:

For the reasons given I affirm the recommendation of the Commissioner that the Appellant not be declared to be a refugee.

The rest of the text in each of these decision documents is all entirety of the evaluation of the appeal by the Tribunal member, including descriptions of the arguments presented by the person appealing the decision and their solicitor, when present; the arguments presented by the ORAC or IPO defending their decision; and evaluations, discussions and decisions on the evidence and the case of the appeal. This written document is then sent out as a letter to the asylum seeker and their solicitor as notification of the decision; when an appeal decision is added to the Appeals Tribunal Archive (ATA), a PDF version of this document is also added to the ATA. These appeals tribunal decision letters are a very particular kind of administrative document that make judgements and, while framed by formulaic language, can be seen to express the sentiments and anxieties of the state agents working as Tribunal members and are representative of interpretations of social relations of power.

In the analysis of the ATA, I identified multiple facets of the systematic patterns of bordering by Tribunal members and the appeals tribunals. These facets include issues found in determining asylum cases in many other countries including how decision-makers interpret, judge and manipulate the nature of memory to discredit asylum seekers and the stories that they tell. I identified, additionally, that protocols around talking to victims of violence including sexual coercion and state abused are either not present at all or not adhered to. There are also facets of the decisions that are not usually highlighted in literature including , among others, how decision-makers judge timing – assessing when events or conditions happen ‘too fast’ or ‘too slow’ to be believed– and how Tribunal members interrogate applicants on the knowledge of their situations, critiquing applicants for knowing too little about the political situation in the countries they are from or for knowing too much.

In section 5.2, I introduce how Tribunal members treat travel as narrative. Tribunal members are working in the context of a lot of guidance, case law and legislation. In the section 5.3, I address this context and legislation and outline the international law and guidance from the UN. In section 5.4, I outline Irish law and the politics of how evaluation of travel became a focus of determination, as set out in the legislation, focusing on the 2003 amendments to the Refugee Act 1996, and then the changes in IPA 2015. I present evidence that Tribunal members have privileged domestic law over UNHCR guidance. In section 5.5, I discuss how Tribunal members produce a tactic of ‘common sense’ to generate anxieties around asylum seekers’ narratives of travel, and ultimately to disbelieve and discredit asylum seekers’ testimonies. While travel is explicitly peripheral to claims for refugee status and subsidiary protection, Tribunal members leverage travel as a ‘non-core issue’ to judge asylum seekers as ‘not credible’, and that therefore the rest of the evidence they present is not valid. I identify some central themes of this anxiety, including themes

around ‘first safe country’ and the narrative of passports. In section 5.6, I specifically discuss the decisions issued by Tribunal member Nehru Morgan Pillay in 2008-2011. I show how original research from this project found that an egregious mis-quoting was used wrongly rejected over 100 claims of protection, and how Pillay’s work in the Tribunal reveals in a dramatic fashion the patterns of disbelief systemic in appeals decisions issued by the RAT/IPAT. I conclude this chapter by discussing the implications of investigating the sentiments and ontologies of Tribunal members in the decisions in the ATA, and how these archives are not simply accounts of actions or records of what people thought happened, but records of uncertainty and doubt in how Tribunal members imagine and construct the lives of asylum seekers.

5.2 Narratives of travel in the ATA

Narratives of travel allow us to focus on the sentiments and judgements of Tribunal members in relation to one facet of the decisions – how Tribunal members analyse the ways in which asylum seekers travel and arrive in Ireland. In Tribunal decisions, Tribunal members almost always spend some time and ink recounting and reproducing applicants’ accounts of their journeys to Ireland, among the narratives that tell of where the asylum seekers are from and why they have left to seek asylum in Ireland. Asylum seekers must tell these stories initially and repeatedly over the prolonged asylum determination process (as described in section 3.3). Asylum seekers first must recount their journeys to Ireland in an initial interview with the ORAC/IPO. They then must submit a written questionnaire including questions about their journeys and are asked again in further interviews and again if they appeal a first-instance negative decision.

In the decisions, Tribunal members also sometimes recount their own interrogation of asylum seekers during appeals tribunals oral hearings. These hearings are when asylum seekers make an appearance in front of the Tribunal and the Tribunal member assigned to

the appeal. In attendance at these hearings are the Tribunal member; the asylum seeker(s) in the appeal; any solicitor they may have, either paid for or available through free legal aid; a representative from the ORAC or IPO to defend the negative first-instance decision; and an interpreter for translation if necessary. During these hearings Tribunal members often question and scrutinise asylum seekers and their stories. Tribunal members recount how they asked a question and received a response, but simply by recounting the narratives, Tribunal members change these narratives, capture them in the logics of the state. In the decisions, Tribunal members work to produce the stories as ‘asylum seeker stories’.

Each person seeking international protection must tell at multiple times and points in their applications process of their claim of persecution in their country of nationality. Almost every asylum seeker also tells of the journeys they took to reach Ireland, of the lengths that they went to travel, often outside the accepted means of travel by European border customs and regulations.¹⁵ When included, the accounts of these journeys often take a central position in Tribunal members' evaluation of an appeal, becoming part of the contested narratives that Tribunal members engage with and decide on in their roles in the Tribunal. The accounts of these journeys within the Tribunal member's evaluation of an appeal of a negative first-instance decision are re-told and reproduced in the ATA to become elements of statecraft and evidence of the ATA as a site of bordering.

Some people left their country and travelled to Ireland by plane, landed in Dublin airport and claimed asylum at the immigration check in the airport, or entered Ireland and claimed asylum later. Some people fled to a country neighbouring their own before boarding a flight. Many people arrived in Ireland with visas allowing them entry and temporary residence, using their own identification. Many people hire human smugglers

¹⁵ There are a small percentage of people who do not tell of their journeys to Ireland because they were born in Ireland and because of the nationality and status of their parents were not eligible for citizenship or residency.

and testify in their accounts to the lengths that they went to leave their country -- travelling with a false passport and/or avoiding border checks. Many people have travelled by ship, and give account of the journeys boarding ships, travelling through international ports, and arriving into one of Ireland's ports. Some of the accounts tell of journeys that last years and involve living in other countries for extended periods of time facing various deportation threats. Accounts of travelling by plane are some of the most common, but in the thousands of decisions in the ATA there are just as many different journeys and different arrivals in Ireland, each becoming a part of a person's files in the Department of Justice and Equality. Each account is 'evidence' that can be leveraged against them or recounted back to them in courts, in the appeal tribunals or in written decisions.

In the initial decisions by the ORAC/IPO and in appeals decisions, civil servants and state officials evaluate these journeys. These evaluations are visible to the researcher only by proxy in decisions by the ATA, when Tribunal members make reference to the first-instance decisions. The ORAC/IPO turn to the accounts of these journeys to interrogate asylum seekers' 'credibility', assessing whether in their eyes the story of their journey is true. In doing so, state officials produce what is important in these narratives, and produce what kind of evidence and narratives can be discarded, forgotten or deemed not relevant to their asylum decision. This process brings some elements into sharp focus for the state, leaving types of knowledge and experiences in shadows. As Stoler writes:

Institutions create shadowed places in which nothing can be seen, and no questions asked. They make other areas show in finely discriminated detail, which is closely scrutinized and ordered. ... To watch these practices establish selective principles that highlight some kinds of events and obscure others is to inspect the social order operating on individual minds. (Stoler, 2009, p. 25)

Using the framework of gathering a spectrum of evidence from sustained engagement with the archives, I present the ways that Tribunal members operate within and on social orders

in their decisions focused on the element of journeys that asylum seekers have taken to get to Ireland.

I provide here a short sample of some of the journeys described in the decisions, sometimes recounted by Tribunal members in minute detail, sometimes in broad strokes, selected to show patterns from the sections in the decisions coded as travel. In this decision from 2013, Tribunal member Bernard McCabe recounts the account of a man from Pakistan of travelling to Ireland with the help of a paid agent by car and by boat:

He was asked who travelled with him to Ireland. He travelled to Ireland with an agent, his family also travelled with him. His wife, two children and the agent. He travelled by car and then by boat. He was asked when he arrived in Ireland. He arrived in Ireland on the 28th June 2006. He was asked how long the journey took. He said that it took six days for them to travel to Ireland. At first they went to Dubai then they went to the United Kingdom. He was asked if he could have stayed in Dubai and applied for asylum there. He did not know. The agreement was that we [sic] would be taken to the safe country and that was Ireland. (McCabe, 2012, p. 4)

Often, Tribunal members recount and describe the journeys of applicants who do not know all the places they went to on their journey, usually because the asylum seekers have travelled in secret or in hiding under the guidance of someone else, including human smuggling agents. In a decision issued in 2011, Tribunal member David Andrews recounts a Nigerian woman's account of travelling to unknown destinations until she arrived at the office of the Refugee Application Commissioner:

She does not know what airport she flew from as it was night and this was her first time travelling. She left her home at about 8am and travelled by bus with a woman until they reached an airport at 10pm where she flew non stop until they arrived at an unknown destination where they boarded a bus and travelled for three hours

until they arrived at a bus stop. This was to an unknown location where she got off the bus. They were collected by a taxi and travelled for 30 minutes to an unknown location. It appears it took 2 hours to get from this unknown location to get to the ORAC office.[sic] It appears she travelled on a green passport. She does not know the name on the passport nor did it have the Applicant's picture on it. She did not have the passport in her possession at any time. (Andrews, 2011)

Families and people travelling with children often describe reaching Ireland as a much more complicated task. In a 2013 decision, Tribunal member Bernard McCabe recounts the accounts of a woman from the Democratic Republic of Congo travelling with her husband and children, travelling separately when necessary:

When her husband came back, she decided she wanted to leave, "it was better to leave the country then". They started to decide where they would go. She was asked when did she decide to leave. "This was in July 2002 subsequent to his return from detention for one week". She was asked about her first attempt to leave. Her husband contacted her friend. It was not easy to travel so they had to split up into three different groups. He asked his friends who lived in London if they could help him with eight passports to take the children with him or to take a few children with him. "I took three children on my passport because you can have the children on your passport up to ten years of age". (McCabe, 2013, p. 15)

These three narratives recounted and reproduced by Tribunal members and drawn from the decisions in the ATA give a glimpse into the wide range of accounts in decisions and give some insight into the great lengths that those applying for asylum have gone to in their journeys that have led to their arrival in Ireland. There is, in a real and substantial way, something extraordinary about any and all of these journeys, in the violence that precipitated the journeys, in the disorientation and risk that is part of many of these

journeys, and in the fraught arrival of the asylum seekers in Ireland, where safety and asylum are contested, and for many out of reach. There is evidence in the ATA that the extraordinary nature of the journeys becomes, in the decisions of the Tribunal members, a tool to deny inclusion to these people who are seeking asylum in Ireland.

5.3 International guidance and the UNHCR

The UN High Commissioner of Refugees (UNHCR) provides some guidance for countries adjudicating determination on the best practices of evaluating asylum seekers' accounts of their journeys and arrivals. Irish agencies are not under legal obligation to follow this guidance, but it is considered best practice. The 2013 report "Beyond Proof: Credibility Assessment in EU Asylum Systems", published by the UNHCR and the European Refugee Fund of the European Commission, advises that the travel route that asylum seekers should rarely be a material fact (UNHCR, 2013, p. 13). The judgement of whether an individual meets the qualification that they would face upon return persecution for a convention nexus -- because of race, religion, nationality, membership of a particular social group or political opinion -- is almost never based upon how they travelled in other countries or how they arrived in the host country. The report does say that context is always important to learn and to keep in mind as a decision-maker in refugee determination, and that "the circumstances pertaining to the applicant's journey to the Member State and the situation in transit countries may be relevant in assessing, for example, the applicant's explanations for an absence of documentary evidence in support of asserted material facts" (ibid, p. 36). If an asylum seeker has faced hardships on their journey, it may be that they no longer have their identification documents or were unable to bring with them documentary proof of the claims that they make in their applications for international protection.

The report references *The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (also known as the UNHCR Handbook), which emphasizes the vulnerability that asylum seekers face in their presentation of evidence in their applications and in their positions in host countries:

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs. (UNHCR, 2019, p. 42)

UNHCR guidance gives a multitude of resources to decision-makers in countries and has major influence in assessing how decision-makers are doing. UNHCR emphasize that any interrogation of asylum seekers should be done with care, 'objectivity' and with respect to the context of each individual's situation.

In addition to guidance on assessing and judging evidence on an asylum seeker's journey, there is also guidance and scholarship more generally on assessing the credibility of evidence in asylum cases. Often there is not documentary evidence, and so the evidence presented in the case is the testimony by an asylum seeker. The UNHCR Handbook explicitly states that while the burden of proof lies on the person submitting a claim, a case in which an applicant can provide documentary evidence of their statements will be rare, and "if the applicant's account appears credible, he should unless there are good reasons to the contrary, be given the benefit of the doubt" (ibid, p. 238). This language of doubt and plausibility, it is important to note, is emotive language similar to what I argue is the emotive language of Tribunal members. And importantly, the role of the decision maker is

not only deciding but imposing a sense of whether the testimony is credible. As the handbook states:

The benefit of the doubt should, however, only be given when all available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statements must be coherent and plausible, and must not run counter to generally known facts. (ibid, p. 238)

Article 3 of the European Charter of Human Rights, the prohibition of torture or inhuman or degrading treatment, has also been ruled to provide further protections and rights to asylum seekers in their claims. In *Hatami v Sweden* (1997), in an asylum application after a short interview conducted with inadequate interpretation facilities, the asylum seeker applicant, was rejected asylum on the grounds of the applicant's story about his transit route. This rejection was judged to be a violation of Article 3 because there were inadequate procedural safeguards put in place by the State. Article 3 has been ruled to give specific protections in judgements of credibility around narratives of travel and transit. As Peers and Rogers write:

It is also clear that, to avoid an Article 3 violation, instead of an obsessive focus by the authorities on alleged inconsistencies concerning an applicant's travel, the asylum determination process should focus on an applicant's assertions concerning the threat of torture, derived from an applicant's 'political affiliations...and his activities, his history of detention and ill-treatment'. Finally, the Commission made the important general observation that 'complete accuracy is seldom to be expected by victims of torture'. In a later case, the Human Rights Court ruled that lack of credibility in an applicant's story regarding his or her transit should be overlooked where there was nonetheless a sufficiently strong argument that Article 3 risk would materialise upon return to the country of origin. (Peers and Rogers, 2006, p. 328)

While it is clear that international guidance at the UN and European level recognises that the evidence and narratives of travel and transit to a state before applying for refugee status should not be a central element in assessing and deciding asylum determination, what also is embedded in this guidance is the sentiments and anxieties of the state, of layers of questioning of genuine details, of assessing credibilities that could disrupt the obligation of the state to offer refuge.

5.4 Irish law: legislation to ‘have regard for the following’

International law sets out guidance for decision makers, and Irish law has also provided further guidelines and interpretations of qualifications for refugee status. Tribunal members are not acting on their own, and neither are they relying solely on International law. Legislation has always produced, contributed to and affected how the Tribunal practiced the decision-making process. In Ireland, the Irish Refugee Act in 1996 was the first formal act of legislation concerning asylum determination and created the ORAC and the RAT to align Ireland with other European countries and the EU (as explained in section 3.3). In 2003, the government in the Immigration Act 2003 amended sections of the Refugee Act, and this amendment had specific consequences and ramifications for how decision-makers assessed asylum claims. Among other changes to immigration law, the 2003 Immigration Act changed the requirements on the ORAC and the RAT to evaluate the credibility of asylum seekers. These new requirements were set out in the provisions of Section 11B (subsections a through m) of the Refugee Act, which required asylum decision-makers to assess the credibility of asylum seekers based on a specified list of thirteen aspects of their case. Section 11B effectively created a checklist of credibility standards that Tribunal members were obligated to check and ‘shall have regard to’ when assessing an asylum seeker’s credibility and the credibility of their testimony. Section 11B(b) and (c) in particular required Tribunal members to have interrogated asylum seekers’

accounts of their journeys and arrival in Ireland. The legislation required that Tribunal members, “in assessing the credibility of an applicant... shall have regard for”:

- (a) whether the Applicant possesses identity documents, and, if not, whether he or she has provided a reasonable explanation for the absence of such documents;
- (b) whether the Applicant has provided a reasonable explanation to substantiate his or her claim that the State is the first safe country in which he or she has arrived since departing from his or her country of origin or habitual residence;
- (c) whether the Applicant has provided a full and true explanation of how he or she travelled to and arrived in the State.
- (d) where the application was made other than at the frontiers of the State, whether the Applicant has provided a reasonable explanation to show why he or she did not claim asylum immediately on arriving at the frontiers of the State unless the application is grounded on events which have taken place since his or her arrival in the State;
- (e) where the Applicant has forged, destroyed or disposed of any identity or other documents relevant to his or her application, whether he or she has a reasonable explanation for so doing; ...

(Refugee Act, 1996 as Amended, 2003)

Each of these items requires an evaluation on a certain topic by a decision-maker, prescribing their approach to assessing credibility of an applicant, and often diverging from the ‘benefit of the doubt’ standard set out in the Handbook. This standard then appears to be in opposition to the UNHCR guidance.

The Immigration Act 2003, including these amendments to the Refugee Act were passed in 2003 under Minister for Justice and Equality Michael McDowell, a Progressive Democrat member of the Dáil Éireann (the lower house and principal chamber of the

Oireachtas, the Irish legislature) in the governing coalition with the larger Fianna Fail Party at the time. Minister Michael McDowell introduced a range of legislation limiting the rights of migrants in Ireland, including the 27th amendment to the Irish constitution limiting the rights of babies born in Ireland to access Irish citizenship, as described in section 3.3. In debates in the Seanad Éireann (the upper house of the Oireachtas), McDowell presented the new Section 11B to Seanad members (emphasis added):

The new section 11B sets out a range of matters to which regard is to be had....

These are largely a matter of *common sense* and serve to put beyond doubt what factors are relevant in assessing credibility.... I emphasize to senators that this legislation will not turn the country into fortress Ireland... Its intention is to make our asylum and immigration law coherent and workable and ensure state resources are not misdirected by having a weak and ineffectual law (Oireachtas, 2003)

McDowell emphasised the ‘common sense’ aspect of the Tribunal. McDowell’s statement emphasised an Irish practice of assessing asylum seekers’ narratives based on the ‘common sense’ knowledges of Irish Tribunal members.

At the time, McDowell’s proposals were met with criticism from immigration NGOs and Seanad members in opposition. In rebuttal in the Seanad the same day, Independent Senator Mary Henry pointed out how restrictive the ‘common sense’ requirements were and how inappropriate the standards set out were for assessing the situations in which asylum seekers arrive in Ireland.

It is unfair to decide a person is manifestly unworthy of asylum due to lack of documents given that those fleeing countries in which they are being persecuted are unlikely to go to the border with their own passport. The provisions of this section are patently ridiculous. I am very concerned about section 11B(c) which refers to applicants who have provided a full and true explanation as to how they arrived in the State. They will not give that information because it might put the lives of their

family and goodness knows who else in danger. I am dismayed that this and the credibility of their case will be taken into account rather than the merits of their case. I cannot see how these measures will help to prevent the abuse of the asylum procedure. All they will do is put people more in terror of getting themselves into such a mess that they will be thrown out of the country. (ibid)

The Immigration Act 2003 became law in July 2003. UNHCR guidance clearly states that there is no duty on asylum seekers to prove that Ireland was the first safe country that they arrived in after leaving their country of nationality, nor is there a requirement that an individual seeks asylum immediately upon arriving in Ireland. However, under these subsections, Tribunal members were legislatively obligated to assess the stories, narratives and evidence that asylum seekers gave about their journeys to Ireland and their arrival in Ireland. Tribunal members regularly engaged with this policy by using the accounts of journeys and travel and arrival in Ireland to discredit asylum seekers, and I gathered in this project evidence that this is a systematic practice of the Tribunal. It became apparent that the Section 11B amendment and the ‘checklist’ of legislative requirements for Tribunal members set out in Section 11B became a central focus of a large proportion of decisions. Repeatedly, Section 11B legislation was cited as Tribunal members questioned, criticised, and discounted the credibility of asylum seekers through interrogation of their journeys. Tribunal members remained under the obligations of Section 11B until the Refugee Act was replaced in December 2015 by the International Protection Act.

The focus of the analysis in this chapter is on decisions made under the Refugee Act 1996, in effect from 1996 to 2016, and during the time that the amendments from the Immigration Act 2003 were in effect. When the International Protection Act 2015 (IPA) came into effect, and when the IPAT took over the decision-making responsibility from the RAT in 2017, the legislation had different language around assessing credibility and specifically around assessing narratives of travel. Relevant sections of this new legislation

include Section 28 of the IPA that sets out language around the assessment of facts and circumstances in asylum applications. This section includes that the International Protection Office (IPO) and IPAT shall take into account, among other factors, the general credibility of the applicant, their travel routes and:

whether the applicant's activities since leaving the country of origin were engaged in for the sole or main purpose of creating the necessary conditions for applying for international protection, so as to assess whether those activities will expose the applicant to persecution or serious harm if returned to that country. (Ireland, 2015)

While this chapter does not specifically focus on the practices in decisions issued by the IPAT, and focuses on decisions issued by the RAT, it is important to note that the language in the IPA continues the focus on assessing travel as part of an asylum determination.

In the decisions that I analysed Tribunal members did not evaluate asylum seekers' journeys in line with UNHCR guidance outlined above, and instead employed strategies to call into question claims of persecution and the credibility of asylum seekers in Ireland. Tribunal members did this in multiple ways, and I collected a spectrum of evidence using a wide range of investigative and social science methods outlined in section 4.4 to understand a culture of approach to decisions that work to discredit asylum seekers in multiple ways. By spectrum of evidence, I mean that there are multiple ways and methods to investigate, explore and prove the cultures and practices of agencies that are normally secretive and unwilling to share their practices. From the web scraping of the ATA and with the PDFs of the decisions I was able to perform search texts on the texts of all of the decisions in the ATA or on subsets of decisions. In reading the samples of decisions selected, I found patterns of practice in the subset of decisions, which I discuss later in this chapter, and I was able to further search the other decisions in the ATA for further examples of patterns found in the samples. In this way, the iterative methods of this project allow for

quantitative searches and measurements of strategies in decisions to complement the sustained qualitative ethnographic engagement with sentiments in the ATA using archival methods.

This context of disbelief surrounding determination about journey and travel creates a robust argument for showing patterns in the ATA and practices by the appeals tribunals that persist across the years that the appeals tribunals have operated and across the many individuals who have worked as Tribunal members and issued decisions. This engagement suggests a culture of disbelief, and the systematic abuse of credibility standards in the appeals tribunals. This evidence also speaks to how Tribunal members created knowledge and produced state knowledge from ‘reorganising’ the accounts of asylum seekers and translating these accounts into their own language. Stoler identifies this type of ‘reorganized knowledge’ in colonial efforts of knowledge production:

Colonial commissions reorganized knowledge, devising new ways of knowing while setting aside others. One implicit task was to reconstruct historical narratives, decreeing what past events were pertinent to current issues and how they should be framed. (Stoler, 2009, p. 29)

Statements judging credibility in Tribunal decisions are for the most part normative judgements: sentiments that Tribunal members express when they don’t feel convinced or feel that a narrative is or is not plausible. The appeals tribunals are set up so that Tribunal members are tasked with constructing a common sense to construct the ‘genuine refugee’ and decide what that person does, and then declare if a person meets or does not meet that standard. Tribunal members work to imagine what they cannot see, and to assess what is credible and what is incredible. In doing so, they produce common sense to assess these narratives that are then categorized into credulities and incredulities.

These common sense constructions while they reflect the anxieties and inner desires of Tribunal members as state agents and also reflect the conjoining of “social kinds

with the political order” (ibid, p. 9), are informed by government policy, office cultures and societal beliefs. These common senses are also “subject to revision and actively changed. Navigating the archives is to map the multiple imaginaries ... that elevated something to the status of an ‘event’ (ibid, p. 9). These constructions of common sense as they are seen in the ATA are similar to what Stoler identifies in the Dutch colonial archives, “not simply the accounts of actions or records of what people thought happened. They are records of uncertainty and doubt in how people imagined they could and might make the rubrics of rule correspond to a changing imperial world” (Stoler, 2009, p. 4).

The common sense of the Tribunal impacts the Tribunal decisions, as they contain constant normative judgements by Tribunal members declaring statements and accounts as difficult to believe, beyond their belief, implausible in their eyes, not credible, or incredible, among other frameworks of disbelief. Everyone making an asylum claim has a journey, and Tribunal members demand that this journey is coherent, credible, and makes sense to them. This journey must fit into the knowledge framework of the individual Tribunal members who are making the determination of asylum, and through this negotiation of the two—the narrative of the journey of the asylum seeker and the knowledge framework of the appeals tribunals, their anxieties of the world surface. Tribunal members’ anxieties, in these moments, become both visible and productive. We can start to see these anxieties just as Tribunal members project their anxious conceptions of the world onto asylum seekers. If the Tribunal members do not understand the life and narrative of the asylum seeker, if the asylum seeker’s life does not follow the path of the ‘genuine refugee’ in the Tribunal members’ eyes, then the Tribunal members do not believe the life of the asylum seeker. The Tribunal members, with the ability to discredit the asylum seeker, and to declare that the asylum seeker’s life is not as they tell, are in effect judging that the life of the asylum seeker as they tell it does not exist. The Tribunal members, with their anxious re-telling of an asylum seeker’s life, (re)produce the stories as incredible and unbelievable.

By applying a common sense of the appeals tribunals that discredits the extraordinary nature of the journey of an asylum seeker, by not believing elements of their life, Tribunal members are able to discard the entire life, through discarding the ability of an asylum seeker to tell their life. These are bordering acts that take the asylum seeker and allow the appeals tribunals to make them not genuine, make them the lying person, and the person whose life can't exist, and cannot be allowed to stay in Ireland.

5.5 A Tribunal member's common sense

In this section, I gather and present evidence of the systematic practices of disbelief by Tribunal members in the ATA. The methods of working with the ATA in this project allow me to find evidence of practices of Tribunal members, the appeals tribunals and the Department of Justice and Equality that would otherwise not be able to be gathered. These practices are often discrete, often repetitive and often shadowed in revealing that a culture of systematic disbelief does exist among Tribunal members, and it can be seen in the ATA in multiple ways as Tribunal members reveal their sentiments and anxieties about credibility and belief.

The evidence that is gathered in this project is often from small statements and word choices that Tribunal members employ in their arguments. These types of statements waver between non-events, between Tribunal makers creating an event of judgement, and between these two categories. Povinelli describes this wavering as the 'quasi-event', which Povinelli describes as just below the threshold of an event (2011). Events, for Povinelli, demand an ethical response, and so to deem testimony as outside of any 'event' pushes away the demand for an ethical response. Tribunal members make these judgements in passing, declaring someone not credible because of an errant comment they made in their first interview, or because of a certain nature of their claim. Tribunal members decide what

is an event and what isn't and refuse that they have responsibility to offer protection and refuge based on anything less than their own produced events.

For instance, Tribunal members interrogate details in people's stories and make judgements on people's credibility based on how they walk off a plane or how they find a way to leave their country. Tribunal members interrogate why people do or do not contact their families while they are in Ireland. Tribunal members interrogate intimate and daily parts of people's lives. And Tribunal members also present in their decisions aspects of their own life, quotidian beliefs that they hold about daily practices or ways to conduct oneself, for example, in the range of words and phrases that Tribunal members use to describe how they don't believe evidence shows a rich range of response and sentiments towards evidence and the narratives that asylum seekers present.

Tribunal members use certain phrases to describe their judgements of credibility and their belief, and in the qualitative coding method, this project gathered all of these phrases used as evidence of how Tribunal members evaluated credibility. A sample of some of the phrases are presented here (emphasis my own). These different phrases show a spectrum of judgements between attempted normative subjectivity and objective judgements:

The Tribunal also finds the appellant's explanation for failing to claim asylum in Turkey *unconvincing*.

He has not in my view provided a reasonable explanation to substantiate his claim that this is the first safe country he has arrived in since departing his country of origin.

These two phrases forefront the Tribunal member's own judgement with statements such as 'in my view' and 'unconvincing', which in their statements position the Tribunal member as the one who is unconvinced. This constructs the decision process as one in which it is only to make the narrative make sense in the Tribunal member's mind

The applicant's account of her travel to the jurisdiction and her reasons for not hearing or understanding any announcements made is *simply not capable of being believed*

[T]he Tribunal considers that this aspect serves to *undermine the credibility* of the story presented by the appellant.

The Tribunal finds his claim that he could not understand the reasons for the refusal of his asylum claim in Greece due to the unavailability of interpreters *inherently implausible* given that he had no difficulty understanding that his claim for asylum had actually been refused and that he was to be deported. It also is *inconsistent with his evidence* that he applied for asylum on three separate occasions in Greece, including under a false name.

These phrases forefront a Tribunal member attempting to present an objective judgement, and phrases such as 'not capable of being believed' present the case not as one in which the Tribunal member should be convinced, but rather some universal judgement of the case. Some of these phrases emphasize internal consistency, for example if the Tribunal member is judging that the testimony an applicant is giving is not consistent:

Further *the Applicant could not explain how* he got through the Immigration

Authorities without any difficulty on the basis that Mr XXX had actually presented his papers to the authorities and that the passport he was travelling on was false.

The applicant's account of transiting 3 international airports without handling his own passport *is not credible*.

The Applicant's account of travel, in this regard, is *simply incredible*.

These phrases declare a statement not credible, or not to be believed, with little or no discussion as to why the Tribunal member is making this judgement. The use of 'incredible' in the last excerpt, when used as a judgement against an asylum seeker, is an interesting

one. The double meaning of incredible here points to the very basic fact that while it may be difficult for a Tribunal member to believe testimony by an asylum seeker, that the testimony is incredible, the very nature of the stories should not be understood using the metric that Tribunal members apply. The journeys that asylum seekers tell are incredible, they are extraordinary, because in the face of great obstacles, in the face of the persecution they may face, in the face enormous infrastructures of border control, they have arrived in Ireland.

Tribunal members state quite often how the testimonies of travel are not in themselves how Tribunal members decide refugee status, as they are not determinants of whether an asylum claim has nexus to the Convention. Tribunal members make different arguments as to why it is still important for Tribunal members to assess travel narratives. Tribunal member Conor Gallagher in a decision in 2016 refers to travel as a ‘non-core issue’:

As a non-core issue, lying about travel arrangements cannot determine an Appellant’s credibility such that a Tribunal finds there is no merit in the claim. But when assessing the Appellant’s overall credibility it cannot be ignored. (Andrews, 2009, p. 12)

These kinds of arguments are usually present in cases and provide the justification for Tribunal members to fully evaluate asylum seekers’ accounts of their journeys to Ireland. Certainly, language that is used to form Tribunal members’ understanding of the account of an asylum seeker’s journey communicate the importance of credibility. The stories asylum seekers tell of their journeys rarely are ‘satisfactory’ to convince Tribunal members. In decisions in the ATA, Tribunal members express their inability or unwillingness to imagine a world in which the asylum seeker exist. They don’t imagine and won’t imagine a world where the asylum seeker’s story is true and therefore that they have legitimate right to be heard from the Tribunal member.

Ostensibly, Tribunal members are charged with the responsibility, beyond assessing whether an asylum seeker's claims meet the threshold of the Refugee Convention or other legislation, to find the truth, and to find out in the cases when an asylum seeker's claims diverge from the truth. This responsibility is far removed from the kind of decisions and the culture of decisions in the ATA that I found. Tribunal decisions are emotional documents, laden with the sentiments and normative assumptions and common sense of Tribunal members and the appeals tribunals, a common sense that seems unable to be reconciled with the incredible nature of seeking asylum.

When Tribunal members judge people to be not credible, they turn away from any responsibility they have under international law to be required to include someone into the community of the Irish nation and territory. Tribunal members refuse to acknowledge and refuse to say that one could face persecution (in the case of refugee cases) and/or serious harm if returned, and that someone could be the person that they say they are. If Tribunal members admitted that the refugee exists, if they admitted the asylum seeker exists, there would be obligation on them; they would have the responsibility to act, and there would be certain demands of them that might not fit with the exclusionary practices of the Irish state. If the Tribunal member admitted the existence of a different common sense, they would still find themselves beholden in their professional responsibility and in their reputations to the legal Bar and to the state. In these decisions where Tribunal members say "no, that could never have happened, you're lying, it's not true" over and over again in thousands of decisions over tens of years, they are revealing not only that they can't comprehend that an asylum seeker could exist and could be in front of them asking for protection, but that they can't act on this request either.

5.5.1 *First Safe Country*

A primary issue for Tribunal members in their decision is their assessment of what country was the ‘first safe country’ that asylum seekers reached in their journey. Tribunal members go through a process of interrogating asylum seekers during appeals tribunals oral hearings; of interrogating asylum seekers’ previous statements and testimonies about all of the countries and cities that asylum seekers reached in their journey; and of inquiring into asylum seekers’ experiences, conditions and activities in each place. This interrogation about the first safe country is present in a majority of decisions. Tribunal members present this argument in many different ways and question many aspects of asylum seekers’ accounts based on their travel through other countries.

One site of Tribunal members’ investigations are the times the asylum seekers spent transferring from one flight to another within airports. Asylum seekers rarely give account to direct flights, and so the transfers in airports are events that Tribunal members often look at with suspicion. Often asylum seekers give accounts of being in a country for very brief amounts of time catching a transfer flight in an airport. In 2009 Tribunal member Andrews decided that it was the asylum seeker’s responsibility to apply for asylum during a short transfer in France:

The Presenting Officer questioned the Applicant as to why he did not apply for asylum in France to which the Applicant replied he was only in France for forty or fifty minutes. (Andrews, 2009, p. 15)

In 2009 Tribunal member Twomey decided that someone fleeing persecution should have applied for asylum in the ‘few minutes’ transferring in Amsterdam:

The Applicant failed to seek asylum in the first safe country which she arrived in. She said she was only in Amsterdam for a few minutes. It is not credible that a genuine refugee in earnest fear of persecution would fail to seek asylum at the first safe haven which they arrive in. (Twomey, 2009)

Asylum seekers also often give testimony that they intend to apply for asylum in a specific country, and therefore are on their journey until they arrive in that country. This is a very well-known and documented desire among those fleeing violence and faced with forced migration. Tribunal members recount these situations in a variety of ways, narrating and also evaluating these stories, using certain repeated phrases to deny the logic of these narratives. In 2009 Tribunal member O’Gorman decided against a woman who did not apply for asylum while travelling to find her husband:

The Applicant travelled through Italy France and Spain en-route to Ireland. She states that she did not apply for asylum in these countries as she wanted to see her husband and she did not know what asylum was. (O’Gorman, 2009, p. 2009)

In some decisions Tribunal members do not go into detail about their decision, only recounting the countries that a person travelled through, how long a person has stayed there, and determining that their story is not credible:

The Applicant spent five days in England before travelling to Ireland and applying for asylum. One would expect that if the Applicant was fleeing persecution that he would have sought assistance at the first available opportunity. I have had regard to Section 11 B of the Refugee Act, 1996 (as amended) and find that Section 11 B (b) is relevant to this particular claim. (O’Gorman, 2006, p. 9)

Sometimes the Tribunal member judges that even when someone does not know the country they are in, they are expected to apply for asylum:

The Applicant’s account of his journey from Ghana to Ireland and his reason for not claiming asylum in Togo, unknown country and at Dublin Airport is neither plausible nor credible and I find it undermines his credibility. (Pillay, 2010a, p. 19)

The Applicant allegedly departed Nigeria on the 4 April 2006 and arrived in Ireland on the 5 April, 2006, having travelled via an unknown country. He did not apply

for asylum in the unknown country or his alleged point of entry into the State, namely, Dublin airport. (Dourado, 2006, p. 1)

The First Safe Country argument is a common argument that Tribunal members make to discount asylum narratives, to decide that asylum seekers are not credible and to refuse their appeal. The focus on this facet of the journey is highlighted in further depth later in this chapter, in section 5, in the decisions of Tribunal member Nehru Morgan Pillay and in the specific Judicial Review case of *P.M. v Refugee Appeals Tribunal & ors. 2014*.

5.5.2 *Passports*

Another part of the knowledge framework that Tribunal members bring to the appeals tribunals and their judgements is an explicit trust in institutions in any country and trust that states will follow through with regulations and laws that they have in place. One way this sentiment is expressed in Tribunal members' judgements of asylum seeker's accounts of travelling reveals itself in Tribunal members' assessments of how people pass through borders and how people use passports when they have them. Tribunal members regularly examine how people appealing decisions travelled and used or did not use passports at border controls. Tribunal members rely on the construction of a common sense of travelling, a common sense of how people travel, and a common sense of how airports are constructed and operated to control the movement of people and to control the entry and through-passage of people in airports.

Airports are built environments constructed around the control of the movement of people, and international airports (often) tightly control the movement of people across borders (Salter, 2007, 2008), also requiring travellers and airport workers and border control officials to perform 'theatrical rituals' of border crossing and security checks (Amoore and Hall, 2010). Tribunal members rely heavily on imagining and constructing these airport controls and airport rituals as homogenous, predictable, controlled and

extremely legible. From these imaginative constructions and produced common sense, Tribunal members transpose and reproduce the narratives of asylum seekers, establishing hierarchies of credibility.

Tribunal members' imaginative constructions and produced common sense focused on the airport often include discrete and specific practices that may or may not be part of asylum seekers' narratives of their journeys. People's accounts of, for example, arriving in and encountering immigration checks in Dublin Airport, a busy international airport and the largest airport in Ireland, either line up or deviate from the practices Tribunal members expect that the asylum seekers will have experienced. Often people who go on to seek asylum in Ireland travel with no passport, with forged passports, or with human smuggling agents who provide them with passports at the specific moments of immigration checks, and these specific situations lead to events, quasi-events, or non-events that become part of the bordering of the ATA, through the judgements of the Tribunal members on these fraught moments. For example, in a decision issued in 2010, Tribunal member Dourado writes that:

The applicant's account of his journey and his entry into Ireland is not credible. Each person must produce their own passport at immigration control. It is not credible that a trained immigration official at Dublin airport would detect that the passport was false. Clarke, J in IMOH-V- RAT stated that the practice of the immigration authorities at Dublin Airport was "based on a common sense approach as to the procedures which any person travelling through Dublin Airport would be aware of such matters are therefore such may be taken as common knowledge rather than matter that would require evidence". (Dourado, 2010, p. 19)

Tribunal members' judgements of what is reasonable behaviour from immigration officials is repeated in many decisions, across a spectrum of specific decisions from a spectrum of individual Tribunal members.

Tribunal members also have expectations of predictable behaviour at other European airports, apart from Dublin Airport. As an example, in a decision issued in 2009, Tribunal member Twomey writes:

The Applicant travelled to Ireland on a passport, the details of which she was unaware. She said she did not know the name on the passport and she did not look at the photo. The Applicant claims she came through airports at Amsterdam and Dublin and she did not have any problems with immigration. She said she could not remember the airline she flew with. Further, she said she did not worry that she did not know about the lack of detail in her passport as she did not think about this. The Applicant's account of travel, in this regard, is simply incredible.

(Twomey, 2009, p. 15)

This common sense expands to include airports outside of Europe as well including, in a decision by Tribunal member McCabe in 2012, airports in Dubai, UAE and Karachi, Pakistan:

With regard to describing how he travelled to and arrived in this country the applicant provided a story that he had a red passport and that he had not seen the name on the passport and it was his agreement with the agent that the agent would show the passport at the checkpoint and no question was ever asked of him. This evidence in my view, in the security climate that exists with regard to air travel, is neither plausible nor credible. The applicant had been to three airports in Dubai, Karachi and the UK. I am not satisfied that he has provided a full and true explanation of how he has travelled to and has arrived in this State. In this respect regard is had to Section 11 B(c) of the Refugee Act 1996 as amended. I reach this conclusion on the basis that it is not in my view possible to travel through immigration in three countries in the manner contended for by the applicant.

(McCabe, 2012b, p. 21)

In this decision, the Tribunal member is “not satisfied that [the man making the appeal] has provided a full and true explanation of how he travelled” because for the Tribunal member the account that the Tribunal member recounts “is not in my view possible”. This is one example of Tribunal members’ expected logic of how airports function and operate, and an example of how Tribunal members employ these logics that decide how asylum seekers’ narratives are or are not accepted into the common sense of the appeals tribunals and the assessments and decisions that Tribunal members make.

Tribunal members’ logics and attention to travel are not only focused on the ways that asylum seekers have travelled, but also is focused on how their passports look, and how they describe what their passports look like. The passport becomes an object of intense attention that can be used to disrupt the common sense that would be able to recognise a genuine refugee, and to discredit people’s stories and discredit people; in the process of assessment, Tribunal members must know of the passport’s colour, the passport’s contents and how asylum seekers have handled them.

In a decision issued in 2006 Tribunal member Brennan decides that it “defies belief in the light of the international situation that prevails at *all* airports” that someone could travel on a passport that did not contain their name or photograph:

The applicant’s account of his travel to Ireland having travelled on a passport which did not contain either his name or photograph, yet the applicant managed to pass through various immigration points without being questioned or queried, defies belief in the light of the international situation that prevails at all airports.

The applicant has no travel documentation and since his arrival here he has not managed to produce or procure documentation.... The applicant told the Tribunal the agent took every piece of documentation from him prior to his arrival here.

(Brennan, 2006, p. 7)

The Tribunal member is critical of the person appealing in this decision because the applicant travelled with a passport without a picture of himself and without his name and ‘the agent’ -- how Tribunal members refer to people smugglers – took “every piece of documentation from him”, and the asylum seeker has no documentation to produce. This situation is the same, exactly, as the situation that Senator Mary Henry criticised the Immigration Act 2003 for in 2002 (see 5.3), concerning the unfairness of deciding that a person ‘is manifestly unworthy of asylum due to lack of documents given that those fleeing countries in which they are being persecuted are unlikely to go to the border with their own passport’ (Oireachtas, 2003), concerns that were swept aside at the time by Minister McDowell.

Tribunal members also make many other critical judgements about the narratives of asylum seekers that involve the practices that human smugglers use. Often these critical judgements involve the recounting of practices such as detailed in a decision by Tribunal member Garvey in 2011, in which an asylum seeker recounts human smuggling agents and their handling all the documents at ticket and border checks:

He then went to Lagos where he met a man, xxxxxxxx a British national, who organised a passport paid for him and accompanied the applicant to Ireland via UK. The applicant used the passport of the British national as identity and spent 2 months in Ireland before being arrested. Whilst in custody he applied for international protection. ... The applicant’s account of transiting 3 international airports without handling his own passport is not credible. The Tribunal is satisfied that Section 11B of the Refugee Act 1996 (as amended) applies. (Garvey, 2011, p. 2)

In many decisions, Tribunal members made a similar judgement that they did not believe that this practice by human smugglers would work, and/or they did not find it credible.

Even when an asylum seeker recounts having and using a passport that has a photograph that looks like them, and when they recount to having handled their own passport at border checks, Tribunal members are critical. In 2009 Tribunal member Egan decided that it was “very difficult to believe” that someone with a French passport with a “look-alike photograph of the Applicant” could pass through airports in Amsterdam and Dublin:

The Applicant said that he travelled to Ireland by air from Lagos through Amsterdam to Dublin. He travelled with a French passport upon which was a look-alike photograph of the Applicant. That he came through Immigration checks in Amsterdam and Dublin using a false passport, with a look-alike photograph on it bearing in mind the heightened security at international airports and having no difficulties with trained Immigration officers is very difficult to believe. (Egan, 2009, p. 12)

The logic that Tribunal members employ in their common sense judgements provide no possibility, no world that can be imagined, in which asylum seekers could pass through airports to arrive in Ireland.

The issues of Tribunal members evaluating first safe country evidence and investigating how asylum seekers used or didn't use passports are two examples of cultures of practice in the appeals tribunals. In the following section I outline another type of evidence of the cultures of the Tribunal. This section specifically details the case of 109 decisions issued by Tribunal member Nehru Morgan Pillay. These decisions contain a repeated section that wrongly employs a quote from the works of James C. Hathaway, a well-known international refugee legal scholar whose work is often employed and cited by refugee decision-makers around the world. I show how under Judicial Review an Irish High Court judge overturned one decision that involved the misuse of Hathaway's work and created errors in Pillay's judgement because of this misquotation. While this Judicial Review

decision quashed one decision issued by the Tribunal member, I show how this misquoting has not been further addressed in 108 other decisions refusing appeals for international protection at least partially based on this issue.

5.6 Tribunal member Nehru Morgan Pillay and a quote by James Hathaway

An extreme and discrete example of the means by which Tribunal members discredit asylum seekers based on their accounts of their journeys is the case of 109 decisions issued by one Tribunal Member, Nehru Morgan Pillay, from 2009 to 2011. These decisions share a written section in which they misquote and misuse a legal text, implying a legal reasoning to deny any case in which an asylum seeker travelled through another country before reaching Ireland.

Tribunal decisions regularly cite legal opinions and legal texts in the evaluation of asylum claims from a wide range of sources, including Irish and European court decisions, decisions by judges in other countries that don't have jurisdiction in the Tribunal, legal textbooks and other academics sources. Tribunal members cite and quote these texts to provide a rationale for decisions and judgements. James C. Hathaway, an American-Canadian scholar of international refugee law, and his seminal text *The Law of Refugee Status* are highly cited in Tribunal decisions; Hathaway has had an outsized effect on the application of refugee law internationally. I found through a text search of decisions in the ATA that Hathaway is explicitly cited in 3,281 decisions (21% of 15,528 decisions with written decisions included in the ATA as of January 2019), in decisions from all years that decisions were included in the archive (2001-2018) and in decisions from 61 of the 142 (42%) Tribunal members identified using the Optical Character Recognition techniques detailed in section 4.4.7. Hathaway is referenced in arguments relating to a range of topics, mainly around Tribunal members assessing the credibility and validity of arguments and testimony by asylum seekers. However, this study has identified that Tribunal member

Pillay systematically misused Hathaway's text and systematically misquoted from *The Law of Refugee Status*.

In a 2014 Irish High Court judgement *PM v Refugee Appeals Tribunal & ors*, a judicial review of a Tribunal decision, High Court Justice Anthony Barr identified errors in a Tribunal member quoting Hathaway in a decision. The Tribunal decision of concern in this judicial review proceeding was issued in November 2010 by Nehru Morgan Pillay, a Tribunal member of the RAT from 2008-2011. Pillay quotes Hathaway twice in support of his argument in the decision to deny the appeal, and his quoting of Hathaway is as follows:

Professor Hathaway, in his book *The Law of Refugee Status*, states:

“Those who truly fear return to their state ought reasonably to claim protection in intermediate countries of potential refuge”.

He further states that: “It is hard to believe that a person in the grip of an uncontrollable fear of being persecuted for political or other reasons does not make any effort to eradicate this fear when the opportunity arises.”

It would appear from the Applicant's claim that he had a number of opportunities to claim asylum while travelling to Ireland. Given the above comments from Professor Hathaway, it is not considered credible that if the Applicant had a genuine fear of persecution that he would not have claimed asylum when he had the opportunity to do so. (Pillay 2010, as quoted in *PM v Refugee Appeals Tribunal & ors* 2014)

The quote from Hathaway as Pillay writes it appears to show that Hathaway argued that an individual applying for international protection must present an argument as to why they did not apply for international protection in any country that they mentioned that they travelled to, and Pillay argues for just this interpretation and application in this case. In the Judicial Review decision, Justice Barr provides a quick summary of how the person

applying for asylum travelled to Ireland from Malawi as the courts understood it in a “Background” section of the decision:

The applicant left Malawi on 17th May 2010. He flew, first to Kenya and then to Holland where he had a stopover for a number of hours. He arrived in Ireland on 18th May 2010. He said that he did not claim asylum in Kenya because it was a Muslim country where he would not be tolerated. He did not claim asylum in Holland because the man who had advised him in relation to his travel arrangements had said to him that he should come to Ireland. ... He applied for asylum in Ireland on 19th May 2010. (Barr, 2010)

In this case, using Pillay’s interpretation of Hathaway’s legal opinion, the applicant would have to justify not applying for international protection in Kenya and Holland.

The appellant submitted to Justice Barr that the use of the Hathaway quotations in the decision were a “serious error” and that “the Tribunal Member seriously misquotes Professor Hathaway”. To summarise, Pillay’s initial quote of Hathaway that he used – “Those who truly fear return to their state ought reasonably to claim protection in intermediate countries of potential refuge” – is part of a paragraph detailing “the more pernicious interpretations of the ‘fear criterion”, as Barr explains in the judgement. Hathaway is explaining how arguments requiring asylum seekers to justify not claiming asylum in another country are harmful misapplications of refugee law (Hathaway, 2005). Hathaway is making the opposite argument from the argument Pillay implies from Hathaway. The second Hathaway quote that Pillay uses implies that if an asylum seeker’s fear is legitimate, they would never travel beyond the first ‘safe country’ they arrived in. The quote as Pillay uses it is as follows: “It is hard to believe that a person in the grip of an uncontrollable fear of being persecuted for political or other reasons does not make any effort to eradicate this fear when the opportunity arise”. Again, this is not a quote

summarising an argument Hathaway is making but is also a misuse of quotations from a section in which Hathaway is arguing the exact opposite. As Justice Barr states in the High Court decision:

[The second quote] is not a statement of Professor Hathaway at all, but rather, something the author quotes at p. 49 of his book from the judgment in Canadian Immigration Appeal Board decision in Ferrada in 1981. The applicants point out that Professor Hathaway immediately follows this quote in his text by stating:

“Fortunately, the Federal Court of Appeal has intervened to constrain this implied direct flight rule.”

The applicant submits that the quotations which have been included in the decision are the very antithesis of Professor Hathaway’s views on the subject. (Barr, 2010)

In his text, Hathaway is including the Canadian Immigration Appeal Board opinion as an example of an argument that is sometimes presented but that is invalid, as is common in legal textbooks and guidance documents such as Hathaway’s *The Law of Refugee Status*. In the High Court decision Barr states that he is “satisfied that [Pillay] quoted very selectively from Professor Hathaway’s book” and that Hathaway was coming to the opposite conclusion as Pillay, namely that there is no requirement for asylum seekers to apply for asylum in intermediate countries, in the first safe country that they arrive in, or indeed within any limited time of arriving in a safe country. In the decision’s conclusion Justice Barr states:

I am also satisfied that the Tribunal fell into error in holding that an adverse finding could be made against the applicant by virtue of the fact that he did not seek asylum in either Kenya or Holland. The Tribunal was somewhat selective in its quoting of passages from Professor Hathaway’s book ‘The Law of Refugee Status’

in this regard. The applicant gave credible reasons why he did not seek asylum in these countries. (ibid)

The decision clearly shows the errors in Pillay’s decision and the misquoting of Hathaway. Justice Barr quashed the RAT decision by Pillay and referred the applicant/asylum seeker from Malawi back to the Tribunal for reconsideration by a different Tribunal Member.

The Judicial Review system is the intended process for asylum seekers to seek remediation when there are errors in the decisions issued on their cases, and in this case the system worked as intended – the High Court judge identified the errors in the appeals decision, judged that the errors were possibly on the balance of judging the appeal, quashed the decision deemed to be in error, and mandated that the RAT reassign the case to a different member and start the process over again. The power of Judicial Review is limited, and High Court judges may only evaluate the appeals decisions on relatively technical grounds, and judge if the errors were contributory enough to the decision to quash the decision.¹⁶ This scope often does not give judges the ability to address deeper structural issues that they may identify in the appeals tribunals. In this Judicial Review case, the issues of the misuse of the quote could be addressed. Justice Barr quashed Pillay’s initial appeals decision and required that the appeal be re-heard by a different Tribunal member.

Appeals Tribunal Decisions issued by Nehru Morgan Pillay, BL

Year	2008	2009	2010	2011	TOTAL
Total decisions issued	11	107	106	6	230
Granted decisions		2	1		3(1.3%)
Decisions with misquoted Hathaway section (all refused)	0	19	86	4	109(47.3%)

Table 5.1 Appeals Tribunal Decisions issued by Nehru Morgan Pillay, BL.

¹⁶ Judicial Review in Ireland is a mechanism which allows the High Court to review the lawfulness of decisions by state bodies, and is generally understood not to be an appeal process, but rather a review of the legality of the decision (Brazil, 2014). Judicial Review in asylum cases were further restricted right to appeal in scope and time limited by Section 5 of the *Illegal Immigrant (Trafficking) Act 2000*, however these restrictions were relaxed in the framework set out in the *Employment Permits (Amendment Act) 2014*, which reverted judicial reviews to a lower requirement of a ‘substantial grounds’ for review threshold (Law Society Ireland, 2015)

However, there are some larger and more direct problems in this case. Nehru Morgan Pillay was found in error in the decision in this case and in fact by the time the Judicial Review was issued in 2014 was no longer working for the Tribunal or issuing decisions. However, findings from this dissertation show that Pillay quoted the exact same passages from Hathaway to make the exact same argument as this decision in 108 other decisions. The ATA contains 230 decisions issued by Nehru Morgan Pillay in the four years spanning 2008 to 2011¹⁷. In these decisions Pillay overturned the initial decision refusing international protection only three times, refusing international protection in over 98 percent of decisions. I found in this group of decisions 109 decisions with the exact same body of text misquoting Hathaway. These decisions follow the same pattern as the RAT decision reviewed in the *PM v Refugee Appeals Tribunal & ors.* case, and all decisions cite the credibility of the person making the appeal for protection as at least a contributing factor in denying them asylum in their appeal based on their decision not to apply for asylum until arriving in Ireland. I present here a small sample of decisions in which Pillay employed the Hathaway quotes.

In a decision issued in 2010 Pillay recounts the account of a man from Uganda who left Uganda fleeing retribution from the ADF, a rebel group in the country. He travelled by foot to Goma, in the Democratic Republic of Congo -- “he crossed the border through the bush”. The man then met an agent and travelled by plane from Congo to Manchester, UK and then on to Belfast Airport. He spent four days in Belfast and then took a bus to Dublin. Pillay judged that “the Applicant’s account of his journey from Uganda to Ireland and his reason for not claiming asylum in Manchester and Belfast is neither plausible nor

¹⁷ The ATA does not contain all decisions issued by the RAT and IPO, and while recent annual reports from the Tribunal state the number of decisions issued by each Tribunal Member, annual reports did not state these in the years 2008-2011 that Pillay was a Tribunal Member. According to annual reports, the RAT issued a total of 9998 decisions in the years spanning 2008-2011 and the ATA makes record of 7025 decisions, implying that there are 2973 decisions missing from the archive.

credible and I find it undermines his credibility” (Pillay, 2010b), citing the erroneous Hathaway quotes.

In a decision issued in 2009 Pillay recounts the account of a woman from Zimbabwe who left the country because her father was killed because of his membership in the Movement for Democratic Change (MDC), she had been beaten by members of the ruling Zanu PF party for failing to be involved in their activities, and the party members burnt down her grandmother’s house. An MDC member of parliament and her grandmother helped her to leave the country with her sister, and they “crossed into Botswana at the Plumtree crossing” (Pillay, 2009, p. 15), leaving their car behind. The woman and her sister then travelled to South Africa and after staying at a shelter they flew to Israel, then on to Budapest, and finally flew to Dublin Airport. In the decision Pillay cites the erroneous Hathaway quote and judges that she was not a refugee, and that “her account of her journey from Zimbabwe to Ireland and her reason for not claiming asylum in Botswana, South Africa, Israel, Budapest and at Dublin Airport is neither plausible nor credible and I find it further undermines her credibility” (ibid, p.22).

There were clear, serious and damaging repercussions of Tribunal member Pillay’s decision. It is clear from the descriptions of errors outlined in Justice Barr’s High Court decision that Pillay’s decision was an unjust act, a misuse of power, and an error with the deepest of possible damages, which in this case, as it is in most international protection decisions, raises is the risk that an individual or a family will be persecuted when returned or will be returned to a violent, harmful and possibly deadly situation in their ‘country of origin’ identified by the state. This case also hints at a larger injustice: the presence of such an obvious error in decisions is indicative of a much deeper culture in how the appeals tribunals operate.

Pillay conducted studious interrogations and details in his written decisions how he asked each applicant about their journey to Ireland and details how their journeys disprove

their cases for international protection, explaining in each decision that the “reason for not claiming asylum in [intermediate countries] is neither plausible nor credible and I find it undermines [his/her] credibility.” In all of these decisions Pillay determines that the people applying for asylum are not credible.

Incredibly important to Pillay is the tracing in an asylum seeker’s account of the countries that they passed through before arriving in Ireland, and using these traced journeys, Pillay focused on the countries people were in even if just briefly, to argue that asylum seekers should have applied for asylum there, in their ‘first safe country’. Table 5.2 shows a sample of some of the journeys as Pillay saw them and as Pillay recounted them in his decisions, and illustrates the intensive detail that Pillay often uses in describing the journeys. For Pillay, it is important to note the different countries. This is the way that Pillay has reproduced the accounts of asylum seekers, has translated them into the language of the official documents and the decision of a Tribunal member. The narratives become highly focused on these countries that an asylum seeker travels through. By recounting the number of countries and the names of the countries when possible, Pillay is producing the knowledge of the Tribunal, reshaping the narratives to fit Pillay’s grasp of the common sense—the common sense of the first safe country.

In this case the RAT as an agency stood up in High Court and defended the actions of Pillay and defended the use of the ‘recital’ of the misquoted Hathaway sections:

It was submitted [by the lawyers for the Appeals Tribunal] that the respondent [Pillay] was entitled, as a matter of law and fact, to draw such conclusions as he saw fit and justified, and that this included an inference from the unadorned explanation that the applicant chose Ireland and spurned other earlier options on the basis of an entirely unqualified recommendation from an ill-defined acquaintance. The recital of Hathaway as an authority seems to be largely redundant in the particular circumstances of this case and the specific inference is valid, even

Journey	Leg 1	Leg 2	Leg 3	Leg 4	Leg 5	Ireland lctn.
Lagos	Istanbul					Dublin Airport
Zimbabwe	South Africa	Zurich				Dublin Airport
Zimbabwe	England					Ireland
Bangladesh	Unknown Port					Dublin Port
Zimbabwe	South Africa	Frankfurt	Belfast			Dublin
Bangladesh	Unknown country	Unknown Country				Ireland
Bangladesh	Bahrain	London Heathrow, UK				Dublin Airport
Bangladesh	Bahrain	UK				Dublin Airport
Lagos	UK					Dublin Airport
Algeria	Tunisia	Turkey				Dublin Airport
Bangladesh	Unknown Port					Dublin Port
Tanzania	Kenya	Unknown European country				Dublin Airport
Nigeria	Istanbul					Dublin Airport
Moldova	Italy	Romania	Hungary	Slovakia	Turkey	Dublin Airport
South Africa	Germany					Ireland
Kenya	Amsterdam					Dublin Airport
Bangladesh						Dublin Port
Zimbabwe	Unknown African country	Unknown European country				Dublin Airport
Bangladesh						Ireland
Ghana	Amsterdam					Dublin Airport
Bangladesh	India	Pakistan	Iran	Turkey		Ireland
Libya	Unknown port					Ireland
Bangladesh	Abu Dhabi					Dublin Airport
Kenya	Amsterdam					Dublin Airport

Table 5.1 The journeys described in 24 decisions issued by Nehru Morgan Pillay containing the misquoted Hathaway excerpts, from stated country of origin to the location applicants arrived in Ireland, if stated.

if the more general inference is not properly supported by the writings of that very well regarded author. (Barr, 2010, Par. 51)

The lawyers for the RAT in effect are arguing that it doesn't matter that Pillay misused Hathaway's work for the opposite point as 'the specific inference is valid', seeming to mean that Pillay's argument is correct even if Hathaway's work supports an opposite conclusion.

The RAT in this case seems confident that judging asylum seekers' journeys and where they chose to apply for asylum is a valid reason to deny international protection. In the following section in the ruling, Justice Barr refutes this explanation:

I am satisfied that the respondent quoted very selectively from Professor Hathaway's book. The inference given that the learned author supported the so-called 'direct-flight requirement' was totally misleading. The learned author was not suggesting any such requirement, indeed, he was coming to the very opposite conclusion. (ibid, Par 52)

Pillay is not a rogue actor within the RAT; he was continually assigned cases up until 2011, and his decisions were defended by the RAT years after he had left, up until this ruling in 2014. What starts to emerge at this point in my investigation is a deeper culture of doubt and incredulity among Tribunal members.

The Pillay cases are important because they take place at a time when the general practices and way of doing business of the RAT was called into question, threatening other decisions and the way that the RAT operated. Nehru Morgan Pillay had been retired as a Tribunal member for at least three years by the time Justice Barr issued his Judicial Review decision; however, the RAT was still standing in defence of Pillay's decision in the High Court. In Barr's decision, Pillay's errors were strictly defined by Tribunal defence as an error in how external sources are used, not in challenging anything about how Tribunal members assess asylum seekers' journeys and credibility. However, as this study has shown, evaluating appeals decisions in this way is not out of character or an exception among the decisions in ATA. As I explored earlier in this chapter, there is a regular practice in decisions issued by the Tribunal to interrogate and scrutinise asylum seekers' accounts of their journeys to Ireland. Pillay's decisions do not stand out as exceptional among decisions in the ATA.

In the 230 decisions issued by Pillay, and especially in the 109 decisions in which Pillay uses the Hathaway quotes as he does in the P.M. v. Refugee Appeals Tribunal case, Pillay shows an exact and particular attention to the way that asylum seekers travelled and to certain details of their travels. These decisions show a kind of attention about the journeys that people took to arrive in Ireland before applying for asylum that leads to judgements of disbelief and incredulity. The journeys that asylum seekers give account of become a central aspect of every case that Pillay decides. Pillay fastidiously interrogates every person in their appeals about how they travelled from their country of nationality to Ireland, how long it took, and where they arrived in Ireland. What is revealed is a relationship that Pillay has between his duties to interpret international laws and the refugee regime that Ireland has signed onto as a member of the international community, and something deeper both within the governmental agencies and bodies that he operates within and frameworks, how he understands the duties of state agencies like the appeals tribunals.

5.7 Conclusion

I have shown throughout this chapter how interrogating the journey becomes an opportunity for Tribunal members to discredit asylum seekers. Tribunal members also in these declarations produce the ‘genuine refugee’ as an imaginary individual who possesses all the traits that Tribunal members profess a ‘real’ refugee would have. The genuine refugee seems to be something that the ATA is concerned with. Tribunal members listen to the stories that the applicants offer about their journey, and then, the decisions that are evidence within the ATA demonstrate an anxious re-telling that often makes the stories incredible and unbelievable.

My investigations show other logics and aims that are not stated publicly, and that are part of an embedded culture of the appeals tribunals. Tribunal members’ hyper-

attention to journey in their decisions brings to attention unmentioned anxieties brimming underneath the surface of asylum determination. While race is almost never explicitly mentioned in relation to the travel and journeys detailed in the Tribunal decisions, race and the racialisation of asylum seekers is an important factor in asylum determination. It is important to come back to the racialization of bordering and in particular the racialization of the Irish state, and conceptions of exclusionary practices that come from and contribute to racism. The evocation of the genuine refugee can reflect back on the genuine or authentic Irish person. For Lentin, the discourses of Irish racism are both specific and multiple, with migrants being both positioned as racialized and as “the other.”

The specificities of Irish racism, Lentin argues, include four main elements: “the evocation of Irish cultural authenticity[;]... parallels between past discourses of Irish emigration and present-day discourses of immigration into Ireland, racialising incoming migrant[;]... blaming outgroups and in-coming migrants for causing racism[;]... and projection, which is always involved in constructing racialised stereotypes” (Lentin 2001, par. 2.7). In the travel journeys, some of these aspects of racialisation can be seen to be a factor under the surface. Tribunal members have an outsized view of the ‘common sense’ of travel, an attitude parallel to Irish cultural assumptions about non-Irish migratory populations based on a cultural understanding of Irish emigration, and a presumed authentic understanding of the logics of, especially, international airports.

Race and evaluation of racial elements is difficult to assess in Tribunal decisions, and while looking for these elements was not a direct focus of the research in this project, racialisation of asylum seekers is part of the entangled history of the racial Irish state. Those cultures of practice are about how Tribunal members frame the narratives of journeys cast doubt on the story of the journey. What I have found contributes further evidence of the culture of disbelief in the asylum process, as shown in other studies (Conlon et al). The motives for this culture of disbelief are hard to study in the archive, and

getting to the heart of motives of individual asylum decision-makers is often difficult. However, it is clear that there is a long-standing policy and culture of border control in Irish bureaucracy and governments to maintain images and policies of ‘Irishness’ (Lentin, 2001). This bordering is the geopolitical bordering found in other countries (Coddington, 2018, Gill and Good, 2019), and has its own patterns and signatures in Ireland, mainly an informal understanding of ‘benefit of doubt’ and a hyper-attention on migrants’ movements, above and beyond any guidance from legal resources, UNHCR, or international legal scholars. In Cameron’s assessment of asylum determination in Canada, she assesses how decision-makers assess credibility and memory, and how decision-makers assess risk asylum seekers face. She concludes that these decisions are difficult:

If considering the above factors sounds like a lot of work, it should.... If it sounds like more than a lot of work – if it sounds impossible – then adjudicators should not be in the business of judging the reasonableness of a claimant’s risk response. ... Judgements about risk perception, assessment and management simply do not provide a solid basis for a life and death decision. (Cameron, 2008, p. 585)

The logic asylum decision-makers use in decisions in the ATA is employed in potentially life and death decisions, and cultures of disbelief and denial, irrespective of motivations, are a structural violence that affects the lives of individuals and communities in Ireland. The Pillay case is not the exception, but it is a uniquely *visible* example of the practices of the appeals tribunals. While the P.M. v RAT case made one of Pillay’s Hathaway’s judgements public knowledge, it was by using the web scraping tools and text search that enabled me to find Pillay’s repeated practice of using the Hathaway quote. This type of investigation into how Tribunal members and decision-makers produce knowledge can also be focused on for the other facets of decision identified in this study and demonstrates the importance of systematically investigating how these decisions are made.

6 Chapter 6: Creating a public database – the individuals of the Tribunal

6.1 Introduction

In the previous chapter I set forth evidence of a culture of practice in the appeals tribunals of discrediting and disbelieving asylum seekers. Part of this culture was the use of a series of tactics, expressed in decisions, to produce doubt and to assess asylum seekers as not credible, and to reject appeals based on these credibility findings. I showed specifically the use of these tactics in discrediting asylum seekers' narratives of travel and arriving in Ireland, and I argued that in the moments and points of discrediting asylum seekers Tribunal members revealed the anxieties and sentiments of bordering in the asylum determination process and among state agents involved in this process. By systematically studying patterns of practice in the ATA, I reveal systemic evidence of state practices that had been identified before only in individual cases or, in the case of the Irish Refugee Council report *Difficult to Believe* (2012), in the 86 cases in which they were able to obtain documents.

In this chapter I propose that within this culture of practice there is also a privileging of the normative and subjective judgements that individual Tribunal members make on decisions. This attitude has had the result of a spectrum of variation in how Tribunal members assess and decide asylum and international protection appeals. The methods in this project are designed specifically to try and see what can be found using an innovative set of tools and methods that have not normally employed in migration studies research. The Appeals Tribunal Archive (ATA) contains most of the decisions issued by the appeals tribunals 2006 to present, and as a corpus provides a view of the entire output of the work of the appeals tribunals, even if it provides a certain view in a certain way.

Along with the contributions and evidence set out in this research, there are still many aspects of the practice of power by Tribunal members and the appeals tribunals that remain hidden. I address in this chapter how investigating border enforcement practices often also reveals more that we don't know, and I employ the framework of quasi-events of immigration enforcement (Coleman and Stuesse, 2016) to help us understand the practices of bordering in the Irish state despite these absences in the evidence. Coleman and Stuesse employ Povinelli's concept of the quasi-event to explore how a 'durative present' -- practices deemed regular and everyday -- often cannot be observed in research because they do not reach the threshold of an event:

Ultimately Povinelli's work helps us problematize a lingering idea in the power-as-practice literature that power is something which can be readily "seen" and then communicated by researchers—for example, documented first hand and straightforwardly by researchers in field notes, interviews, etc. (ibid, p. 527)

These aspects of practice in the appeals tribunals are still hidden in this study of the ATA. The extraordinary violences of the Tribunal remain present, and projects investigating the ATA must also be accompanied with other types of research and considerations of the conditions that asylum seekers face in Ireland.

Chaos and disorganization have always been a part of migration and of migration controls and are often deployed by states as a way to make the process of migrating and seeking asylum and international protection more disorienting (Hiemstra, 2013, 2019). In the case of the appeals tribunals, the lack of transparency in decision making is a part of how Tribunal members institute their own normative common sense, varying from their colleagues, and thus making the process of asylum determination less regularized and more transitory and unstable. Additionally, this system of chaos and disorganization makes it more difficult for an asylum seeker and their legal representation, if indeed the asylum

seeker has any legal representation, to make a case on an appeal, as it is unclear how individual Tribunal members will evaluate and assess claims.

In this chapter I present results and findings of collecting evidence of the practices, variations, and normative and subjective judgements of the Tribunal members using a set of tools to create a public database of Tribunal member decisions and grant rates. In section 6.2, I present how I came to focus on the decision rates of Tribunal members as evidence of bordering practice, following and building on previous efforts and work to investigate the decision rates of individual Tribunal members. I detail how there has long been a demand from asylum seekers and advocacy groups for transparency and information around this kind of information from the appeals tribunals, and how the publication of the database detailed in this project enables some of this transparency. In section 6.3, I present work by border scholars on the practices of individual asylum decision-makers in other countries, specifically efforts in Canada, the USA and Europe to reveal individual decision-maker practices. In section 6.4, I describe how I created a database of Tribunal member decision rates from the ATA. While the ATA presents a public database of Tribunal member decisions, the ATA does not immediately allow anyone to see the practices of Tribunal members across all of the decisions that they have issued. Using qualitative digital tools and tools from qualitative geocomputation, I present how I have created a public database of Tribunal member decision grant and refuse rates. In section 6.5, I present the findings from analysis of this database. This analysis shows that there is a wide variation in how Tribunal members are assessing decisions, and that these variations have become more acute since the change in government in 2011, the reforms and changes instituted in the RAT after 2011, and the reforms to the asylum process put in place with the International Protection Act 2015. This analysis also shows how before 2011 there was a clear culture refusing international protection appeals using the logics described in chapter 5, and that since 2011 the Tribunal culture, these patterns have become less

apparent, but also the practices of the appeals tribunals overall have become less cohesive and more chaotic, and standards of assessing international protection have become more varied among Tribunal members. In section 6.6, I discuss some limitations in this type of analysis, and some of what remains hidden in the asylum determination process. I conclude the chapter, in 6.7, by describing how the efforts in this chapter have made progress working against state efforts to obfuscate the asylum determination process in Ireland.

6.2 Decision-making in Ireland

The focus of this chapter – on the decision rates of individual Tribunal members – emerged directly from the knowledge exchange forum that I held in November of 2018 (see section 4.4.6). One concern that was raised by participants in the knowledge exchange forum was an interest in the practices and decision rates of individual decision-makers, including Tribunal members. Participants of the knowledge exchange forum expressed interest in investigating if it was possible to find the decision rates of individual Tribunal members from the ATA. Participants spoke of experiences with Tribunal members and rumours that a specific Tribunal member had refused protection in all or almost all of the appeals that they had decided, and how asylum seekers and legal representatives had previously made attempts to argue that the Tribunal member in a case was biased but had found that they did not have enough evidence.

There has previously been interest and attention to the decision rates of Tribunal members in Ireland. As mentioned in section 3.3.6, the *Atanasov* case in 2006 resulted in the requirement that the RAT make available the ATA. In 2007, asylum seekers again demanded more information on Tribunal members and their decisions in Judicial Review; this is known as the *Nyembo* case (*Nyembo -v- The Refugee Appeals Tribunal & anor*, 2007). In this case, three asylum seekers and their legal counsel claimed that James Nicholson, the Tribunal member assigned to review their appeal, had 100 percent or close

to 100 percent rate refusing appeals, and that he was unfair and biased in his judgements of appeals (Coulter, 2008a, 2008b, 2008c, 2012). Nicholson was also the highest earner on the RAT because he was allocated the most appeals cases by the Tribunal chairperson. The asylum seekers had sought statistics on the decisions of the Tribunal members in their cases from the appeals tribunals and had asserted that it was their right to know if the decision-maker assigned to their appeal had a radical approach to assessing international protection appeals. The RAT denied their request for this information, and the asylum seekers appealed to the courts that their cases be allocated to a different Tribunal member or that the appeals tribunals provide statistics on his decisions.

Seven solicitors who represented asylum seeker clients, including from the Refugee Legal Service and private practice, provided affidavits supporting this appeal, stating that to their knowledge James Nicholson had never issued a positive ruling (Irish Refugee Council, 2015b). Managing solicitor of Cork Refugee Legal Service John McDaid, in one submitted affidavit wrote:

In the light of the absence of any practitioner dealing in the area of refugee law having a recollection of the second-named respondent ever having made a recommendation for refugee status in favour of an appellant, and also in the light of my own observations, I now feel obliged to advise all my clients whose cases have been assigned to the second-named respondent that there is no prospect of their appeal being successful. (Irish Refugee Council, 2015b, p. 7)

Mr Justice Butler in the High Court granted leave for judicial review in the three cases, and in June 2007 the Supreme Court ruled that statistics could be examined as part of this particular case against a Tribunal member who was at great variance to the RAT generally (Nyembo v. Refugee Appeals Tribunal & anor 2007). Nicholson subsequently resigned from the RAT, and the RAT settled the case with the three asylum seekers in 2007.

Additionally, three senior members of the RAT filed a separate case for a correction of a statement made by the Tribunal chairman John Ryan during the Nyembo case at the Supreme Court, “along with changes in the way the tribunal operated” (Coulter, 2008b). The three Tribunal members contested the statement made by Ryan that “the record of [Nicholson] is not at variance with the other members of [the Tribunal]”, stating that “the record of [Nicholson] is markedly at variance with those of the three members of the tribunal... [and] with the records of a substantial number of other members of the tribunal” (Coulter 2008b). The Nyembo case was settled without the member grant rates being released, and without testimony from the Tribunal members that joined the case; however, in this case there was tacit recognition from the courts that there should be public accountability from the RAT.

While the *Atanaszov* and the *Nyembo* cases brought attention to issues of inconsistency, variation and bias in RAT hearings, there has been little further research into the practices and statistics of individual Tribunal members since in the RAT and IPAT. Conlan et al. of the Irish Refugee Council (IRC) in their 2012 study *Difficult to Believe: The assessment of asylum claims in Ireland* address some of the problems and concerns that the NGO sector had been raising around the practices of the Tribunal. Their study included analysing all of the files relating to 86 individuals applying for international protection, obtained from legal offices with the permission from participants. All individuals in their sample were refused international protection, and all of the applications were active at some stage in 2011 or 2012. Conlan et al. noted that there was an uneven distribution of cases among Tribunal members. While the report analysed a sample of asylum applications, instead of a systematic study, Conlan et al. did note that fifty percent of cases in their sample were decided by just five Tribunal members (Conlan et al., 2012), and that “all five Tribunal Members displayed distinctive styles in which were evident in their decisions. In most cases, Tribunal member comments suggest a negative and quite hostile attitude

towards those whose appeal they considered” (ibid, p. 27). The report concludes that, among other issues, there is “a lack of fairness and transparency in the Refugee Appeals Tribunal in particular” (ibid, p. 40), and that “the apparent confidence with which comments are made about applicants in dismissive, almost derogatory terms at times, possibly encouraged by the knowledge that their decisions will not be published and available in a public domain, should give cause for concern about how some Tribunal Members view their role” (ibid, p.44). The decisions examined in this study appeared to be consistent in expressing disbelief of claims made by asylum seekers, and with differences based on who was hearing the case, with practices differing between individual Tribunal members.

In 2015 an independent Working Group tasked by the government to review the asylum determination process, long waiting times and the conditions in the Direct Provision system published its report, known as the McMahon Report. The report addressed the conditions asylum seekers faced in the reception conditions, but did not generally address the problems raised in past research and by asylum seekers, NGOs, solicitors and judges regarding the practice of the RAT. Later in 2015, the Irish Refugee Council (IRC) published a report on “What asylum seekers told the Working Group”. The Working Group had been tasked to collect testimony from asylum seekers and refugees through consultations across the country. The IRC report argues that there “is little evidence to suggest that the Working Group properly took into account comments on the asylum system by asylum seekers themselves. Rather the Working Group was selective in what it chose to respond to from the evidence gathered from asylums seekers” (Irish Refugee Council, 2015b). While the IRC report focuses on the submissions asylum seekers and refugees made regarding the long lengths of time they had to live in Direct Provision while waiting for the asylum determination, the submissions also highlighted the capricious

and unpredictable judgements that asylum seekers received, and how the unpredictability in the decisions created disorientation and distrust in the process.

While there is little direct attention on the RAT in either the McMahon Report or in the Irish Refugee Council's 2015 report, some excerpts of testimony from asylum seekers included in the IRC report provide a strong impetus to further study the often opaque practices of all of the agencies involved in asylum determination. Asylum seekers gave testimony that the unpredictability in the process made them feel powerless: "If application commissioner's office is allowed to make rejections upon the whims and caprices of the interviewer, the system will always remain opaque" (Irish Refugee Council, 2015b). Asylum seekers gave testimony that they felt that the process was rigged against them: "There seems to be a culture of disbelief amongst the individuals charged with processing the asylum applications" (ibid, p. 285). And the requests made by asylum seekers in the report were clear. One asylum seeker is quoted as saying, "Grounds upon which applications are rejected must be looked into, made objective or at least reasonable" (p. 291), and there must be a system that will treat people seeking asylum with dignity and respect, and ensures that well-reasoned decision are fair and transparent (ibid, p. 290).

The work detailed in this chapter identifying Tribunal member refusal rates is a response to these requests to create systematic evidence of practice of Tribunal members. As I outline in the following chapters, I use the ATA and the digital and data science methods outlined in this project to create a repository and database to be published publicly¹⁸ on the variation in how Tribunal members are assigned and issue decisions. This work draws upon the methods and approaches used by researchers studying the asylum determination process in other countries and who have published reports on the practices and decision rates of individual asylum decision-makers.

¹⁸ Public database reports are in development will be published shortly. See appendix 4.

6.3 Luck of the draw – research in other contexts

Researchers in other countries have worked to provide systematic reports on the decision process and on the individuals involved in the determination process. These researchers, while focused on a process that may be different than the process in Ireland, provide models and the framework for a systematic publication of Tribunal member decision rates in Ireland.

In Canada, Sean Rehaag analyses the decision rates in the second-instance decisions for international protection, which are made by judicial review in the Federal Court. In 2012, in a review of over 23,000 applications for judicial review from 2005 to 2010, Rehaag argues that analysis of the decisions based upon the decision-maker showed great variation among the rates of granting or refusing the appeal, and that consequently, “leave decisions hinge partly on which judge is assigned to decide the application” (Rehaag, 2012, p. 30). Just as is the case in the appeals tribunals in Ireland, the Judicial Review process in Canada is both opaque and final. The Judicial Review process in Canada is the final non-technical opportunity for appeal. Rehaag writes:

And of course there are extreme stakes in this decision-making process: if the Federal Court wrongly denies applications, the direct result is that refugees may, contrary to international refugee law, be sent back to the countries where they face persecution, torture or death. In short, the key finding of the study is that the leave requirement, as currently applied, all too often possess an arbitrary and unfair barrier to access to justice and for refugees, with potentially devastating consequences. (ibid, p. 31)

Specifically, Rehaag found that there was linear distribution in the variation of decision-makers’ grant/refuse rate, with 36% of judges deviating from the average grant rate by more than 50%. There was no normal or consistent decision grant rate because there was a

relatively equal distribution of decision-makers at all percentages. The identity of the judge had a strong effect on the likelihood that an application would ultimately succeed.

In the United States, asylum determination decisions are made by immigration court judges in courts across the country, and while these court records are open documents for the most part, the efforts to collect and compile the information can be considerable. This project is currently done by the Transaction Records Access Clearinghouse (TRAC), a data gathering, research and distribution organization at Syracuse University, New York. Through a series of systematic monthly Freedom of Information Act (FOIA) requests to the Executive Office for Immigration Review (EOIR), TRAC annually compiles updated reports on the roughly 20,000 to 50,000 applications for asylum that are determined every year in the USA (Transactional Records Access Clearinghouse, 2020a). TRAC's reports show that asylum decisions vary widely across judges and vary widely geographically, across courts in different cities (Transactional Records Access Clearinghouse, 2020b). TRAC also provides resources for researchers and legal workers to further investigate immigration court and immigration judge practices through judge-by-judge asylum decision databases on their website, which have been used in multiple studies of bias and consistency in asylum decisions in the US (see for example the works of Burnham et al. 2006, Chen 2016, Eagly and Shafer 2015).

In Europe, a complicated diversity of legal cultures and interweaving national, EU, and international legal frameworks create a tapestry of asylum decision-making practices. In the introduction to *Asylum Determination in Europe: Ethnographic Perspective*, a collection of a range of accounts of asylum determination processes in Europe, Gill and Good note that:

The asylum issue is deeply contested as a result of an inherent contradiction between the need for Western states to portray themselves as representing shared communities with common values, including recognition of basic human rights such as the right not to suffer persecution; and the discretionary right assumed by

modern states to decide who can enter and reside in their territory. (Gill and Good, 2019, p. 2)

Gill and Good measure how states and asylum agencies waver between two competing models for approaching refugee issues – between evaluating applications within the international laws for asylum and international protection and “an instrumental security model that emphasises control of refugees” (ibid, p.3) Gill and Good’s approach to investigating the ‘crisis of migration’ and the ‘crisis of migration management’ in Europe focuses on a legal and ethnographic approach to asylum determination. This approach is in contrast to doctrinal legal scholarship, which is “fundamentally normative, both because its subject-matter is focused on norms, and because it generally locates itself within the legal paradigm” (ibid, p. 15). Ethnographies of law allow for insights into the internally complex cultures and networks of states and state agencies and practices. While this is a different approach than outlined by TRAC and as pursued by Rehaag in Canada, these investigations show the same kind of ability to do investigative research using multiple methods to make asylum processes less opaque and more visible. These efforts work to make it more clear what kind of state is determining asylum and hearing asylum seekers.

Importantly, there has been a difference in how legal scholars and how geographers have approached studying asylum determination, the asylum determination process in different countries and the processes and cultures that decision-makers engage in. Legal studies and research are divided between the need to provide prescriptivist normative analysis of laws and providing empirical proof of ‘law in practice’ -- either normative or empirical. Normative law research provides prescriptive ‘fixes’ to law and legal practices while empirical legal research focuses on the practice of laws in society (Christiani, 2016). Normative legal research can provide criticism of practices operating outside the bounds of the existing legal framework. However, research by geographers has often worked to show how the protections offered in existing legal framework of international law granting rights

to refugees and asylum seekers, centred around the 1951 Refugee Convention and the 1967 Refugee Protocol, have been deteriorating in signatory states, and there is now only a narrow gap between the protections offered by signatory and non-signatory states (Coddington, 2018). Political geography more often evaluates internal logics of legislation, precedent and legal arguments and judgements, and looks at how laws, legislation, courts and rules are applied in the world, differently across space and place.

Sorgoni evaluates the practices of asylum judges in the context of the asylum process in Italy. Sorgoni criticises the asylum process, and also criticises more deeply the positivism of asylum claims in their entirety. As Sorgoni writes that her criticisms are: “not to offer ad hoc solutions to make the existing asylum system fairer to those ‘happy few’ who land alive at the external frontiers of Europe, thus supporting the positivist illusion that finding yet more technicalities, or refining existing ones, will eventually render the screening of human beings ‘objective’” (Sorgoni, 2019, p. 234). Instead, Sorgoni argues there must be an evaluation of the logics and knowledges of asylum decision-makers and the culture of knowledge production in these agencies in order to determine how there can be a just acknowledgement of migrants and asylum seekers:

A fair recognition of the aspiration of a multitude to a dignified and safe life does not depend on correcting some faults in the asylum system, as if the system itself existed in a vacuum, independent and detached from those global migratory politics and rhetorics in which, on the contrary, it is radically embedded. (ibid, p. 235)

The radically embedded route towards a fair recognition of migrants’ lives must be a part of any analysis of state practices of bordering, as well as an exploration and investigation of state agencies and, in their bordering, how they produce certain ways that migrants must live their lives and how migrants are produced in the rhetoric of state knowledge. If work is to critique the asylum process, then the work must also offer something beyond a critical approach; we must propose our own models of what asylum

can mean. These empirical works are central to investigating the state, which cannot be done only theoretically. It is therefore one of the aims of this study to create a more transparent view of the practices of the appeals tribunals in one way, by creating a database of Tribunal member decisions and to make publicly available resources from and of previously hidden and undisclosed information. This database is designed to be used, similar to how the TRAC reports are used, by asylum seekers and advocates to make arguments for their cases and for reforms in asylum determination processes, and to reveal the logics and production and practice of the asylum determination by the state, government and agencies. And while the two designed outcomes of resources for those affected and resources for study do intersect, there also must be a balance in this project between these two designed outcomes, and a balance between the ability to use the database for practical projects and for theoretical projects. The creation of a database allows for both of these contributions and is specifically designed to allow for both practical use and for investigation of theoretical investigation by myself and other scholars.

6.4 Creating the database

This database was constructed by scraping the ATA for written decisions issued by Tribunal members. The metadata on decisions in the ATA includes the internal reference number of the decision, the year of the decision, the stated country of origin of appellant, the type of application for international protection, and the outcome of the decision. It does not include the Tribunal member making the decision. The written text of the decision very roughly follows a format that includes various information at the beginning in a cover page or header, sometimes including the Tribunal member name, and concludes with a statement at the end of the document affirming or setting aside the initial international protection decision, followed by the Tribunal member name and the date of the decision. Decisions are made available in the ATA as PDFs.

A computer program¹⁹ was written to use Optical Character Recognition (OCR) to read the text of the images of the Tribunal member names embedded in the decision PDFs scraped from the ATA, as described more fully in section 4.4.7. Appeals tribunals annual reports specify that 42,892 decisions were issued between 2001 and 2018. Of these, 16,531 are included in the ATA (see Table 6.1). I was able to connect 15,377 of these decisions to the Tribunal member issuing the decision. Of the total 19,134 decisions issued between 2006 and 2018 according to appeals tribunal annual reports, 13,902 (72.7%) are included in the ATA at least including the decision’s metadata, and the techniques outlined above identified the decision-maker in 12,749 cases (66.6%), one third of all decisions 2006-2018

Year	Total Decisions Issued*	Decisions in the Archive	Decisions with Tribunal member name
2001	3,472	324	324
2002	4,950	745	745
2003	4,841	602	601
2004	6,340	548	548
2005	4,156	410	410
2006	2,103	1,509	1,485
2007	2,006	1,352	1,286
2008	2,461	1,599	1,505
2009	3,426	2,701	2,603
2010	2,781	1,969	1,850
2011	1,330	958	776
2012	691	548	490
2013	584	615	567
2014	255	223	217
2015	640	593	360
2016	1,163	998	879
2017	602	560	455
2018	1,092	277	276
Total	42,893	16,531	15,377

Table 6.1. The number of decisions issued by the appeals tribunals and the number of decisions in the Appeals Tribunal Archive, by year issued. *According to Tribunal annual reports.

¹⁹ This was an R script using the pdftools R package and the tesseract R package that uses the Tesseract OCR engine. Both packages are built and maintained by Jeroen Ooms.

6.5 Findings – Tribunal member decisions 2006-2018

Table 6.2 provides an overview of the decisions in the ATA issued in 2006 to 2018 by type of appeal and by Tribunal member decision. The type of appeal and the decision/outcome is included in the metadata for each decision in the ATA and was obtained in the scraping process. The ATA lists fourteen different types of appeals which fall into five general categories: (1) Substantive appeals before the RAT – These include the Substantive (15 day) and Substantive cases, and are appeals for refugee status and/or subsidiary protection; (2) Substantive appeals before the IPAT – These include Substantive appeals for refugee protection and/or subsidiary protection, denoted by asylum only or SP [subsidiary protection] only or asylum only, and some legacies appeals not fully processed by the RAT before it was replaced by the IPAT in 2017; (3) Dublin Appeals - Appeals against deportations to other European states on the grounds that their asylum claim be heard by that state under Dublin Regulations. This type includes appeals to decisions under the first Dublin Regulation (DC), Dublin II and Dublin III; (4) Accelerated appeals - The DoJE denotes some asylum applications and appeals to go through an accelerated decision process, including for applications from people from countries designated ‘safe countries’ by DoJE; and (5) Inadmissible and other appeals – These categories are not explained in the ATA or in annual reports. A few points are worth noting. Firstly, appeals rarely succeed. Of the decisions in the ATA issued in year 2006 – 2018, 87.1 percent of appeals were refused, denying international protection and affirming the initial negative decision by the ORAC or the IPO.

Secondly, there is wide variation in the number of decisions issued by each Tribunal member both in the number of decisions that each Tribunal member issued and the refusal rate between Tribunal members. Forty-six (49 percent) of the ninety-four Tribunal

Type	Granted	Refused	Total	Appeal Refuse Rate
Accelerated	81	2051	2132	96.2%
Dublin II Reg	13	848	861	98.5%
Dublin III	29	355	384	92.4%
Inadmissible Appeal	0	5	5	100.0%
Legacy, Asylum Appeal	1	0	1	0.0%
M/U	1	0	1	0.0%
SP Appeal	184	488	672	72.6%
Stream Acc	15	243	258	94.2%
Subsequent Appeal	12	14	26	53.8%
Substantive	24	53	77	68.8%
Substantive (15 day)	1314	7755	9069	85.5%
Substantive IP Appeal	99	165	264	62.5%
Substantive IP Appeal, Asylum only	8	12	20	60.0%
Substantive IP Appeal, SP only	10	16	26	61.5%
Other	2	0	2	0.0%
Total	1793	12005	13798	87.0%

Table 6.2. Number of decisions in the Appeals Tribunal Archive issued 2006 to 2018 by type of appeal and by decision issued.

members identified in the ATA issued thirty or more decisions in the time between 2006 and 2018, and these Tribunal members issued over 97 percent of all decisions in the ATA with an identified Tribunal member. The ten most prolific Tribunal members together issued 7,434 decisions, over half (58 percent) of all decisions in the ATA. The refusal rate among this cohort of Tribunal members is 86.3 percent, similar to the overall refusal rate of 87.1 percent. However, within this cohort of decision-makers there is also a variation in refusal rates between 98.3 percent (Margaret Levey) and 64.4 percent (Connor Gallagher). Annual reports from the appeals tribunals confirm this overall pattern. While annual reports before 2013 do not report the number of decisions by individual Tribunal members, in the years 2013 to 2017 over fifty percent of decisions were made by seven of the forty-four Tribunal members.

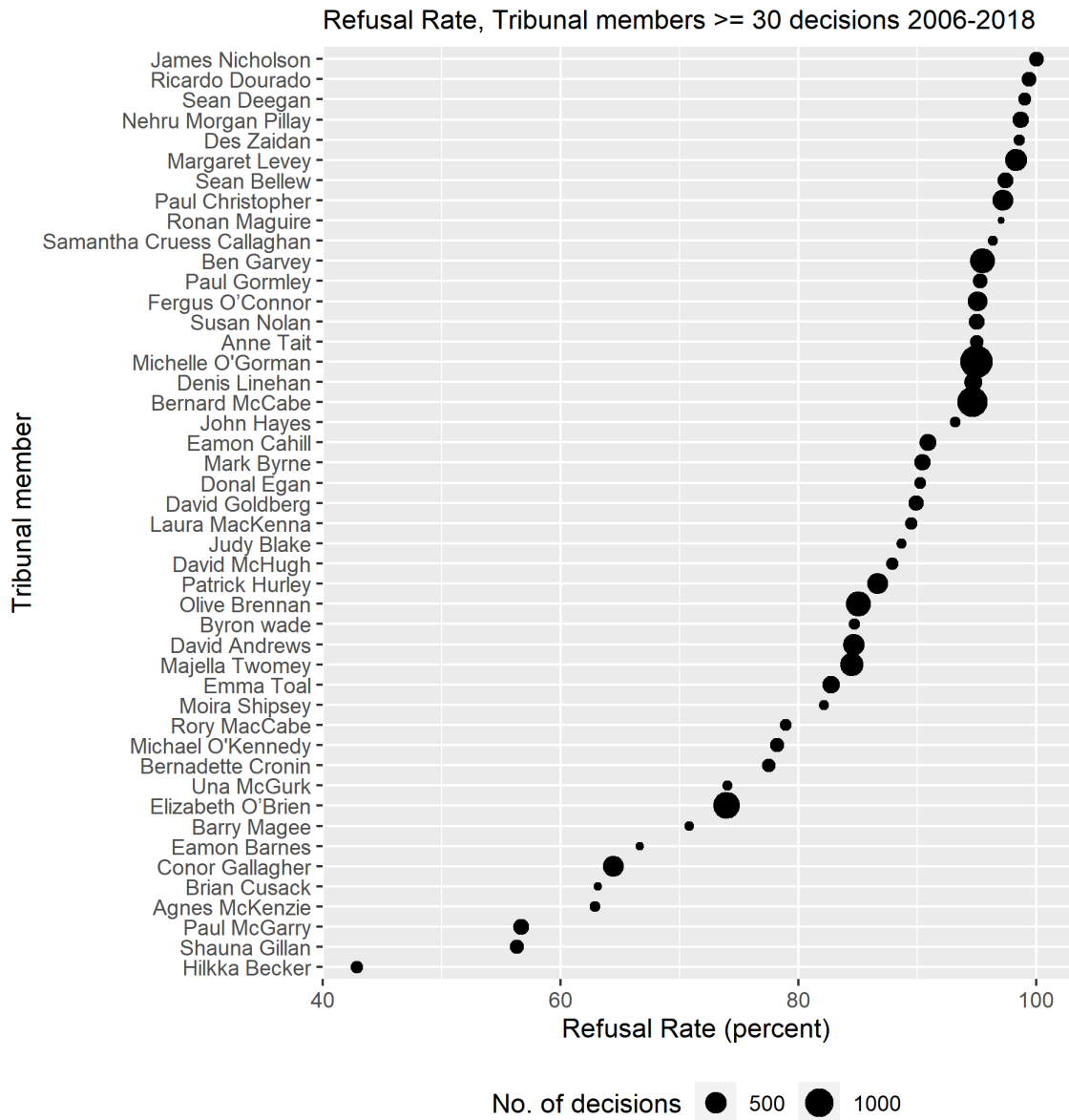


Figure 6.1 Tribunal member rates of refusal in decisions in the ATA for Tribunal members who issued 30 or more decisions in the archive, 2006 to 2018.

Thirdly, there is also wide variation in the refusal rate of Tribunal members – that is, in the proportion of the decisions issued by each Tribunal member in which they refused the appeal and international protection for the person seeking asylum (See figure 6.1). Tribunal members’ refusal rates in decisions in the ATA varies from James Nicholson, who refused appeals in 100 percent of decisions in the archive that he issued, to Hilkka Becker, who refused appeals in only 42.9 of their decisions. Hilkka Becker is the current chairperson of the IPAT since April 2017.

This analysis of the variation refusal rate of Tribunal members is a normative analysis of Tribunal practice. The norm of the appeals tribunals is to refuse appeals for international protection, just as it is the norm for decision-makers to refuse applications of asylum and international protection at the first instance. Within this normative practice of the appeals tribunals, the variations in individual Tribunal members' rate of refusal are one indication of these Tribunal members taking a different approach to assessing appeals from each other. James Nicholson is the only Tribunal member with a 100% refusal rate in decision in the ATA; however, he is not an outlier. Fifteen Tribunal members who issued thirty or more decisions 2006-2018 refused appeals in 95 percent or more of their decisions. Hilka Becker is somewhat of an outlier in her decision rate, however not substantially, as the Tribunal member with then next-lowest rate of refusal, Shana Gillian, refused protection in 56.3 percent of decisions, to Becker's 42.9 percent. Similar to Rehaag's findings in Canada (2012), the variation in rates of refusal by Tribunal members also follows a largely linear distribution (See Figure 6.1). Very few judges have a refusal rate close to the average refusal rate of 87.1% and a substantial proportion have rates significantly different than this average refusal rate.

6.5.1 *Tribunal members and their gender*

Some research has investigated if the gender of asylum decision-makers affect the outcome of their decisions (see Rehaag 2012). For this project, the gender of each Tribunal member was identified by assessing Tribunal members' presenting gender based on their name and information available on their online profiles -- almost all Tribunal members had public LinkedIn accounts. Thirty-four (36%) of the ninety-four Tribunal members who issued decisions in the ATA 2008 to 2018 were identified as women. There is an even gender divide among the top ten decision-makers. Overall, women Tribunal members had a lower refusal rate in appeals decisions (85.2 percent) than men Tribunal members (89.0

	Name	Refusal rate	No. of decisions	Granted decisions	Gender*	Cumulative Pct of total decisions in the archive
1	Michelle O’Gorman	95.0%	1438	72	F	11.3%
2	Bernard McCabe	94.6%	1175	63	M	20.5%
3	Elizabeth O’Brien	73.9%	856	223	F	27.2%
4	Olive Brennan	85.0%	734	110	F	32.9%
5	Ben Garvey	95.5%	705	32	M	38.4%
6	Majella Twomey	84.5%	607	94	F	43.2%
7	Margaret Levey	98.3%	534	9	F	47.4%
8	David Andrews	84.6%	501	77	M	51.3%
9	Patrick Hurley	86.7%	451	60	M	54.8%
10	Conor Gallagher	64.4%	433	154	M	58.2%

*Gender identified by assessing presenting Tribunal member’s gender by name and LinkedIn profile.

Table 6.3. Ten Tribunal members who issued the most decisions in the Appeals Tribunal Archive.

percent). However, Tribunal members who issued more decisions did not follow this pattern, and there is no correlation between gender and refusal rates among the top ten decision-makers. Within the normative framework of the appeals tribunals, there is a clear overall difference in Tribunal members’ refusal rate correlated with the Tribunal member’s gender. Women Tribunal members refused fewer appeals. However, the differences are not large, and there should be a reticence to draw conclusions about differences in the practice of assessing appeals by men and women. It is also interesting how Tribunal members issuing more decisions do not follow this trend. The chairperson of the RAT or IPAT has had full power over assigning appeals to Tribunal members, with little transparency in how this happens. It is unclear if Tribunal members were assigned cases because of the practices that they exercised in their decisions, and the allocation of cases is not explained by the IPAT.

6.5.2 *Predicted refusal rate by country of origin*

Another normative way to assess the practices of individual Tribunal members in comparison to their colleagues and the generalised practices of the appeals tribunals is to assess if individual Tribunal members differed in their assessments of appeals for people applying for international protection who are from the same country. For example, for decisions in the ATA regarding people appealing with the Democratic Republic of Congo identified as their country of origin, 66.8 percent were refused. However, there were substantial differences between individual Tribunal members assessing appeals from people from the DRC. For example, Tribunal member Ben Garvey refused 28 out of 29 decisions on appeals by people from the DRC, a 96.6 percent refusal rate. Tribunal member Michelle O’Gorman refused 25 of 26 decisions, a 96.2 percent refusal rate. The refusal rates of these Tribunal members in this subset of decisions indicate that they are taking a different approach than the normative framework in assessing appeals for people from the DRC. This approach can be generalised to create and calculate a predicted refusal rate weighted by country of origin. This approach addresses one limitation in the dataset – the straightforward refusal rate of a Tribunal member is one way to assess the practices of that Tribunal member within and in comparison to the normative overarching framework and practices of the appeals tribunals; however, some Tribunal members may be receiving substantially different types of appeals and appeals from people in very different circumstances. One way to attempt to assess the extent of these differences and to identify the differences in Tribunal members’ caseloads versus Tribunal members’ approaches to decision-making is to calculate the refusal rate of each Tribunal member if they were to exactly follow the normative approach of the Tribunal, and refuse appeals at the same rate as if the average Tribunal member had the same distribution of appeals cases by country. The predicted refusal rate weighted by country of origin calculates what the refusal rate of a Tribunal member would be if their decisions for people from a country aligned perfectly

with the overall Tribunal refusal rate for appeals from that country. This technique is used by Rehaag to assess the normative decision.

**Decisions issued by Tribunal members by outcome 2006-2018
and country weight**

	Name	Granted	Refused	Total	Refusal rate (%)	Predicted refusal rate by country of origin (%)
1	Michelle O'Gorman	72	1365	1437	95.0	88.2
2	Bernard McCabe	63	1109	1172	94.6	86.1
3	Elizabeth O'Brien	216	618	834	74.1	80.2
4	Olive Brennan	103	616	719	85.7	86.2
5	Ben Garvey	32	673	705	95.5	89.5
6	Majella Twomey	91	505	596	84.7	88.6
7	Margaret Levey	9	525	534	98.3	91.8
8	David Andrews	77	424	501	84.6	93.2
9	Patrick Hurley	59	391	450	86.9	87.7
10	Paul Christopher	12	421	433	97.2	80.8

Table 6.4 Decisions by the top ten decision-makers and their predicted grant rate by country of origin.

practices of asylum decision-makers in Canada (Rehaag, 2017). The predicted refusal weighted by country of origin reflects the following calculation: For each country, calculate the average refusal rate in decisions for that country. For each Tribunal member, take all their decisions, and assign each decision an 'expected refusal chance' value based on the average refusal rate for the country of origin in that decision (i.e., for a decision from a country with an average refusal rate of 50%, the value would be 0.5). Add all of these assigned values together and divide by the number of decisions to complete the calculation. (See Table 6.4)²⁰.

For example, Tribunal member David Andrews issued 613 decisions in the years 2006 to 2013 and refused protection in 84.5 percent (424) of these decisions. This refusal

²⁰ The predicted refusal weighted by country of origin reflects the following calculation: For each country, calculate the average refusal rate in decisions for that country. For each Tribunal member, take all their decisions, and assign each decision an 'expected refusal chance' value based on the average refusal rate for the country of origin in that decision (i.e., for a decision from a country with an average refusal rate of 50%, the value would be 0.5). Add all of these assigned values together and divide by the number of decisions to complete the calculation.

rate is approximately equal to the average refusal rate of decisions in the ATA of 87.1 percent. However, the predicted grant rate by country of origin shows that David Andrews received appeals from applicants from countries that were more often refused by the appeals tribunals, and Andrews does not refuse appeals from these countries at this higher rate. Over half (361) of the decisions Andrews issued were issued on appeals for protection from people from Nigeria, and David Andrews granted the appeals in a higher percentage of these cases than the overall refusal rate for applicants from Nigeria, refusing 88.6 percent of cases compared to the average of 94.3 percent.

Tribunal member Bernard McCabe, in contrast, has a much higher refusal rate (94.6%) than his predicted refusal rate by country of origin (86.3%). Bernard McCabe issued 1,175 decisions from 2006 to 2018 in the ATA, and many of these decisions were issued for appeals from people from Georgia (248 decisions) and Pakistan (104) and Nigeria (91). Appeals from these countries are often refused by the appeals tribunals: for example, 90.4 percent of cases for people from Georgia, 86.8 percent of cases for people from Pakistan, and 94.3 percent of cases from Nigeria were refused. McCabe's refusal rate for these three countries was even higher. In the extreme case, McCabe heard 104 appeals from people from Pakistan and granted only one, a refusal rate of 99.0 percent. During McCabe's tenure as a Tribunal member, he had a particularly high refusal rate overall, and comparing his refusal rate to his predicted grant rate by country of origin shows that his decisions are even more inconsistent with the overall practices of the appeals tribunals.

The metric of the predicted refusal rate by country is an indicator of David Andrews' and Bernard McCabe's practices as Tribunal members in these examples. Comparing the predicted refusal rate by country of origin against Tribunal members' actual refusal rate can be a measure of the consistency of the appeals tribunals and the consistency between Tribunal members in their decisions granting or refusing international

protection. The metric can also reveal Tribunal members who are outliers, differing at least numerically from a ‘norm’ of the approach by Tribunal members.

This same kind of analysis can be carried out based on the type of appeal in each decision. As shown in Table 6.2, the refusal rate is different for decisions on appeals of different types, and a predicted refusal rate based on the types of appeals Tribunal members have issued decisions for can be created using the same approach as above. Appendix 3 shows the refusal rates of Tribunal members based on decisions in the ATA issued from 2006 - 2018 and their respective predicted refusal rate by appeal type. An analysis of the Tribunal members who have issued the most decisions in the ATA shows a mix of results, especially when compared with predicted refusal rates by country. All of the top-ten Tribunal members differ from both normative metrics in the same direction - i.e., each of the Tribunal members have either a higher refusal rate than both predicted metrics, or a lower refusal rate than both of these predicted metrics. This result shows how this type of analysis can contribute further to building multiple bases for evaluating how Tribunal member may be differing from normative practice within the Appeals Tribunals.

6.5.3 *Variations over time*

In the time period 2006 to 2018, there were also temporal variations in the appeals tribunals’ refusal rate. The database of decisions in ATA shows a clear difference in the practices of the Tribunal after the 2012 change in government and change in Tribunal chairperson. The RAT and the IPAT were established as independent from the DoJE; however, except for the chairperson who is appointed by public competition, decision-makers are appointed by the Minister for Justice and Equality, and two of the three chairpersons of the appeals tribunals who served between 2006 and 2018 were first appointed by the MoJE as interim chairpersons. Tribunal members serve three-year appointments, the Minister has the discretion of re-appointing Tribunal members after

each term and the Minister may dismiss Tribunal members at any time for ‘stated reasons’, according to the Refugee Act 1996 (amended) and the International Protection Act 2015.

In the years 2006 to 2012, Fianna Fáil government-appointed chairperson John Ryan presided over the RAT. In August 2012 Barry Magee became chairperson under a new Fine-Gael led coalition (although not appointed by the Minister) and in 2017 Hillka Bekker was appointed chairperson of the IPAT by Minister Charlie Flanagan of the Fine Gael-independent minority coalition government.

In the years 2006 to 2012, with John Ryan as chairperson, the RAT had a high refusal rate of 90.9 percent. Tribunal members were also relatively consistent in their refusal rates during this time period. Thirty-one (82%) of the thirty-eight Tribunal members who issued more than thirty or more decisions during this time were within ten percent of the average, ranging from 80% to 100% refusal rate (see Figure 6.2). This is a notable pattern

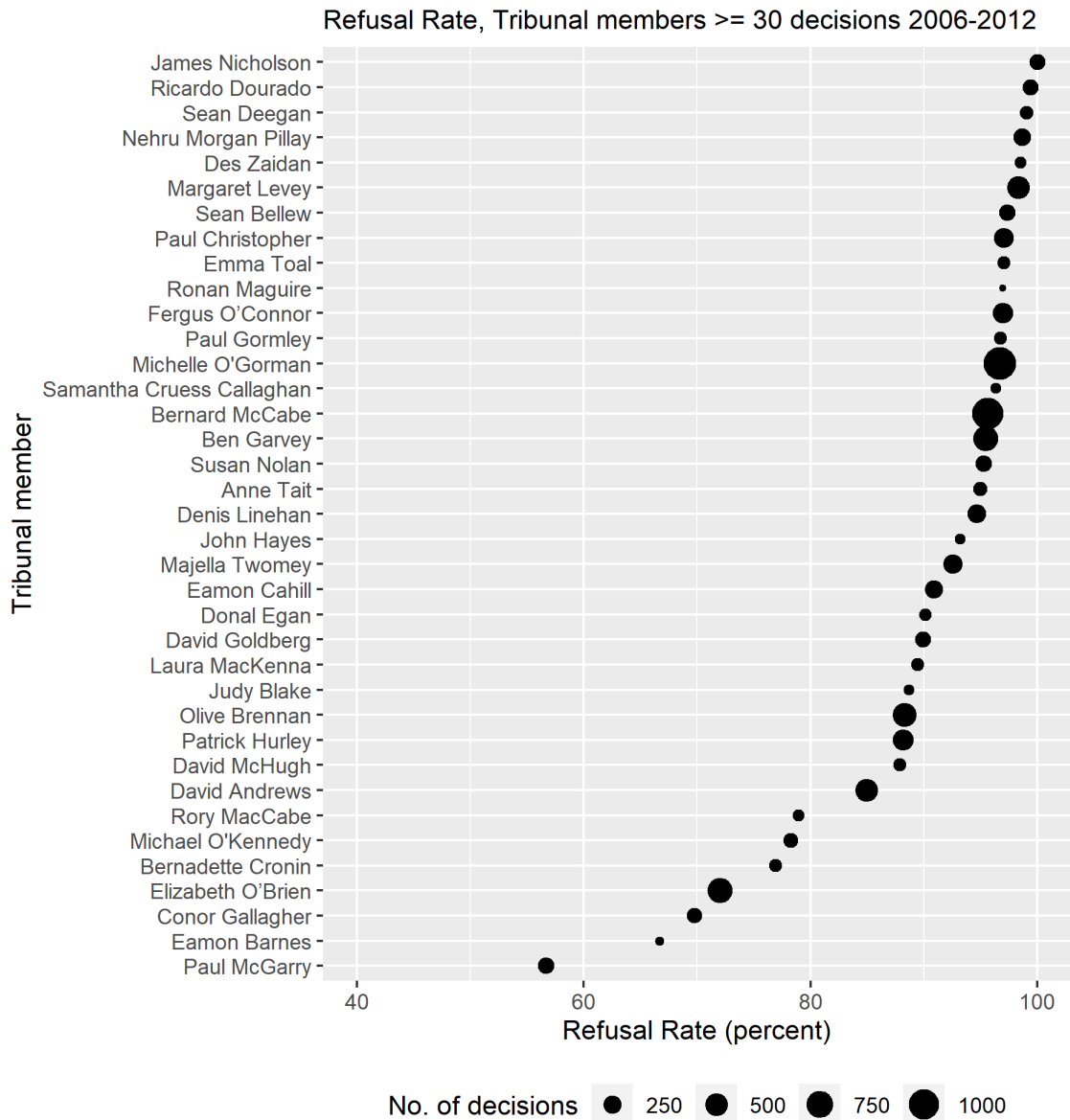


Figure 6.2 Refusal rate of Tribunal members who issued thirty or more decisions, 2006-2012.

that reflects the criticism levelled against the RAT during this time (see the Pillay case in Ch. 5 and the Nicholson case in section 2 of this chapter).

In the years 2012 to 2018, the appeals tribunals had a notably lower refusal rate of 73.8 percent, 17.1 percentage points below the 2006 to 2012 period. Additionally, during this period there was a marked higher variation in the refusal rates of Tribunal members (See Figure 6.3). Tribunal members who issued more than thirty decisions during this time-

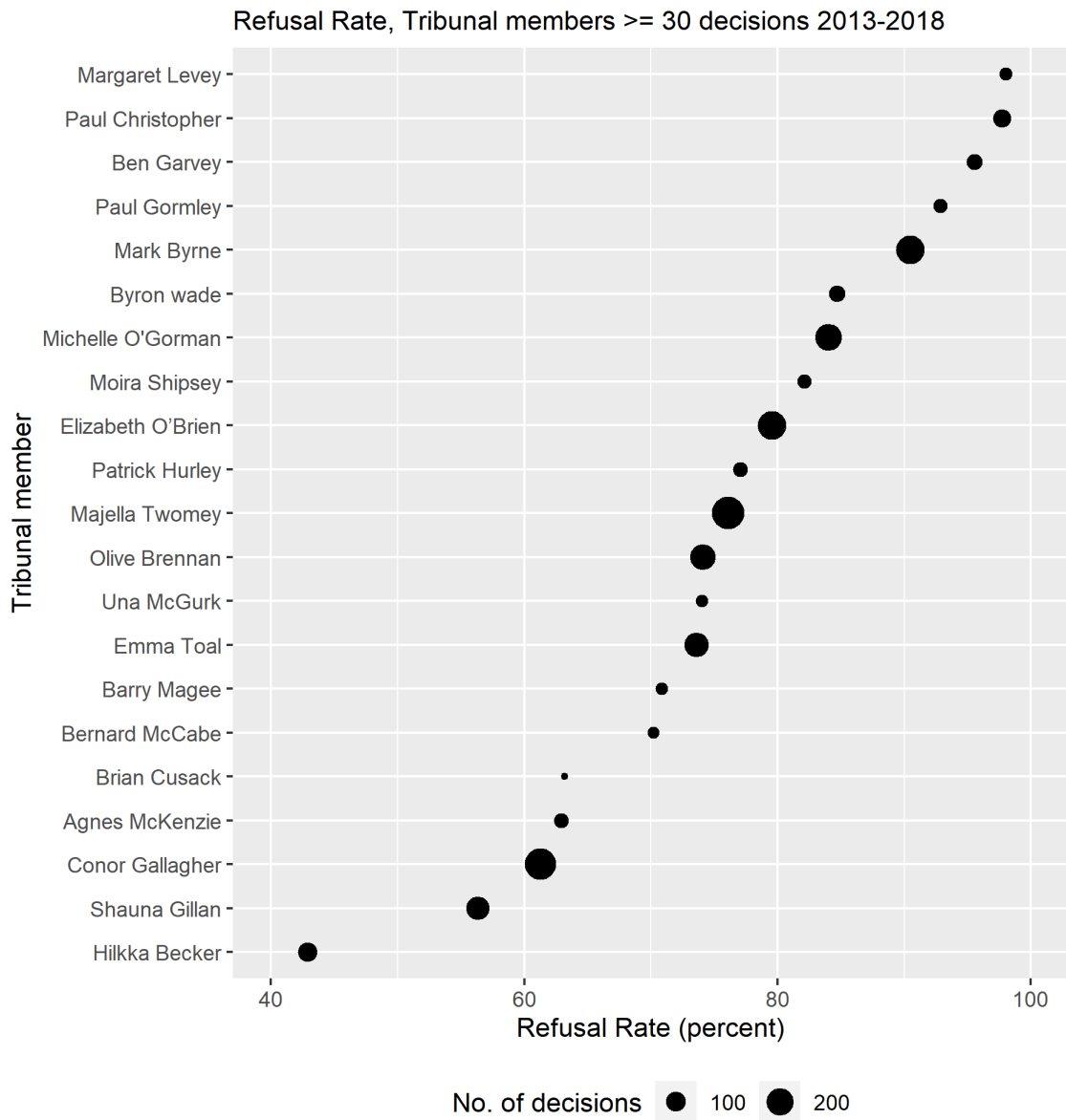


Figure 6.3 Refusal rate of Tribunal members who issued thirty or more decisions, 2013-2018.

period had refusal rates ranging from 42.9% (Hilkka Becker) to 98.0 percent (Margaret Levey).

These two time-periods mark different kinds of common-sense and practices at the appeals tribunals (for a visualisation of these different time-periods and the tenure of Tribunal members, see Figure 6.4). During the transition time between these two time periods, from 2011 to 2013, there was a significant change in the membership of the RAT. After the Irish general election in February of 2011, a Fine Gael – Labour coalition

established a government, ending almost fourteen years of Fianna Fáil and Fianna Fáil-coalition governments. During this time, a large portion of the active Tribunal members left the RAT. Thirty-five Tribunal members were active at the RAT before 2011 and issued thirty or more decisions and of these thirty-five, over half (19) left the RAT between 2011 and 2013, and sixteen remained. There are nine Tribunal members who joined the RAT or IPAT after 2011 who issued thirty or more decisions. This shows that there was a replacement of over half of all the substantially active Tribunal members in this time-period. During this time there was both a change of leadership and a change of much of the personnel, while some people stayed on.

Because of the change in the overall pattern of practices at the RAT during this time of transition— a change in the overall refusal rate and a change in the variation of refusal rates by Tribunal members -- the Tribunal members can be divided into three groups: Tribunal members who were active before 2011 and left either before or during this transition period (28 members); Tribunal members who were appointed to the Tribunal after 2013 (9 members); and the Tribunal members who were active throughout both of these time periods (9 members) (see Figure 6.4). Unsurprisingly, this last category includes Tribunal members who have issued the most decisions, including Michelle O’Gorman, Bernard McCabe, Elizabeth O’Brien and Olive Brennan, the top four Tribunal members by number of decisions issued. In total, these four Tribunal members have issued 6,797 decisions, 44 percent of all decisions in the ATA with an identified Tribunal member decision-maker.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
1	Michelle O'Gorman	Bernard McCabe	Michelle O'Gorman	Bernard McCabe	Michelle O'Gorman	Michelle O'Gorman	Majella Twomey	Michelle O'Gorman	Conor Gallagher	Majella Twomey	Mark Byrne	Mark Byrne	Mark Byrne
2	James Nicholson	Michelle O'Gorman	Ben Garvey	Michelle O'Gorman	Olive Brennan	Bernard McCabe	Bernard McCabe	Paul Christopher	Majella Twomey	Elizabeth O'Brien	Olive Brennan	Conor Gallagher	Shauna Gillan
3	Elizabeth O'Brien	Ben Garvey	Bernard McCabe	Fergus O'Connor	Bernard McCabe	Paul Christopher	Michelle O'Gorman	Majella Twomey	Michelle O'Gorman	Conor Gallagher	Conor Gallagher	Shauna Gillan	Agnes McKenzie
4	Bernard McCabe	Elizabeth O'Brien	Elizabeth O'Brien	Elizabeth O'Brien	Sean Bellew	Margaret Levey	Paul Christopher	Ben Garvey	Barry Magee	Emma Toal	Elizabeth O'Brien	Olive Brennan	Byron wade
5	David Andrews	Olive Brennan	David Andrews	Ben Garvey	Fergus O'Connor	David Andrews	Patrick Hurley	Paul Gormley	Hilkka Becker	Hilkka Becker	Majella Twomey	Emma Toal	Elizabeth O'Brien
6	Olive Brennan	Margaret Levey	Olive Brennan	Paul Christopher	Nehru Morgan Pillay	Olive Brennan	Ben Garvey	Margaret Levey	Moira Shipsey	Olive Brennan	Emma Toal	Elizabeth O'Brien	Majella Twomey
7	Ben Garvey	David Andrews	Margaret Levey	Olive Brennan	Paul Christopher	Majella Twomey	Margaret Levey	Fergus O'Connor	Bernard McCabe	Olive Brennan	Shauna Gillan	Byron wade	Brian Cusack
8	David McHugh	James Nicholson	Patrick Hurley	Nehru Morgan Pillay	Margaret Levey	Fergus O'Connor	Elizabeth O'Brien	Bernard McCabe	Elizabeth O'Brien	Michelle O'Gorman	Hilkka Becker	Majella Twomey	Conor Gallagher
9	Des Zaidan	Patrick Hurley	Denis Linehan	Majella Twomey	Ben Garvey	Patrick Hurley	Fergus O'Connor	Elizabeth O'Brien	Emma Toal	Patrick Hurley	Moira Shipsey	Agnes McKenzie	Mark Murphy
10	Patrick Hurley	Denis Linehan	Eamon Cahill	David Andrews	David Andrews	Ben Garvey	Conor Gallagher	Conor Gallagher	Doireann Ni Mhuircheartaigh	Moira Shipsey	Patrick Hurley	Patrick Hurley	Olive Brennan
11	Michael O'Kennedy	Rory McCabe	Fergus O'Connor	Patrick Hurley	Elizabeth O'Brien	Elizabeth O'Brien	Olive Brennan	David Andrews	Evelyn Leyden	Barry Magee	Una McGurk	Una McGurk	Olive Brennan
12	Margaret Levey	Paul McGarry	Susan Nolan	Margaret Levey	Denis Linehan	Conor Gallagher	Ronan Maguire	Susan Nolan	Mark Byrne	Bernard McCabe	Bernadette Cronin	Bernadette Cronin	Una McGurk

Table 6.5. Top twelve decision-makers at the appeals tribunals by number of decisions issued, 2006 to 2018. Tribunal members Elizabeth O'Brien and Ben Garvey, discussed in section 6.5, Nehru Morgan Pillay, discussed in section 5.6 and Una McGurk, discussed in section 7.2, are highlighted.

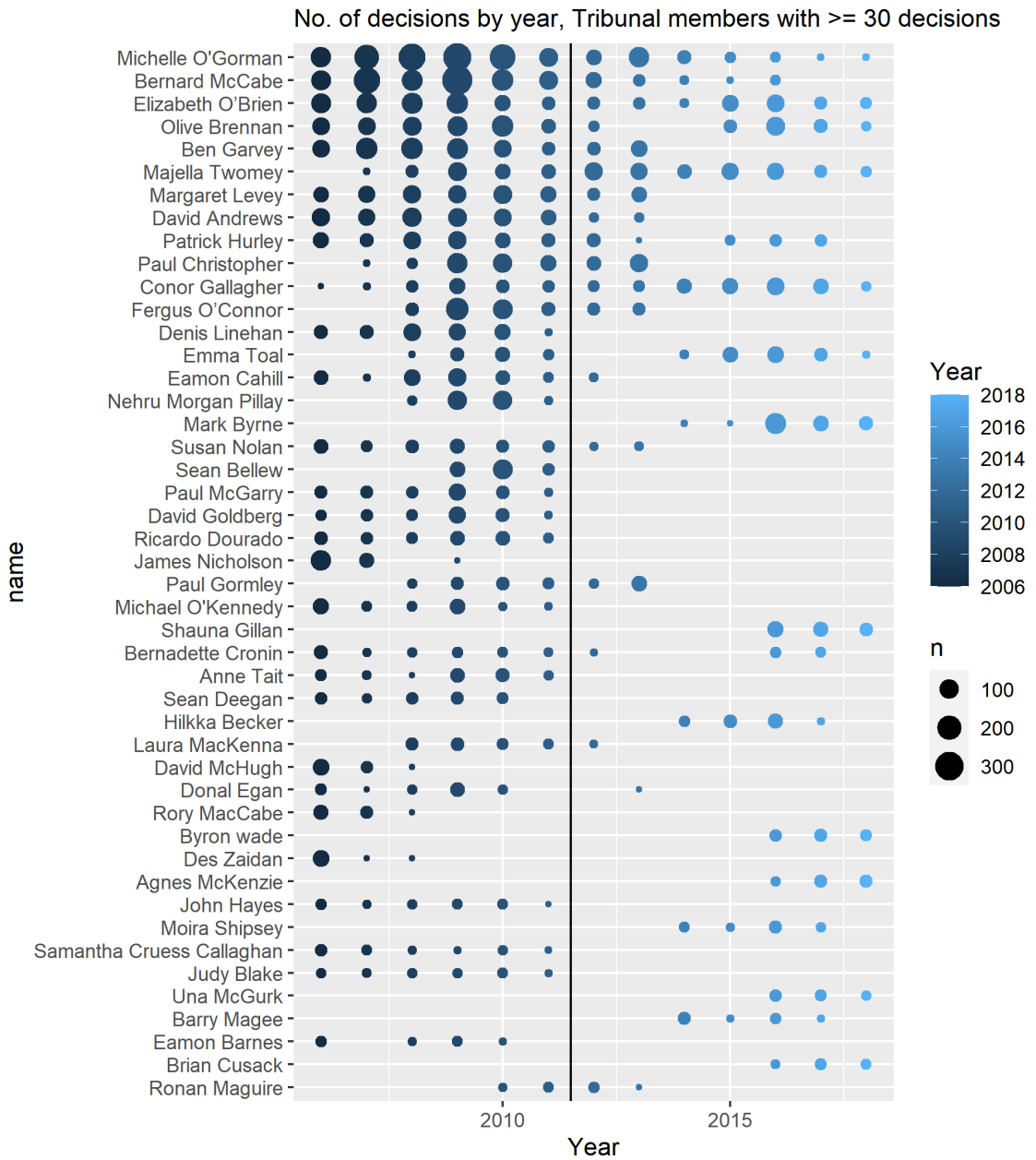


Figure 6.4 Tribunal members who issued thirty or more decisions 2006 to 2018, sorted by total number of decisions issued and color-coded to show the time of their tenure. The vertical line denotes the transition in the Tribunal in 2011-2012.

members by number of decisions issued. In total, these four Tribunal members have issued 6,797 decisions, 44 percent of all decisions in the ATA with an identified Tribunal member decision-maker.

Many of the Tribunal members who left during the transition time had been criticised for being not transparent and/or for refusing all decisions. Notable among these are James Nicholson, the Tribunal member in the *Nyembo* case mentioned earlier in section 6.2, Nehru Morgan Pillay, the subject of the investigation of the mis-use of quotes by James C. Hathaway in section 5.6, and Sean Deegan, who in 2015, five years after retiring from the RAT, declared on RTÉ Prime Time²¹ that he had granted only two appeals out of 500 and stated that "if asylum seekers had money for traffickers they could not be refugees" (RTÉ, 2015).

Ben Garvey is also a former Tribunal member who left in 2013. The records of his decisions in the ATA show us how Garvey fits the pattern of decision-making by Tribunal members like Nicholson, Pillay and Deegan. Garvey issued the fifth highest number of decisions in the ATA, and worked as a Tribunal member into 2013, often one of the top-five Tribunal members by decisions issued in the years 2006 to 2013 (see Table 6.5, highlighted in green). Garvey refused 95.5 percent of appeals in available archived decisions, one of the highest refusal rates among the top-ten decisions makers, and 6 percentage points higher than his predicted grant rate weighted by country of origin.

Notably, Elizabeth O'Brien did not leave the Tribunal in this transition time and was a major decision-maker throughout the time-period in the ATA. Table 6.5 shows the top-ten decision-makers for every year in the RAT and the IPAT, and Elizabeth O'Brien, highlighted in yellow, is in this top-ten every year except for 2011. The table shows that she

²¹ RTÉ Prime Time is a popular Irish weekly current affairs television programme broadcast on RTÉ One, the main television channel of the Irish state-owned broadcaster Raidió Teilifís Éireann (RTÉ). The interview was aired during a twenty-minute feature on asylum and the Direct Provision System in Ireland, 2015.

has regularly issued the third or fourth-most decisions in a given year for time-periods including 2006-2010 and 2015-2018. Overall O'Brien refused 73.9 percent of decisions she issued between 2006 to 2018 that are in the ATA. I calculated O'Brien's refusal rate for each year that she was active and found that her rate of refusal has differed over time, as has her variation from her predicted refusal rate weighted by country of origin (see Table 6.6). In 2006 O'Brien issued 117 decisions in the ATA and refused 81% percent of these decisions, 5.7 percentage points more than the predicted refusal rate weighted by country of origin. In 2006 O'Brien had her highest refusal rate as compared to the predicted refusal weight, although there is no clear or apparent pattern in O'Brien's decisions rate over time.

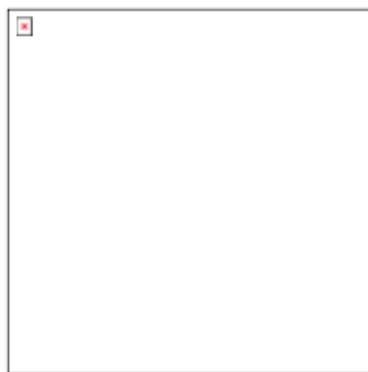
O'Brien is a significant figure in the ATA because of the number of decisions she has issued and her consistent presence in the ATA. Her decision rate is also consistently close to the 'average' refusal, and so matches the 'normal' practice of the appeals tribunals. As stated above, Tribunal members are approved by the MoJE every three years, and also are assigned appeals by the Tribunal chairperson. In order for O'Brien to have this consistent record and the high number of appeals assigned to her she must have consistently had the approval and support from the MoJE and the Chairperson, and the people in these positions also changed in her tenure.

After the enactment of the International Protection Act in 2015, the RAT was disbanded at the end of the year 2016 and replaced by the IPAT in early 2017. This legislation brought in a single-stream decision process, in which applications were considered for all types of international protection at one time instead of one at a time, and the new appeals process brought in other changes to the appeals process and the rights and responsibilities of appellants. However, there is little clear or apparent change during this time in the refusal rates in decisions issued by either Tribunal or of individual Tribunal members.

Year	Refused	Total	O'Brien Refusal Rate	Predicted Refusal Rate by Country of Origin	O'Brien's variance from the PRR* (pct points)
2006	95	117	81%	76%	5.7
2007	88	120	73%	77%	-4
2008	84	134	63%	80%	-17.7
2009	92	145	63%	78%	-14.6
2010	53	59	90%	86%	3.5
2011	24	32	75%	84%	-8.5
2012	22	29	76%	76%	-0.2
2013	18	23	78%	78%	0.8
2014	5	8	63%	80%	-17.3
2015	50	65	77%	84%	-7.4
2016	64	77	83%	87%	-4.1
2017	25	28	89%	88%	1.6
2018	13	19	68%	87%	-18.4

Table 6.5 Decisions issued by Tribunal member Elizabeth O'Brien and predicted refusal rate (PRR) weighted by country of origin, 2006 to 2018.

6.6 Limitations



Member of the Refugee Appeals Tribunal

8 day of December 2015

Figure 6.6 The signature area of Tribunal decisions identified as having an image error. In the place of the Tribunal member name is an error image.

There are limitations in the dataset and using the ATA for analysing the patterns of Tribunal members decisions and decision practices. As stated above, there is a substantial number of decisions by the RAT and the IPAT that are not recorded in the ATA. The ATA website states that decisions issued before 2006 are only included if they granted protection or if they have been specifically requested by a solicitor representing an asylum seeker.

Additionally, the ATA does not include all the records of the decisions issued by the appeals tribunals, according to annual reports. As stated above, the methods outline in this chapter allowed for the identification of two-thirds of all decisions issued between 2006 and 2018. The PDFs and the metadata of

decisions used in this chapter were scraped from the ATA website in January-February 2019 and at the time of publication the IPAT has added more decisions to the archive, mainly decisions from the years 2017, 2018 and 2019. Another scraping carried out in April 2020 identified newly added Tribunal decisions that will be added to the public dataset of Tribunal member decisions over time.

For some decisions in the ATA, it is not clear who issued the decision. These absences appear to be for a variety of reasons. For decisions that are vacated by an appeals tribunal, meaning that because the decision has been quashed in Judicial Review and is no longer, the decision text is removed from the ATA. Additionally, some PDFs of the decision text do not contain the name of the Tribunal member. In 325 decisions issued between 2014 and 2016 the image of the Tribunal member's name is not present, and instead there is an image error symbol (see Figure 6.5 below). This is most likely a technical error in the publishing of the decisions. For example, this error occurs when a Microsoft Word document is sent over email with the images linked instead of embedded in the document and will remain when printed to a PDF. There are also eight decisions issued in 2016 in which the PDF is broken and instead of containing the decision text, these decision PDFs contain hundreds of pages of illegible xml code, most likely from a corruption of a Microsoft Word document before converting to a PDF.

These decisions are a small proportion of the total decisions in the ATA; however, obtaining more information about these decisions, including the Tribunal member issuing the decision, could be done in further work and in communication with the Tribunal.

It is also not clear what decisions had been appealed for Judicial Review by the Irish High Court and whether the decision had been quashed by the High Court judge, or a judge at a higher court in the case of appeals, to be re-heard by the appeals tribunal. Judicial Reviews are processed by the High Court and while decisions are published in the public database of the Courts Service of Ireland, Courts; it is not possible to associate Judicial

Review decisions with the appeals tribunal decision being appealed without further investigation. Similarly, it is not possible to find the initial international protection decision that is being appealed to the tribunal, as these decisions are not made public.

This is all to say that there are things missing, and we can't see all of it, that there are things that are available through other routes of investigation, and that even so, there will be absences that become part of the evidence and architecture of the ATA itself. Archives never document the 'truth' of the carrying out and practices of state agencies and the activities of state officials; however, state archives carry in them the presuppositions and in the marginalia 'the pulse of the archive' (Stoler, 2009). This pulse is produced by the people contributing to and maintaining the archive, and through them the power of the documents in the archive to produce knowledge and truth, of the state's conceptions of borders and a state's conception of how the world works.

6.7 Conclusion

The high level of variations in Tribunal member refusal rates detailed in this chapter show that the determination of an appeals decision rests at least significantly on which Tribunal member is assigned to decide the application. There are high levels of variation in appeals refusal rates, and it seems clear from this evidence that some appeals that were refused could very well have been granted just by the fact that some Tribunal members are more predisposed to denying international protection at the appeals stage. The appeals tribunals are the final recourse for asylum seekers to be granted international protection, and any further appeal of a negative decision can only be reviewed in the High Courts on technical grounds. The time period of the appeals tribunals and Tribunal members does make a difference; however, it also appears that the trajectory of a Tribunal member learning about the practices of the Tribunal has an effect. This effect is magnified by the various hidden processes in the practices of the Tribunal. For example, the opaque

process by which the Tribunal chairperson assigns appeals to Tribunal members gives the chairperson control over who gets to operate as a Tribunal member and issue decisions, and it is unclear how the chairpeople have been carrying out these actions.

Creating the database of Tribunal member decisions allows for a different way to see the ATA and can give a clear sense of how the ATA can be worked with to provide material benefit and allow for further investigation of the practices of the appeals tribunals. This investigation does happen within the overall framework of an opaque agency practicing secrecy and defensiveness over their practices of bordering. Coleman and Stuesse in their research on traffic policing and immigration control in the US recognize that “extraordinary violences are folded into” the routines and practices of power that are difficult to isolate as “distinct, observable events,” and look to Povinelli’s work based on the “quasi-event” where she “draws explicit attention to the operation of power at the same time as she warns that the material life of power can nonetheless be difficult to substantiate clearly in fieldwork” (Coleman and Stuesse, 2016, p. 527). This recognition allows that power with its fleetingness and fluidity does not necessarily reveal itself, that it persists or endures below the threshold of an event, and that findings for a researcher, then, can be partial or opaque, and thus can be ambiguous: this should not be seen “as a research failure per se but as all-important erasure, or invisibilisation of state power, or of the way that the state goes about its business” (ibid, p. 527).

Working with the ATA is always engaging with the tensions bound in the divide between the act of writing, carried out by Tribunal members, and the written work, the decisions, which end up in the ATA, creating a present tense sentiment of anxiety. The tension recognizes what remains between the decision and the events that remain below the threshold of decision. Work in the ATA must also always recognise that these documents are also actions that are erasing people applying for international protection, attempting to fit their narratives and testimony before the state into the frameworks and

knowledges of the state. These documents are both the work of Tribunal members but also the performative act, and act as documents themselves as the decision mechanism in the acts of state bordering that is the asylum determination process. This work is within these documents and the bureaucratic functions that are revealed, including the “policies, procedures, and risk algorithms that structure the representation of those decisions, the interpretation of the claimant’s narrative is entirely discretionary.” (Salter, 2008, p. 276). And it is within these tensions that any work in the ATA must reside, uncomfortably. And while this research was carried out after the forums, engagement with future knowledge exchange forums could help the future developments and communication of the results from this chapter.

7 Chapter 7: Conclusion

7.1 Introduction

In the previous two chapters, I present findings from my research in the Appeals Tribunal Archive (ATA) across multiple scales, from the fine-grained sentiments within the writings and reproduction of narratives of Tribunal members in individual documents to coarse or large-grained quantitative measurements across years of decision making of Tribunal members, both individually and collectively. The range of scales of analysis within this project allow for a fundamental re-envisioning of the state and statecraft as it is evident in the ATA, and the innovative tools of this project contribute new evidence of the ways state agencies and agents do bordering. These tools are, importantly, activist tools that can be purposed for disruption of inequality and unfair power relations.

In this chapter, I discuss how I have accomplished the research goals set out in the beginning of this project, and how the work has stayed engaged with the lived geopolitics of asylum seekers. In this first section 7.1, I show how mapping the evidences and absences in the ATA as a comprehensive process has allowed for an ‘opening up’ of state practices of asylum determination, and how using multiple methods in the methodology of the curated research stream allows for a sustained engagement with the ATA to make clear and accessible the chaotic geographies of Ireland’s border enforcement. In section 7.2, I describe the contributions of the project along multiple axes. With reference to the original goals of the project, as set out in section 1.2, I demonstrate how this project can contribute to geographical knowledge and knowledge of asylum practices in Ireland and abroad. In this section I also discuss in particular the events of 2020, the COVID-19 pandemic and its effects on asylum seekers in Ireland. In 2019 and into 2020 and the COVID-19 pandemic, the Direct Provision reception system for asylum seekers in Ireland received increased attention, scrutiny and critique by Irish political parties and major Irish media outlets,

which led to a commitment from a new government in June 2020 to end Direct Provision. I argue that while this scrutiny is correctly applied, and the reception conditions of asylum seekers has been aggressively punitive, there should also be attention to the asylum determination process. I outline specifically the recent case of one Tribunal member Una McGurk, who in August 2020 spoke at an anti-immigrant anti-mask demonstration (Fletcher, 2020) and how the work of this project and the network and tools I have built as part this project contributed to a campaign, led by the Movement of Asylum Seekers Ireland (MASI), to investigate McGurk's practices on the IPAT. Contributions like this were envisioned in the design of this project, and this project can continue to contribute to campaigns to examine the practices of the appeals tribunals and the DoJE. In the final section 7.3 of this chapter, I reflect on the project and how, following from this campaign, the work from this project can continue to contribute to studying the asylum determination process in Ireland and to working towards an open, fair and just process.

Mapping the archive -- putting the archive on the map -- recognises that the ATA can be used to provide evidence across multiple scales, from the fine-grained gestures and whisperings and voices of sentiment to the large-grained structures of national and international agreements, policies and laws. This work also includes recognising as evidence the embodied journeys of asylum seekers and the contested narratives that importantly contain multi-scalar events of violence, including the quasi-events of the everyday scale up through the global scale. For the researcher, archive work is about mapping the ontologies of state agents and agencies -- investigating what reality is created by the archival work of state bureaucrats. Stoler writes of these 'colonial ontologies': "I understand ontology as that which is about the ascribed being or essence of things, the categories of things that are thought to exist or can exist in any specific domain, and the specific attributes assigned to them" (Stoler, 2009, p. 4). This work, investigating archives, can and should be recognised as a powerful tool for researchers to do the work of studying bordering and statecraft. In

mapping the ATA, tools that have become important include innovative ways of working with the features – both visible and obscured or hidden – of qualitative and quantitative evidence of bordering. This project works to understand the work of statecraft as it is dispersed in institutions such as the RAT and IPAT, and as such traces this work in the asylum determination process in Ireland.

Mapping the ATA, following the curated research stream of this project, involved sustained engagement with the archive and investigation along different strands because of the context, form and content of the ATA. This investigation was also about trying to locate the archive, initially a difficult task. The ATA is accessed through a website; however, the server is located somewhere. It is an undisclosed location but may be in a room somewhere in the IPAT offices at 7 Hanover Street, Dublin, running and connected to the internet. The server is always spinning, but the connection is slow, and the database is outdated, and hasn't been updated since at least 2006. The files on the ATA are physically present in this location, on the server hard drives, and files travel through the interface of the website at decisions.refappeals.ie. The documents on the ATA servers are added one by one as Tribunal members complete their decisions, a Microsoft Word template is converted to PDF, and the IPAT office goes through the process of checking the document, redacting personal information and uploading to the server. Beyond that, the ATA has restrictions to its accessibility that must be incorporated into any researcher's engagement.

The ATA has a presence at multiple scales. The ATA is a record of at once a global context and a hyper-local context. Globally, the Refugee Convention of 1951 and Refugee Protocol of 1967 have become weaker protections for migrants, and states have additional obstacles to immigration. The conditions for migrants and especially those forced to migrate to states signatory to the Convention and/or Protocol have become parallel to the conditions for migrants in non-signatory states, as signatory states enact and

implement strategies to compromise international law and refugee protections (Coddington, 2018). Border enforcement and deportations in European states, all signatory to the Convention or Protocol, have led to increasingly dire conditions. For example, harsh border policies of shutting down state-run rescue missions in the Mediterranean, and criminalising NGO rescue efforts, have led to more people drowning and dying in the Mediterranean in efforts to emigrate from violent conditions. In the local context of Ireland and the ATA, the decision documents of the RAT and the IPAT show how individuals enact these state policies and rely on a culture of undermining migrants in order to justify the rejection of people from Irish society, and in order to justify policies of deportation.

The ATA can be opened to contest dominant narratives, practices that reify the anxieties and sentiments of the state that provide ground for a common sense that acts violently on those who are seeking asylum. Mapping the evidence and absence of evidence in the archives fills gaps and identifies new lapses in our understanding of the ‘chaotic geographies’ (Hiemstra, 2019) of border enforcement by states, and the role of bureaucratic and legal cultures of state agencies in enforcing state borders. For activists and those involved in combating strict and over-reaching border enforcement by states, archives like the ATA can offer a view into the practices and communities of state institutions. The asylum process creates and cultivates disorientation, and asylum seekers in Ireland face a chaotic and disorienting process that is not experienced uniformly and is applied unevenly and irregularly (ibid). The steps of the process are often unclear; it is not always apparent or evident what statements will be taken as credible evidence, or whether the repeated questioning will be used against an asylum seeker’s case. The emerging methodologies used in this study allow for further insights into the ATA and its decisions. Web scraping, in particular, is a tool with the potential to aid many projects critically investigating statecraft and border enforcement. Coupled with methods of sustained engagement with archives,

this kind of approach to archives of statecraft has the potential to work towards a security centering the experiences of vulnerable people and to disrupt the normalcy of the violence of modern border enforcement.

The work in this project has centred feminist research that explicitly focuses on exposing relationships of power and working to transform these power geometries through continual inquiry into the choices of research questions, the choices of data collection, and the choices of analytical techniques, such that “research methods, therefore, can be qualitative, quantitative, or a mixture of both (Hiemstra and Billo, 2017, p. 286). States obscure knowledges and create chaos that disorients, that reveals partial knowledges and makes other parts difficult to find or sometimes untraceable. When we engage in work studying the state, we must recognise the risk of contributing to this chaos and reifying state power, particularly if that work does not do enough to disrupt the static violences of state power. As Hiemstra writes:

The practices of detention and deportation, and the institutions carrying them out, are notoriously slippery to researchers. In addition to the state’s intentional blocking of entry, I suggest that this slipperiness is due to the ingrained acceptance of territorial thinking about how these policies work. That is, scholars’ efforts to fully trace the operation and effects of these policies are thwarted by their adherence to the idea that detention and deportation operate according to border logics and effectively accomplish spatiotemporal containment and exile. They therefore are unable to pry open these institutions, provide alternate assessments, and contest dominant narratives. (Hiemstra, 2019, p. 21)

Few scholars presume that only writing the state – writing of the state, on the state or through the state – is enough to undermine violent and oppressive state projects.

Hiemstra’s ‘slippery’ research demands that research studying statecraft and bordering stays closely aligned with or, if not aligned, at least in communication and in conversation with,

political communities. Social research must always be engaged, and in this dissertation, while working mainly within a state archive, engagement was essential to the project and involved working with groups and individuals in consultation to create a project that contributes to open, fair and just practices.

7.2 Goals and contributions of the project

In the introduction to this dissertation, I set out the context and contribution of this project and set out the three overarching goals for this project. These goals, from the outset of the project, have been the foundation for the decisions and approach that I took in this project. The first goal of this project was to use an investigation of the ATA to contribute to geographical theory that understands asylum determination as bordering, and more broadly as statecraft. The second goal was to recognise the violence of statecraft and to reveal the practices of asylum decision-makers as a resource for asylum seekers, advocacy groups, and self-organised asylum seeker political groups. The third goal is to add to our understanding of how state archives are sites of bordering and how the evidence in archives of institutions of asylum determination reveal anxieties and sentiments and violence of bordering, perpetuated across scales. These goals have inspired the development and use of innovative methods in sustained engagement with archives.

These goals have been interconnected and related, and I have presented in this project how an analysis of bordering in the ATA reveals patterns of bordering practice by state actors, showing theoretical and concrete patterns of practices. In Chapter 2, I advanced a theory of bordering as a form of statecraft. I developed the concept of statecraft as the acts, performances and culture of civil servants, bureaucrats, elected officials, and also others not directly working as state agents. I developed how states are produced by these productive acts of statecraft, and do not have any innate or natural characteristics. In acts of bordering, state agents and others perform the state, placing

migrants and asylum seekers in precarious situations, and performing the violence of state borders. The findings of this project show how asylum seekers in Ireland face a large brunt of this bordering violence from agencies and individuals, including the RAT and IPAT and individual Tribunal members issuing appeals decisions. The asylum determination process emerges as a central place where asylum seekers encounter this bordering. In Chapter 5, I showed how through the archive we can see a culture of disbelief, and a culture of common sense logics employed by Tribunal members, and others, to refuse claims for international protection. This culture of disbelief is partly a result of legislation, such as in the case of the passages of the Immigration Act 2003, which reinforced in domestic law a requirement to question and interrogate asylum seekers about their travel and journeys to Ireland. However, there is also a considerable influence from a *culture* of decision-making in the Tribunal. In Chapter 6, I showed how asylum seekers in encountering the asylum determination process are also encountering a varied and disorienting process. Decision rates between Tribunal members vary drastically, and the process is opaque and unpredictable. By working in the ATA, I have not only discussed the opaqueness of this process, but also revealed the decision rates. By employing a wide range of tools and methods, I was able to investigate the ATA as record of the bordering work by members of the appeals tribunals and the DoJE and as a *central place of bordering*.

I have been particularly interested in how political geographers researching migration and border geopolitics can recognize archives as a way or as a place to study the bordering process. I have been fortunate in this project to have even the limited accessibility to the ATA and have been able to leverage this accessibility using tools like web scraping. The ATA is an archive of the practices of state violence in the asylum determination process, and a violent archive in how it reproduces the practices of the RAT and the IPAT. However, in this project I have worked to show that there is a possibility to remove these types of archives from the restricted contexts in which states present them.

While many of the decisions in the ATA are from past epochs – decisions issued before 2006 were issued before the initial Atanasov rule; decisions issued before 2017 were issued by the RAT, now defunct and replaced by the IPAT – the work in this project investigates the past practices of asylum determination to look into both the past and the future.

Investigations and engagements with archives of statecraft can bolster the work of political geography, as a methodology and approach to work to reveal acts and cultures of bordering statecraft.

This position allows the ATA to be envisioned positively in the future. This position offers an emancipatory and radical vision that advocates for uncovering evidence of bordering and statecraft that has happened in the asylum process in the past to move towards just and equitable lives for those who have been vulnerable in the past, and for those who are vulnerable in the present and in the future. The ongoing nature of the ATA itself, maintaining and also being added to, includes what is often obscured or hidden in the asylum process in Ireland, and includes the mistakes and misinterpretations of individual Tribunal members, the anxieties and sentiment that build a common sense around the genuine refugee and a culture of disbelief around the ordinary and extraordinary asylum seeker. The ATA can be made visible and made available for communities to move more fully toward a radically envisioned emancipatory future. This emancipatory and radical vision includes centring the perspectives and demands of the people experiencing the violent bordering of states. This vision also calls for what Caswell describes as liberatory archival imaginaries. The liberatory archival imaginaries “place the work of uncovering what happened in the past to build more just and equitable futures.... While liberatory archival imaginaries are always context dependent, our efforts to generate them are united by the creative use of our power as archivists in the present to bind what happened to what will be possible” (Caswell, 2017 p. 51).

This project importantly makes the connection between contemporary border enforcement practices in nation-states and the practices of bordering and violence by colonial states. For this project, the strong similarities between the strategies employed by colonial state bureaucrats, civil servants and agencies and contemporary ones were central to making sense of how archives and databases are used today – in the recording of official voices as well as the marginalia central to the cultures and common sense of statecraft. How we study bordering and border enforcement today should be accompanied by an awareness and attention to the colonial origins of border enforcement strategies such as inclusion/exclusion practices, as I discussed in Chapter 2. Digital materials and materials on the internet have a different form from the paper archives of colonial missives and letters, such as the Dutch imperial records that Stoler studies in her work, but in both archives there is evidence of the same strategies of communication, both formal and informal, and production of knowledge by states.

This project has called for a new way to look at the asylum process in Ireland and an acknowledgement of the limitations that can be reinforced by centring work on the state and its territorial borders. I make the case for a diverse and comprehensive methodology that traces and maps the practices and cultures of asylum determination and bordering that take shape and reverberate within and outside Ireland. This methodology has provided a framework for the contribution of this project and allowed for a radical envisioning of liberatory research. The contributions of this project bring attention to how this work can be done effectively and with deep engagement with the conditions of being within a state and the conditions of the enactment and production of the state. The theoretical contributions to studying the political geography of asylum and border enforcement; the innovative methodology and methods in the curated research stream of this project; and the new insights into studying archives as sites of contemporary statecraft and bordering: these contributions make studying the statecraft, bordering and strategies of state agents

and agencies stronger, more effective, more able to deeply engage. As state agencies and agents continue to develop new practices of bordering and statecraft, scholars working against state policies and practices of violence, exclusion and chaos must work to reveal and understand these practices and, importantly, to develop tools, resources and strategies to counter them.

7.2.1 *Responding to asylum politics in Ireland in 2020*

This project has kept central the goal to provide concrete resources to people who are seeking asylum in Ireland, their self-organised groups and those who are working alongside them. This research has been closely linked with the events, developments and changing conditions that asylum seekers and migrants face in Ireland. As I write now in Fall 2020 describing this research, Ireland is in a second lockdown to reduce the spread of COVID-19 through the population, and outbreaks of COVID-19, including outbreaks in Direct Provision centres for asylum seekers and refugees, continue to spread. I have been carrying out this research in a continuing and shifting political context of migration in Ireland, and the changing landscape of migration politics in Ireland has informed and impacted this project and, notably, informed this project in relation to the three goals I set out. In this section I outline the developing changes in asylum politics in Ireland in the past year and how this project has responded to these changes and, in one case, directly contributed towards the goal of opening and revealing the asylum process and the bordering actors in the appeals tribunals.

In 2019 and the beginning of 2020, long-running grassroots and human rights campaigns against the Direct Provision system of reception and accommodation for asylum seekers in Ireland were gaining increased visibility and traction among the major political parties in the Dáil Éireann. In October 2019, MASI – the Movement of Asylum Seekers Ireland – held their first conference, “Towards a More Humane Asylum Process”,

including an impressive gathering of hundreds of asylum seekers from across tens of reception centres, many in remote areas of the country. This conference marked five years since the founding of MASI, and twenty years since the beginning of the Direct Provision system in Ireland. At the conference, MASI unveiled their plan for an alternative to Direct Provision and unveiled the first issue of their publication, *MASI Journal Vol. 1*, a substantial collection of academic and artistic contributions including from those currently or previously in Direct Provision. This conference brought substantial attention to issues that MASI and their members and asylum seekers identified as critical issues facing asylum seekers in Ireland – focused on the right to work for asylum seekers, the right to own-door accommodation for asylum seekers after three months, the ability of asylum seekers to participate in Irish society and reforming the asylum determination process.

In January and February 2020, during the three and a half week campaigning period before the General Election held in Ireland on 8 February, it became apparent that the major political parties had shifted to a more critical stance towards the system of Direct Provision. Researchers from the Irish Centre for Human Rights in National University of Ireland Galway led a campaign asking political parties to share their views on Direct Provision and the future of the asylum system. Two of the three major parties, Fine Gael and Fianna Fáil, expressed commitments to reform the system of accommodation for asylum seekers and to ensure applications were processed in a shorter timeframe. The third major party, Sinn Féin, supported ending the Direct Provision system, and along with other parties including the Green Party, the Labour Party, the Social Democrats and People Before Profit committed to a stance of ending Direct Provision. In June 2020, three political parties – Fine Gael, Fianna Fáil and the Green Party – agreed on a programme for government that included a commitment to end Direct Provision within the term of the government (Kelly, 2020). Over the course of 2020, the government advisory group on Direct Provision, led by Catherine Day, former Secretary General of the European

Commission, was to publish the report and the government was to issue a white paper on their plans to end Direct Provision and reform the reception conditions for asylum seekers. This commitment from the government, while yet to be realised by December 2020, is a marker of the movement in public opinion, and the effect of public campaigns on political parties and policies.

The first confirmed case of COVID-19 in Ireland was reported on 29 February 2020. From this date to June 2020, there were multiple reported COVID-19 outbreaks in Direct Provision centres, exacerbated by cramped, unsanitary shared rooms and communal spaces including bathrooms and kitchens (Pollak, 2020a; Siggins, 2020a). The conditions in Direct Provision centres, already unhealthy and inhospitable, meant that measures to prevent the spread of COVID-19, such as physically distancing, were not possible. The Direct Provision Emergency Accommodation Centre (EAC) Skellig Star Hotel in Cahersiveen, Co. Kerry, became a particular focus of attention by media and campaigners after COVID-19 outbreaks among the 120 residents in March continued into April and May (Gallagher, 2020a). Reports of physical locks on the centre doors and mismanagement by the hotel and the DoJE led to complaints by residents of the centre, residents of the local area and human rights groups (Irish Human Rights and Equality Commission, 2020; Lucey, 2020). In June, the DoJE admitted to ‘error’ in mismanaging the outbreak in the centre (Pollak, 2020b); however, it was only in July after continued campaigning by residents of the centre and a local solidarity group formed by residents in the area, and after more than 30 residents went on hunger strike over ‘inhumane conditions’, that the DoJE closed the Skellig Star centre (Hutton, 2020; McGee, 2020). There have also been reported COVID-19 outbreaks in Direct Provision centres in counties Dublin, Cork, Wicklow, Waterford and Galway (Siggins, 2020b), and new outbreaks in centres continue into December 2020.

While political pressure for changes in the reception conditions for asylum seekers and refugees in Ireland have led to clear changes in the policies that Irish political parties campaigned on in the 2020 General Election and influenced the Programme for Government in the new coalition of June 2020, the asylum determination process has received much less attention. A recent event brought Irish agencies that determine asylum – and the IPAT specifically – into the national limelight. On 22 August 2020, hundreds of people attended an anti-lockdown and anti-mask rally in Dublin. The rally was organised by the Irish Freedom Party and other far-right and anti-immigrant political groups. At the rally, alongside members of the anti-immigrant Irish Freedom, Party Una McGurk, a sitting Tribunal member of the IPAT, gave a speech focused on opposition to mandatory face mask rules. On 24 August, the new Taoiseach Michael Martin stated that “he does not believe Ms McGurk’s appearance at the protest is compatible with membership of the Ipat” and the new MfJE Helen McEntee requested a report on McGurk’s actions from the Chairperson of the IPAT, Hilka Becker (Gallagher, 2020b) . Minister McEntee received the report that she requested by the 2nd of September, and while McGurk has not been given any asylum cases to hear since the rally, she remains on the Tribunal as a member (McCarthy, 2020).

MASI, in a letter to Minister McEntee, stated they were “deeply disturbed by the presence and participation of a member of the International Protection Appeals Tribunal (IPAT)” and that it raised questions about “Ms Una McGurk’s impartiality when assessing appeals for international protection whilst associating herself with anti-migrant groups” (Fletcher, 2020). MASI led a campaign calling for McGurk’s immediate suspension and her subsequent removal from the IPAT for the “clear breach of the Tribunal’s code of conduct, for a review of all of McGurk’s Tribunal decisions, revocation of any deportation orders issued after her recommendation to the Minister and to bring back to Ireland any asylum seeker who was deported after appearing before Ms McGurk” (MASI, 2020a).

MASI also called for the government to “establish a commission of inquiry into the Tribunal’s decisions as members seem to have an alarmingly high rejection rate” (ibid).

Una McGurk has been a member of the IPAT since 2016 and according to IPAT annual reports has issued 137 decisions. After the first reports of McGurk’s appearance at the demonstration, I was able to check the ATA for records of decisions issued by McGurk. I had also in previous correspondence with a member of MASI shared drafts and initial iterations of the database of Tribunal member decision rates discussed in Chapter 6 as part of the continued process of the knowledge exchange forums (see Figure 7.1). I identified 103 decisions issued by McGurk in the ATA, and that McGurk had refused protection in 62 of these decisions, for a refusal rate of 60%, a relatively average rate of refusal among Tribunal members in the time period McGurk has been on the Tribunal. I was also able to, in correspondence with MASI, quickly compile decisions issued by McGurk so that MASI could organise a response and investigate if asylum seekers were treated unfairly by McGurk, or if McGurk, openly expressed anti-immigrant sentiment in decisions, and organisers publicised this work along with other work as part of their campaign (see Figures 7.1 and 7.2).

Bulelani Mfaco, a MASI spokesperson, did highlight one decision in which McGurk judged an asylum seeker to be not credible because he testified that his parents did not take him to the hospital after he was tortured (see screenshot of Mfaco’s statement on Twitter in Figure 7.3). McGurk’s credibility decision in this case follows the patterns outlined in Tribunal members’ credibility decisions as outlined in Chapter 5. In fact, one of the surprising and worrying findings from looking at McGurk’s decisions was just how closely her work aligned with regular practice at the appeals tribunals. At the demonstration on 22 August, McGurk joined with the far-right political party and spoke about the “impact of mandating masks without conclusive evidence” (Irish Legal News, 2020)

MASI - Movement of Asylum Seekers in Ireland @masi_a... · Aug 23 ...

We are looking into tribunal decisions made by Ms Una McGurk. We'll ask @HMcEntee to probe breach of code of conduct for tribunal members, removal from office, review of her decisions, set aside negative decisions, & revoke deportation orders coming from her decisions

19	Sean Bellew	5	187	192	97%
20	Paul McGarry	81	106	187	57%
21	Mark Byrne	14	167	181	92%
22	David Goldberg	17	152	169	90%
23	James Nicholson	0	166	166	100%
24	Ricardo Dourado	1	165	166	99%
25	Paul Gormley	7	142	149	95%
26	Michael O'Kennedy	32	115	147	78%
27	Bernadette Cronin	27	93	120	78%
28	Anne Tait	4	112	116	97%
29	Sheuna Gillan	40	71	111	64%

1 122 373

MASI - Movement of Asylum Seekers in Ireland @masi_asylum

Replying to @masi_asylum

*The stats are from @sashadbrown1's research and cover period between 2006-2018.

8:36 AM · Aug 23, 2020 · Twitter for Android

1 Retweet 1 Quote Tweet 25 Likes

1 122 373

Figure 7.1 Tweets by MASI - Movement of Asylum Seekers Ireland on 23 August 2020 regarding the IPAT decisions issued by Tribunal member Una McGurk after she spoke at a far-right and anti-mask demonstration, citing the work of this project. Source: MASI, 2020b

MASI - Movement of Asylum Seekers in Ireland @masi_a... · Aug 23 ...

We need an urgent review of her life and death decisions. An asylum seeker in Direct contact has a deportation order because of Ms Una **McGurk**.

Roderic O'Gorman TD @rodericogorman · Aug 23

It is vital that all members of the IPAT are objective in their work and that they are seen to be objective. I've raised my concerns over yesterday's protest with Minister McEntee and I'll be keeping in contact with her about this issue.

2 29 82

Figure 7.2 Tweets by MASI - Movement of Asylum Seekers Ireland on 23 August in response to a statement by Roderic O'Gorman, the Minister for Children, Equality, Disability, Integration and Youth. Source: MASI, 2020c.

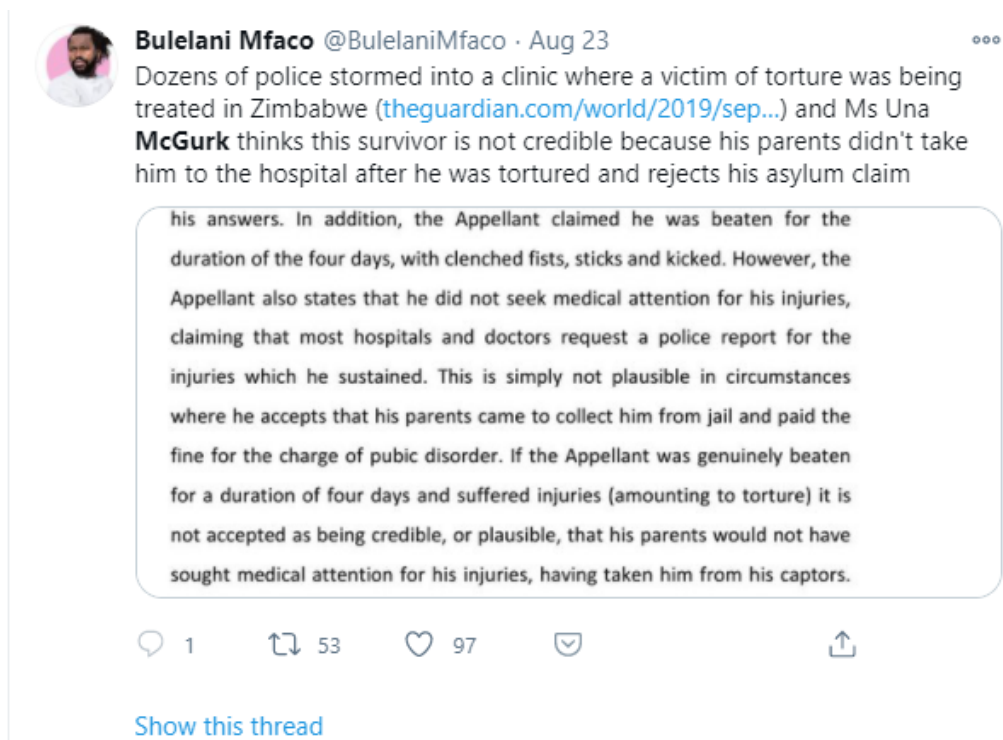


Figure 7.3 Tweet by Bulelani Mfaco, a spokesperson for MASI, on 23 August 2020 citing an IPAT decision issued by Tribunal member Una McGurk in 2019. Source: Mfaco 2020. Used with permission from MASI.

months after substantial evidence supported the use of masks to prevent the spread of COVID-19 (Howard et al., 2020).

This type of behaviour of casting doubt on best practices and evidence, while not systematically examined enough to show a pattern, is closely aligned with the practice and culture of the appeals tribunals as found in this project. MASI highlighted this fact in their petition and call to government and stressed the importance of their call for a commission of inquiry into Tribunal decisions. The ability for the work of this project to be quickly deployed in the way that I have detailed above, working with groups in response to emerging events, was a situation envisioned as an outcome of this project. The project was designed to be able to create a way to increase the accessibility and visibility of the practices of the appeals tribunals and the agencies involved in asylum determination.

7.3 Future contributions of this research

This project has been designed to provide resources for investigating the practices of asylum determination in Ireland, and the outcome of this project includes the creation of a public database and public reports on Tribunal member decision rates, as described in Chapter 6, and the tools to analyse Tribunal member practices. In this sense, the work of this project is ongoing into the future. The IPAT continues to issue decisions and continues to upload decisions to the ATA, and the methods of scraping the ATA continue to be relevant. Qualitative evaluation of decision texts also continues to be important in assessing the continuing practices of asylum determination. Chapter 5 describes an analysis of one aspect of decisions in the archive – Tribunal members’ judgements on credibility and asylum seekers’ journeys to Ireland. This research project encountered other important themes for further investigation, including how Tribunal members assess testimony around gender-based violence; how Tribunal members assess testimony around geographical differences based on where asylum seekers are from; and how Tribunal members use Country of Origin Information in decisions, to name just a few of these themes. The ATA continues to be a productive site of bordering, and a productive place to study bordering in Ireland.

This project has also been easily adaptable for collaborative work, and I have been able to engage with a wide range of scholars from geography, law and sociology. The methodology of the curated research stream can be used in a myriad of applications, directly to study the ATA and also to study other digital archives, and to study emerging practices of statecraft and bordering. In other contexts, in cases when an archive is available, these innovative methods should be shared, and I believe these methods will help inform this future research. This project thus employed a new way to look at contemporary archives of border enforcement that can be applied in other contexts. I produced a blogpost tutorial for using web-scraping tools on difficult-to-access archives such as those

with a required login or messy formatting (Brown, 2017), and the web-scraping and data analysis tools in this project are all free and open-source software (FOSS), except for the software used for the qualitative coding.

Through the deep analysis of the ATA, this project has worked to open spaces to question the practices of the Irish asylum determination process and the people involved. The evidence from this project shows the ways knowledge is produced in the appeals tribunals and in the ATA, and as such moves to produce liberatory work. It is important to recognise that doing this work partially, severing the parts of this project or leaving the project incomplete, risks reifying the state and state efforts to produce evidence and knowledge in chaotic forms. This risks not doing enough to disrupt the violences of statecraft and bordering. We must make sure to work to fully open these institutions, to provide powerful responses to state narratives produced by state agents and agencies to contest the violence of borders and bordering. This project works to undermine state narratives, to present a new way to see the asylum determination process, and to make clear that the evidences and absences in the archive show a state practice of exclusion over inclusion, of violence over welcome, and of restricting the rights of asylum seekers and their claims to protections under law.

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Appendix 1: Full list of codes used in qualitative coding of ATA

decisions

1 Structure

1.1 decision

1.2 Tribunal Member

1.3 multiple people

This decision is for the case of multiple people

1.4 lists

The TM uses lists in the decision

2 Gender

2.1 gender not mentioned

2.2 SOGI

Case is about sexual orientation or gender identity

2.3 Woman

2.4 Man

3 oral hearing

3.1 questions in hearing

3.1.1 counsel qs to

3.1.2 Tm qs to

When Tribunal Member asks questions directed to the applicant and makes certain observations in the decision

3.1.3 ORAC/IPO questions to

3.2 App Quote

Applicant Quote - The Tribunal Member directly quotes the applicant, either directly from their time testifying in the Tribunal court, or from some other interaction between government and applicant

3.2.1 from interview

3.3 TM_interp

3.3.1 demeanor

3.4 no oral hearing

3.5 witness testimony

3.6 possible language difficulty

3.7 translator

4 App process

4.1 dublin convention

The decision marks the process of using the dublin regulation to deport an applicant to another dublin regulation country

4.2 questionnaire

4.3 from interview

4.4 App_Date

4.4.1 App length

4.5 repeat

5 Basis

5.1 fundamental to identity

5.2 fear

Applicant expresses fear related to well-founded fear of return

5.3 SP

The applicant is applying for subsidiary protection in Ireland because they would face serious harm if returned, or otherwise would be eligible for subsidiary protection

5.4 Religion

5.5 ethnicity/race

5.6 political opinion

5.7 social group

5.8 nationality

5.9 gender

5.10 lgbt

5.11 no basis

The TM states that the persecution is not based on race, religion, social group, or any other condition of Convention

5.12 multiple

5.13 Tm judge no basis

5.14 Tm judge basis

5.15 no well-founded fear

5.16 geopolitics

Code for details on the political situation in country of origin that led to claimed persecution

5.17 safe country

5.18 prosecution

6 Credible

6.1 threshold for credibility

6.2 Credible Statement

Tm judges that a statement is credible

6.3 Not Credible Statement

Tm judges that a statement is not credible

6.4 Credible Applicant

Tm judges that a person is credible

6.5 Not Credible Applicant

Tm judges that a person is not credible

6.6 not credible

6.7 Section 11.b

7 Belief

7.1 app admits falsehood

Applicant says that they did not tell the truth in either the ORAC process or in previous records, such as asylum claims or to border enforcement in other european countries

7.2 [believe] Statement is seen as evidence

Tribunal member states that they believe a statement

7.3 [disbelieve] The statement is not seen as evidence

Tribunal member states that they do not believe a statement

7.3.1 coherence

7.3.2 difficult to believe

7.3.3 disbelieve documents

7.3.4 'no coherent explanation'

7.3.5 conflicting dates

7.3.6 'incredible'

7.3.7 other

7.3.8 'inconsistent'

7.3.9 'contradiction'

7.3.10 'implausible'

TM says that such a story is implausible

8 ID_proof

8.1 fingerprinting

8.2 Garda analysis

8.3 Documents in question

8.4 No ID documents

8.5 ID documents

8.6 nationality

8.6.1 no nationality

8.7 ID_in question

8.8 ID_confirmed

9 Internal Relocation

9.1 IR possible

TM judges or notes that internal relocation is possible for applicant

9.2 IR insufficient

TM proposes the internal relocation would be insufficient to protect applicant from persecution

10 Violence

10.1 arrested

applicant was arrested.

10.2 violence to family

10.3 abduction

10.4 in military

10.5 fgm

Tribunal makes reference to female genital mutilation

10.6 police protection

Applicant seeks police protection or there is a conversation of the kind of police protection available

10.7 sexual assault

10.8 state violence

10.9 torture

11 COI_Law

This code is used when law is cited in a section of decision dealing with the facts of the case and with the tribunal member's analysis of the facts of the case along convention/subsidiary guidelines. What this means is that this code captures the laws that are directly used and cited towards particular judgements within a decision

12 COI_Source

12.1 hidden source

12.2 Denmark

12.3 EU

12.4 Int'nl NGO

12.5 Ireland

12.6 Media

12.7 UK

12.8 UN

12.9 US

12.9.1 DoS

12.10 academy

12.11 Other

12.12 COI Local

Country of Origin Information is from a source in the country of origin of the applicant, or from the country of which it is talking about. For example, this applies if an applicant is from Afghanistan and submits newspaper clippings from a local Afghan paper, or conditions in Pakistan are relevant and documents from Pakistan are submitted

12.13 nosource

13 noCOI

This is when a claim made in a decision seems to require COI sources but is just presented as a statement by the TM

14 submitted evidence

14.1 hidden

14.2 no submission noted

It is noted by TM that there were no submissions on a specific topic or claim

14.3 from applicant/solicitor

14.3.1 previous decisions

14.4 from orac/ipo

14.5 from tm

15 age

15.1 age assessment

15.2 age missing

15.3 age contested

15.4 Born in Ireland

15.5 child

15.6 child-at-time

A note of something that happened to the applicant when they were a child, regardless of their age when they entered Ireland or at time of decision

15.7 minor

15.8 parent info/testimony

16 family

16.1 partner in Ireland

16.2 pregnant

16.3 has children

16.4 iom

17 travel

17.1 visa

17.2 DubReg

Mention of making asylum claims in other european countries, relating to Dublin Regulations

17.2.1 fingerprints

17.3 cost

17.4 airport

17.5 deportation

17.6 first country claim

17.7 interrogation

17.8 passport

18 Irish Conditions

18.1 legal rep

18.2 IPA(2015)

The passing of the International Protection Act in 2015 has an effect on this case

18.3 Direct Provision

19 medical

19.1 ptsd judgement from tm

19.2 spirasi

20 Absence/Void

Tm references concepts or metaphors of 'absence' or 'void'

21 Inside/Outside

Tm references concepts or metaphors of 'inside' or 'outside'

21.1 Inside

21.2 Outside

22 memory

Tribunal member makes references to issues around memory

22.1 dates

22.2 calendar

23 Anti_ORAC/IPO

Tribunal member makes a judgement against the decision, judgement or state belief of the ORAC or IPO

24 JR and HC

Tm references the Judicial Review process or higher courts

25 Relevant to RAT/IPAT

A statement is made regarding the process or structure of the appeals tribunals

26 from Orac/IPO

Testimony or opinion from the ORAC or IPO

27 from_TM

Notable testimony or opinion from the Tribunal member

27.1 burden of proof

28 pov

Tm makes a notable observation notable in its perspective from the Tm

29 to_note

Used for record-keeping possibly important and notable passages

30 Typo

Typo in the document

31 wtf

A code for statements that evoked an especially strong personal emotional reaction from the researcher

Appendix 2: Knowledge exchange forum, 26 November 2018

Information Sheet and Handout

Evidence and Absence in the Archives:

Investigating the Irish Refugee Appeals Tribunals

Knowledge Exchange Forum, 26 November 2018

Sasha Brown, PhD student Maynooth Geography

Sasha.Brown@mu.ie

Supervisors:

Prof. Mary Gilmartin, Geography, Maynooth University. Mary.Gilmartin@mu.ie

Prof. Chris Brunson, National Centre for Geocomputation, Maynooth University.

Christopher.Brunson@mu.ie



Information Sheet:
Evidence and Absence in the Archives: Investigating the Irish Refugee Appeals Tribunals

You have been invited to take part in this research study, along with around five other people, because of your work or involvement in support for asylum seekers either through a community group or an organization. The information sheet explains the nature of the study, and what we will be asking you to do in the knowledge sharing forum. It also explains how information from the forum will be used.

About the research

This research is called **Evidence and Absence in the Archives: Investigating the Irish Refugee Appeals Tribunals**. It is funded by the Irish Research Council, and it uses existing data to systematically investigate patterns of practice in the asylum determination process in Ireland and specifically the International Protection Appeals Tribunal (IPAT) from the Appeals Tribunal Archive (ATA), a digital archive of appeals tribunal decisions made available on the IPAT website. The forum will contribute to a better understanding of the asylum determination process in Ireland. Information from the forum may be used in public presentations and/or publications, such as working papers, reports, journal articles or book chapters.

The project is based at Maynooth University. The principal investigator is Sasha Brown (Department of Geography) for his PhD, supervised by Professor Mary Gilmartin (Department of Geography) and Professor Chris Brunsdon (National Center for Geocomputation).

About the knowledge exchange forum

A separate letter will provide you with the details of the time, date and venue for the forum. The forum itself will last for around two hours. We will present the findings from our research on investigating the asylum determination process in Ireland and ask for your feedback, either through the group or individually. With your permission we will record the discussion and take notes during the forum, and will gather any written material produced by participants that they choose to share in the workshop. Our notes on the discussion and the written material we gather will not include any identifying information. The audio recordings will be transcribed and deleted and overwritten. It will not be possible to associate comments with individuals in the records of the forum. The information obtained (notes and written material) will be securely stored on a password-protected computer or in a locked cabinet at Maynooth University, and will be accessible only to the researchers. You will be able to access this information by contacting Sasha Brown. This material will be deleted and overwritten (electronic) or shredded (paper) after ten years. Following the forum, we will provide you with a record of our notes of the event. We will not use any identifying information in these notes i.e. we will not associate comments with individuals.

Your participation in this forum is voluntary, and you may stop your participating in the forum at any time without disadvantage.

Questions

If you have any questions about the research, you can contact the researchers: Sasha Brown (Principal Investigator) or Mary Gilmartin (Primary Supervisor).

Contact details:

Sasha Brown	Professor Mary Gilmartin
Maynooth University Department of Geography	Maynooth University Department of Geography
Maynooth, Co. Kildare	Maynooth, Co. Kildare
Telephone: 087 464 4998	Email: mary.gilmartin@mu.ie
Email: sasha.brown@mu.ie	

If during your participation in this study you feel the information and guidelines that you were given have been neglected or disregarded in any way, or if you are unhappy about the process, please contact the Secretary of the Maynooth University Ethics Committee at research.ethics@nuim.ie or +353 (0)1 708 6019. Please be assured that your concerns will be dealt with in a sensitive manner.

About the research

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The Asylum Determination Process

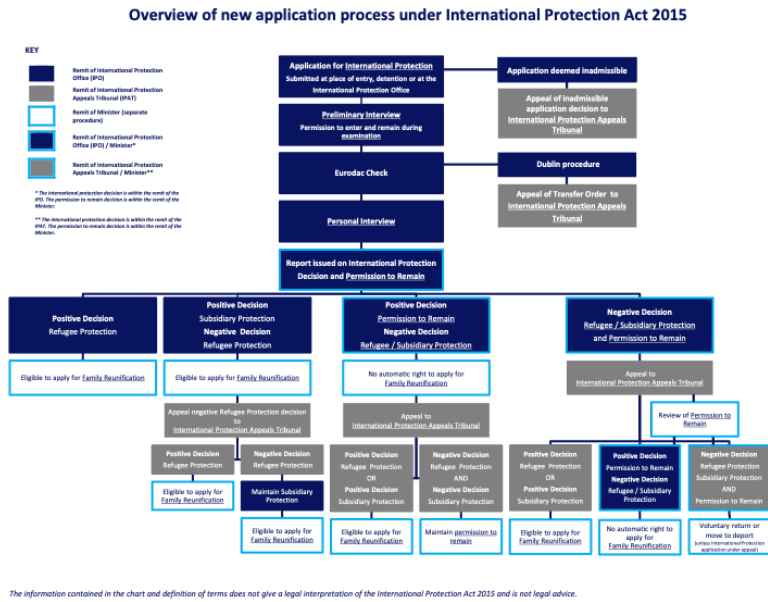


Figure 1. The asylum determination process, Ireland. Source: http://www.emn.ie/media/emn_ip_act_overview1.pdf

Applying for asylum: overview of the process

- Application for International Protection
- Preliminary Interview
- Eurodac Check
- Personal Interview
- Initial decision on international protection (refugee status or subsidiary protection) and permission to remain issued by International Protection Office (IPO).
- Negative decisions can be appealed. Negative international protection decisions can be appealed to the International Protection Appeals Tribunal (IPAT).
- The permission to remain decision is within the remit of the Minister.

The International Protection Act (2015) replaced the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT).

The Appeals Tribunals

Top 10 Appeals Tribunal members by total decisions issued 2013-2017

	Member names	2013	2014	2015	2016	2017	Total
1	Majella Twomey	73	65	74	101	32	345
2	Mark Byrne		3	37	184	72	296
3	Connor Gallagher	16	37	60	98	53	264
4	Elizabeth O'Brian	25	8	86	84	29	232
5	Michelle O'Gorman	122	37	20	16	5	200
6	Olive Brennan	0		34	108	48	190
7	Shauna Ann Gillan			27	106	54	187
8	Emma Toal		7	60	73	35	175
9	Hilkka Becker		20	33	61	3	117
10	Moira Mullaney Shipsey		17	44	37	12	110

Figure 2. Source: Refugee Appeals Tribunal and International Protection Act Annual Reports, 2013-2017. Number of decisions issued by tribunal members are not available before 2013.

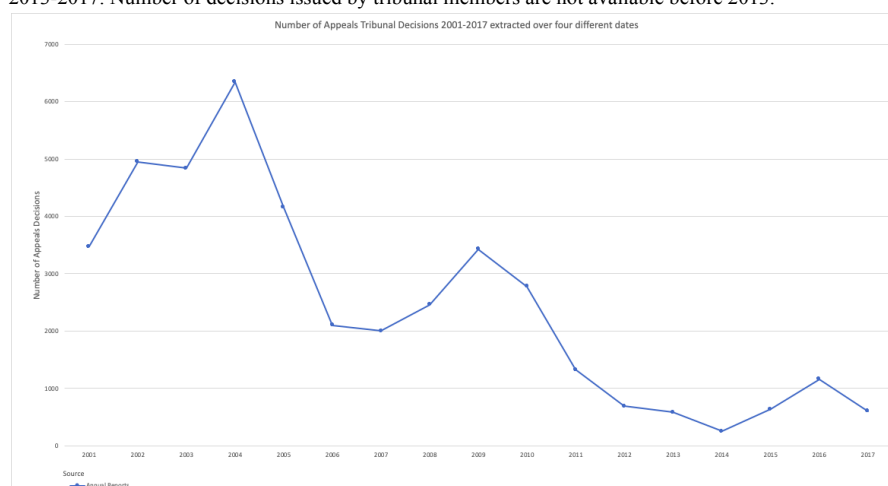


Figure 3. Number of refugee and subsidiary protection appeals decisions issued. Source: Refugee Appeals Tribunal and International Protection Act Annual Reports, 2013-2017.

The Appeals Tribunal Archive online

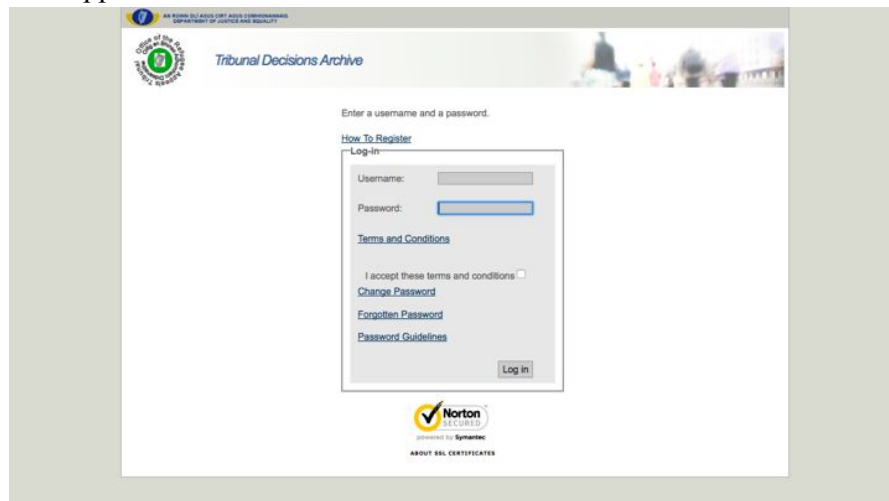


Figure 4. Tribunal Decisions Archive login page

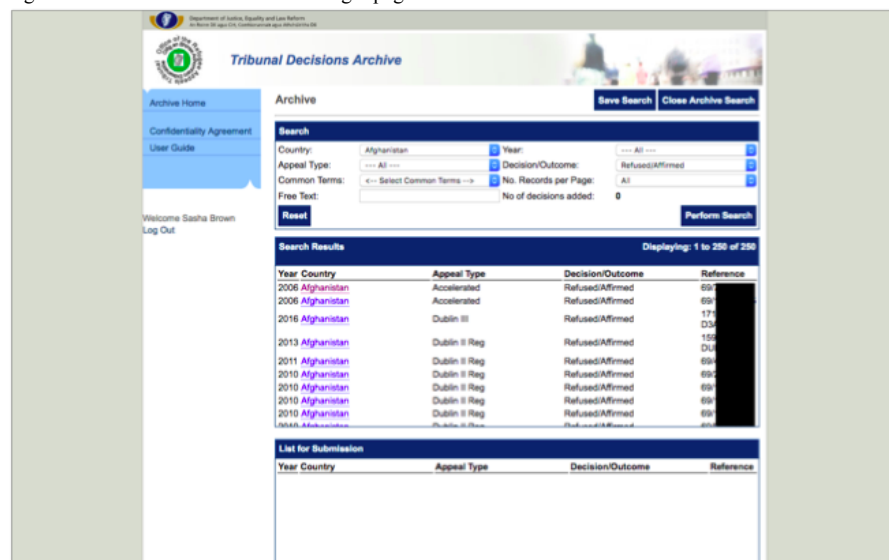


Figure 5. Searching the Tribunal Decisions Archive

Web Scraping: accessing the archive

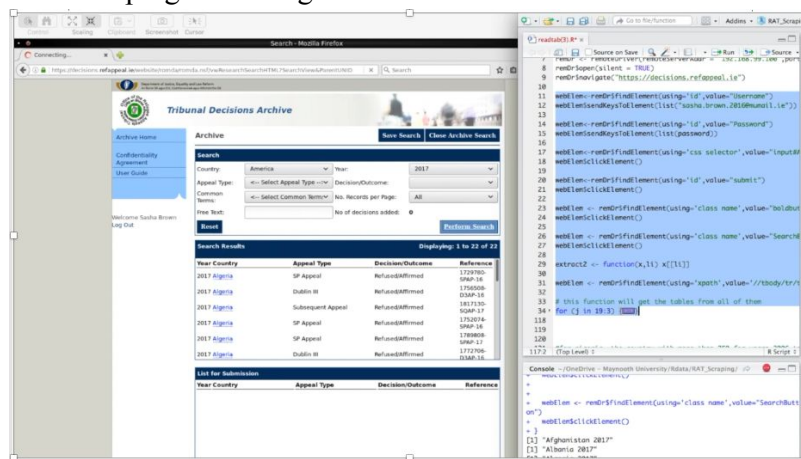


Figure 6. Web scraping the Appeals Tribunal Decisions Archive

Scraping, to state this quite formally, is a prominent technique for the automated collection of online data” (Marres and Waltevrede, 2013)

Web scraping involves writing a script automatically queries a webpage and extracts data from the webpage. In the case of this project, this involves repeatedly performing a search of the archive and extracting the html table and displaying the results and pdfs of the issued decisions. Web scraping as a method for social research is an imported method in that its techniques come from a sphere of work separated from the social sciences, the commercial technologies industry. Marres and Waltevrede argue that this importing of methods risks introducing unknown and different assumptions, while also offering new ways to do ethnographic and ‘social science’ research (Marres and Waltevrede, 2013).

Just as Ann Laura Stoler in her study of archives of the Dutch East colonies in the 19th century argues for a focus on the way that archives produce knowledge “as monuments of states as well as sites of state ethnography” (Stoler, 2002, p. 87), web scraping “makes available *already formatted* data for social research. This makes possible a distinctive approach to social research, one which approaches the formatting of online data as a source of social insight, and which we call ‘live’ social research” (Marres and Waltevrede, 2013, p. 315). The digital state archives that have emerged as dominant in the past twenty years are not necessarily radically different than archives of states in nineteenth century, however the ways that they *are* different, specifically the ways that the form of the archives reveal the hidden production of state, is important.

A detailed demonstration and explanation of web scraping for social can be found in a blogpost by Sasha here:

<https://maynoothgeography.wordpress.com/2017/11/27/web-scraping-for-social-research-a-tutorial/>

Year	Country	Type	Outcome	Reference
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Figure 7. Variables identified in the Appeals Tribunal Archive

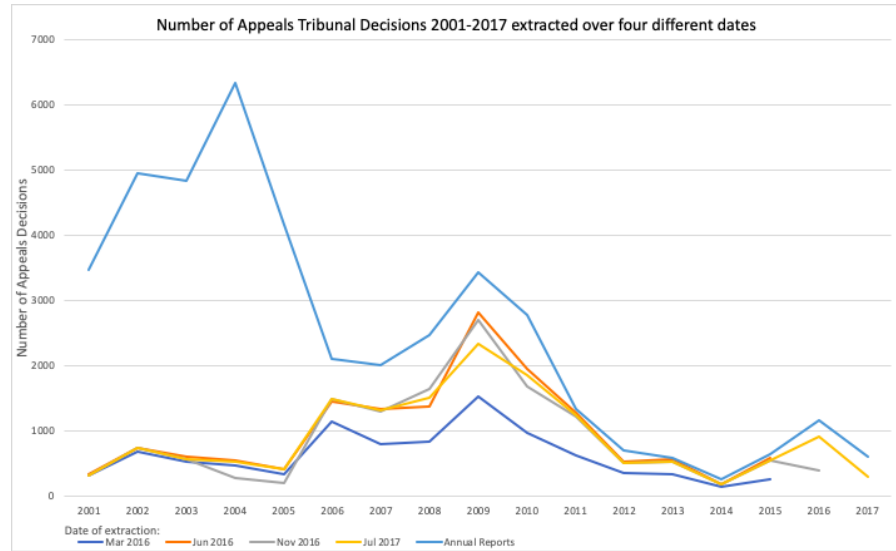


Figure 8. Web scraping the Appeals Tribunal Decisions Archive yielded different results over time and when compared to the annual reports. The archive website notes that decisions issued before 2006 are only included if the decision grants international protection.

Appeals Tribunal Decisions by Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
Refused/Affirmed		9	21	32	29	1257	1116	1209	2161	1649	1125	470	392	106	333	679	309	5	10902
Granted/Set Aside	320	724	541	496	370	180	129	190	212	84	107	32	43	71	203	232	57	7	3998
Affirmed decision - Asylum and Subsidiary protection																	34	19	53
Granted/Set Aside '96 Asylum																	9	17	26
Granted/Set Aside - Subsidiary Protection (SP)																	7	1	8
Affirmed decision - Subsidiary protection																	2		2
Total	320	733	562	528	399	1437	1245	1399	2373	1733	1232	502	435	177	536	911	418	49	14989

Figure 9. Table of decisions and decision outcomes by year in the archive from web scraping in August 2018.

Reading the decisions and using qualitative coding for analysis

Qualitative coding using thematic or content analysis involves line-by-line assigning of codes to statements. This method is an effective tool for, among other things, content analysis of archives and documents.

The coding for this project involved a subset of 122 decisions as a representative sample of the total decisions in the archive, proportionally sampled based on the year the decision was issued and the country of origin of the asylum seeker.

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2015	2016	2017	Grand Total
Afghanistan						1				1	1						3
Bangladesh															1		1
Cameroon										1							1
DR Congo	1	1	1					2	5	3	1		2	1	1		22
Georgia						1	1		2								4
Ghana										1	1						2
Iran						1	1		1								3
Iraq										1							1
Moldova										1							1
Nigeria		1	1	1	1	8	9	9	10	9	7	1	1	1			59
Pakistan									3	2	2		1	2	3	1	14
Romania		1				1											2
Somalia						2	1		1	1	1						6
Sudan						1	1			1							3
Grand Total	1	3	2	1	1	18	14	11	27	17	12	1	4	4	5	1	122

Figure 10. Number of decisions by year and asylum seeker's country of origin in coding Subset 1.



The Applicant claims it was a consensual act was with his partner. According to the newspaper, *"The victim however vehemently deny the consent assertion"*.

The Applicant claims that if he goes back to Ghana, his father will arrange to have him killed. According to the newspaper, *"the father of the alleged homosexual is reported to have sent him into hiding to protect his religious image"*.

The Applicant was asked *"From what you told me you did not have any problems with the police the problem is with your father and members of the Xxxx's family is that correct"*. The Applicant replied, "Yes" (see Section 11 Interview Q 56 p10).

It was put to the Applicant it was not plausible that he would risk going to his partner's house where he lived with many family members rather than meet at his house where he was alone. He said, *"I didn't think of that, we would meet once a week, I would go to his house only once every 3 weeks"* (see Section 11 Interview Q 55 P10)

Figure 11. A sample from an appeals tribunal decision with codes.

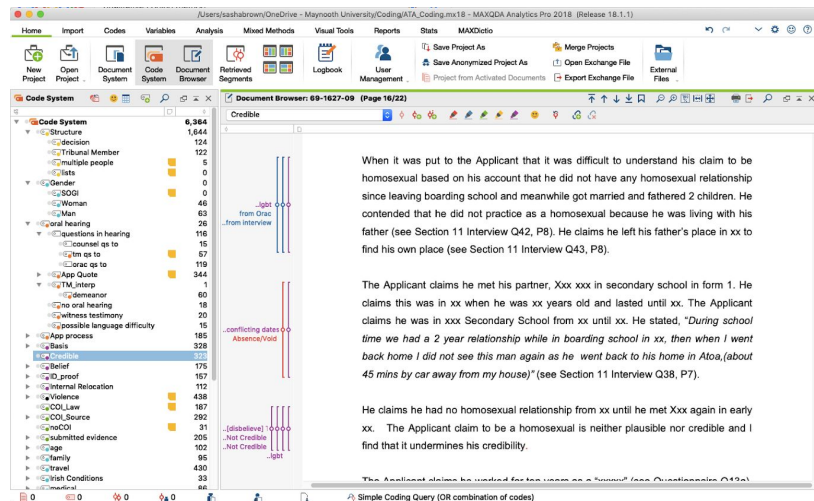


Figure 12. Another sample from an appeals tribunal decision with codes

Code System	Count
Code System	6,364
Structure	1,895
Gender	109
oral hearing	791
App process	185
Basis	328
Credible	323
Belief	175
ID_proof	157
Internal Relocation	112
Violence	438
COL_Law	187
COL_Source	292
noCOI	31
submitted evidence	205
age	102
family	95
travel	430
Irish Conditions	33
medical	86
Absence/Void	22
Inside/Outside	4
memory	93
Anti_ORAC	11
JR and HC	0
Relevant to RAT	8
from Orac	29
from_TM	97
pov	2
to_note	67
Typo	24
wtf	33

Figure 13. All top-level codes used in this project.

Findings 1: Themes

- Memory: Tribunal Members regularly use and manipulate the nature of memory to discredit asylum seekers. The judgement for whether an asylum seekers' story based on memory is credible is inconsistently applied and Tribunal Members do not seem to have any backing as to how memory works, making inaccurate comments about traumatic events that should be or should not be remembered. Tribunal Members are uncomfortable around applicants bringing up how much or how little they remember. The conditions asylum seekers face in Ireland is part of how the questionnaires, interviews, and tribunal hearings go, and yet are never mentioned
 - See excerpts 1-6
- Anytime anyone was helped, they become suspect and disbelieved. This includes help from churches, friends, police, guards, strangers.
- Knowledge: Tribunal Members are uncomfortable when applicant knows too much or too little.
- Time and Timing: "How could you have done this?" (time, speed, timing). Tribunal members judge some things are too fast, some things are too slow, or if they stay somewhere for too long or too short. Tribunal Members are very uncomfortable when applicant doesn't claim asylum right away. See excerpts 4, 5, 6.
 - Time and Memory were especially important for Tribunal Members in cases of sexual and/gender based violence. Tribunal Members would often discredit testimony about sexual and/or gender based violence based on their expectations of what an asylum seeker would be able to do or how others would act. See excerpt 2.
- Tribunal Members have particular intolerance of sexual assault/gender identity based claims. See excerpts 8, 9.
- Tribunal Members particularly rejected claims by children. See excerpts 3, 8, 9.
- Lack of any protocols/guidelines talking to victims of violence including: sexual coercion and state abuse, sexual assault, domestic abuse, trauma, torture (see excerpt 7), and rape.
- Place - Tribunal Members have reactions to places based on sources outside of COI, with misconceptions and more. This is hard to pin down. See excerpt 3.
- Not only is there heavy use of credibility standards in places that may be inappropriate, but also uneven application of credibility standards
 - For political circumstances
 - Identity credibility standards: ID as not credible even when identity is accepted, language analysis test, newspaper photo/article not enough, inconsistent, or in a granted case, the credibility test is different.
- Tribunal Members have a trust in institutions of state in other countries/oppressive institutions
- Burden of proof is inconsistently applied and often not in line with international guidance.
- Country of Origin Information is applied inconsistently and often with logical gaps.

Findings 2: Specific evidence

This type of evidence includes direct quotes that directly show the application or mis-application of laws, standards, and other means by which the Tribunal assesses international protection.

Example 1: Hathaway and the P.M. Judicial Review, 2014

For example, in Judicial Review P.M. v. Refugee Appeals Tribunal in 2014, Justice Anthony Barr noted that the RAT had used a quote from international refugee scholar James Hathaway incorrectly. The quote as used by the RAT read:

Professor Hathaway, in his book *The Law of Refugee Status*, states:

“Those who truly fear return to their state ought reasonably to claim protection in intermediate countries of potential refuge”.

He further states that:

“It is hard to believe that a person in the grip of an uncontrollable fear of being persecuted for political or other reasons does not make any effort to eradicate this fear when the opportunity arises.”

The full quote is directly contrary to the meaning as used by the RAT, and is as follows:

“The more pernicious interpretations of the ‘fear criterion’ involve the disentanglement of persons whose claims to refugee status may have been otherwise objectively solid. First, the Board has sometimes ruled that persons who do not avail themselves of the earliest opportunity to flee their State of origin cannot reasonably be said to fear persecution in that country. Second, claims have been denied on the ground that those who truly fear return to their State ought reasonably to claim protection in intermediate countries of potential refuge, rather than disclosing their fear only upon entry into Canada. Third, and most frequently asserted, is the notion that genuinely fearful persons would not delay in making their need for protection known to Canadian authorities, and would, in any event, seek status before deportation is imminent.”

While this decision was in 2014 and the Tribunal no longer uses this quote incorrectly, an analysis of the archive is in the special position to be able to analyse how many times this quote had been used. The exact passage and mis-quote as printed above is repeated in at least 86 decisions between 2008 and 2012.

Example 2: Use of Wikipedia

Sometimes Wikipedia entries are submitted by evidence in the appeals tribunals. Sometimes wikipedia is accepted as a background source, or sometimes the only source of information for applicants. Sometimes wikipedia evidence is rejected by the tribunal member.

However, sometimes the tribunal member uses a wikipedia source to contravene statements of an asylum seeker, and to discredit them, and there are at least 20 cases that are in this category. It seems these decisions are mainly from the same years as above (2007-2011). Here is one excerpt repeatedly used concerning the standing of the Pakistan Muslim League in Pakistan:

However, according to a document from wikipedia on the Pakistan Muslim League, the following events took place on the 13th day of May 2008 concerning the PMLN and I wish to quote from the aforesaid document as follows “the PMLN Ministers resigned from the government due to a disagreement related to the reinstatement of the Judges. Nawaz said the PML(N) would support the government without participating in it. Undoubtedly, the overall

status of the PMLN has changed since the elections of 2008. However, it has been suggested that members of the PMLN are still persecuted even though they are participating in government by supporting the PPP". Nevertheless I feel that it is significant that their political status has been elevated on account the 2008 elections. For that reason I feel that it is unlikely that PMLN members would now be persecuted in view of the changed political circumstances.

Wikipedia is a source that can be manipulated, and should not be used to discredit testimony from asylum seekers.

Decision excerpts

Memory and Credibility

1. It is indicated in the Notice of Appeal that the Applicant's recollection is flawed as she was traumatised and in poor health. No medical report in relation to the Applicants health has been submitted. The Applicants interview occurred some weeks after her stated arrival to the state, and while she may have been traumatised it would be reasonable to expect that she could explain discrepancies in her account that relate to her claim.

Other codes assigned to segment: Credible\Not Credible Statement, medical, memory\dates, to_note

Document variables: Year: 2010, Country: Nigeria, Appeal Type: Accelerated, Outcome: Refused/Affirmed

2. One of the men appeared to have been armed and the Applicant would have had to run quite slow, in comparison to an adult, due to her daughter's age or alternatively would have had to run at a slower speed if she had to carry her daughter. In the Notice of Appeal it is stated that the Applicants recall is clouded by trauma.

Other codes assigned to segment:Credible\Not Credible Statement, Violence, Violence\violence to family, memory, to_note,

Document variables: Year: 2010, Country: Nigeria, Appeal Type: Accelerated, Outcome: Refused/Affirmed

3. She was asked on the 1st October 2007 at page 16, that she had completed her first year in secondary school at XXX XXX and she went to XXX XXX for the second year. At page 17 of that interview she was asked, "You say you changed to XXX XXX because around May 2002 you had an opportunity to come to the school and she says at page 19 of the interview that she left in May 2002. In the interview, it was pointed out that according to your questionnaire, you attended XXX XXX from September 2000 and that it was XXX XX to which the Gendarme came in May 2002. I told the interviewer that he should take into account your age at the time". The Presenting Officer said, "I would like to put it to you that you were fifteen years of age and one would expect you to know the exact school that you attended at that time during your interview". It was put to her that she had given false information and was not too sure as to what school she attended. She replied, "It wasn't false information, it was just the stress of the day. That was because of my age. When I filled in the questionnaire, all the details were fresh in my mind. I don't mean to say that the mistakes I made were because I forgot or because of age because you don't forget where you go to school, I just got very confused. If you read the beginning of the interview, he asked me when I did my Leaving cert. I was just in a state of confusion. It was just my state of mind on the day. There was not a case of false information".

Other codes assigned to segment: questions in hearing\orac qs to, App process\questionnaire, App process\from interview, age\child-at-time, memory, to_note

Document variables: Year: 2013 Country: DR Congo Appeal Type: Substantive (15 day) Outcome: Refused/Affirmed

4. She was asked why there was such a lack of detail in her story. She said she couldn't invent it. She was asked to tell in detail about her escape. She said they arrived in uniform etc (repeated details as above). She was asked about her passport and whether it was her photo and she said no it was a photo of a black woman.

Other codes assigned to segment:questions in hearing\orac qs to, memory, to_note

Document variables Year: 2013, Country: DR Congo, Appeal Type: Substantive (15 day), Outcome: Refused/Affirmed

5. These enquiries eventually forced his family to relocate in January 2016. The appellant was

found not credible on this topic (but credible otherwise) because he had not previously been recorded as mentioning this fact. The appellant was asked about this by the decision-maker, and stated that he had, in fact, mentioned at the hearing. The record of what was said at the hearing is not verbatim and in this particular decision was very short. In the circumstances the explanation the appellant provided is a reasonable one. The point may simply not have been recorded by the Tribunal Member.

Other codes assigned to segment: oral hearing memory Relevant to RAT to_note

Document variables: Year: 2017 Country: Pakistan Appeal Type: SP Appeal Outcome: Granted/Set Aside

6. He originally stated he was in Dongo for a month and two weeks before the conflict commenced but later stated his problems started on 11th November 2009 which he claimed was the same date he arrived in Dongo. In his interview he attempted to clarify the inconsistency and stated, "I arrived in the month of October 2009 and then the problems found me there". The applicant is of average intelligence and appeared to the Tribunal as articulate and competent, yet he was unable to give the date of his arrest. This is a traumatic event in anybody's life and if one was arrested for the first time it would leave an indelible mark on one's memory

Other codes assigned to segment: Credible\Not Credible Statement, Credible\Not Credible Statement, Belief\disbelieve, The statement is not seen as evidence [disbelieve], The statement is not seen as evidence\conflicting dates, memory, to_note

Document variables: Year: 2010 Country: DR Congo Appeal Type: Substantive (15 day) Outcome: Refused/Affirmed

Credibility and Violence

7. The First named Applicant claimed in his evidence at appeal that his difficulties in his Country of Origin started in or around April 2006 at which time he claims to have been arrested and detained at Camp XXXX military barracks. He initially claimed in his evidence at Appeal to have been detained at Camp XXXX at that time for a period of one week before being released. It was put to the First Named Applicant that in his Questionnaire he had stated that he was detained until the 11th of June 2006. When this was put to the First Named Applicant he claimed that he was mistaken and that he thought he was talking about the arrest in 2009. It was put to the First Named Applicant that he had been describing in his evidence what he alleged occurred to him at the time of his arrest in April of 2006 when he claimed to have been released after one week. When this was put to the First Named Applicant he stated that that arrest was in 2009 when he was released after one week. The First Named Applicant was asked by the Tribunal as to how such confusion would arise as between the periods of his detention arising from his alleged arrests in the circumstances and in response the First Named Applicant claimed that he was not really confused but that it was the same procedure that happened every time they arrest you and for this reason it was troublesome. This is not considered a reasonable or credible explanation considering the remove of time involved between the alleged arrests and it is considered that if the Applicant was ever arrested and detained as he alleges that such confusion would not arise in the circumstances

Other codes assigned to segment:

Credible\Not Credible Statement
Violence\arrested
Violence\state violence
Violence\torture
memory\dates

Document variables:

Year: 2011
Country: DR Congo
Appeal Type: Substantive (15 day)
Outcome: Refused/Affirmed

8. According to the Applicant's mother, the Applicant's claimed fear in Nigeria emanates from the general community in the Anambra State, who she claims would circumcise her. Although questioned several times at interview as to who might circumcise the Applicant, her mother was unable to name any individuals or be more specific in terms of stating exactly who would circumcise her daughter.

Other codes assigned to segment:

App process\from interview
Credible\Not Credible Statement
Violence\fgm

Document variables:

Year: 2011
Country: Nigeria
Appeal Type: Substantive (15 day)
Outcome: Refused/Affirmed

9. The Applicant made a vague reference to the fact that her mother was scared that she would be subject to FGM and that this was one of the reasons her mother came to Ireland. The Applicant did not give any evidence that she, herself, was being threatened with FGM nor was there any evidence before the Tribunal to show that she would be at risk of being a victim of FGM on her return. In the absence of any clear and coherent evidence, in this regard, it is not accepted that the Applicant would face any risk of FGM on her return.

Other codes assigned to segment:

Credible\Not Credible Statement
Violence\fgm

Document variables:

Year: 2009
Country: Nigeria
Appeal Type: Substantive (15 day)
Outcome: Refused/Affirmed

Appendix 3: Tribunal members' decision refusal rate in the ATA –
 2006-2018 and predicted refusal rate by country and by appeal type (as they are stated in the ATA)

Tribunal Member	Total Decisions	Decisions Refused	Refusal Rate (%)	Predicted refusal rate by country of origin	Predicted refusal rate by appeal type
Agnes McKenzie	62	39	62.9	85.9	66.0
Aidan Eames	19	6	31.6	77.6	84.1
Ann Marie Courell	12	11	91.7	86.3	75.8
Anne Colley	9	1	11.1	89.5	76.2
Anne Tait	120	114	95.0	88.0	85.1
Barry Magee	48	34	70.8	85.1	92.2
Ben Garvey	705	673	95.5	89.1	86.5
Bernadette Cronin	120	93	77.5	91.5	87.2
Bernard McCabe	1175	1112	94.6	85.6	93.2
Brian Cusack	38	24	63.2	84.9	68.1
Bruce St John Blake	17	5	29.4	92.1	85.5
Byron Wade	72	61	84.7	81.6	70.7
Caroline Counihan	6	0	0.0	87.2	76.7
Christopher Hughes	2	1	50.0	78.5	62.2
Ciara Fitzgerald	1	1	100.0	86.4	62.2
Ciara McKenna Keane	2	1	50.0	90.9	62.2
Ciaran White	3	3	100.0	83.9	62.2
Clare O'Driscoll	2	0	0.0	88.2	62.2
Colin Lynch	1	1	100.0	86.4	62.2
Conor Feeney	2	1	50.0	86.4	62.2
Conor Gallagher	433	279	64.4	82.7	84.0
Conor Keogh	2	1	50.0	86.0	62.2
Cormac O Dulachain	2	2	100.0	80.3	62.2
David Andrews	501	424	84.6	92.8	86.0
David Goldberg	169	152	89.9	89.4	85.4
David McHugh	91	80	87.9	86.9	84.6
Declan McHugh	22	19	86.4	91.0	86.9
Denis Halton	2	1	50.0	93.5	62.2

Denis Linehan	284	269	94.7	87.1	85.2
Des Zaidan	69	68	98.6	88.3	86.6
Doireann Ni Mhuircheartaigh	18	9	50.0	75.2	81.4
Donal Egan	82	74	90.2	93.6	86.6
Doreen Shivnen	1	1	100.0	88.3	85.0
Eamon Barnes	39	26	66.7	93.7	84.4
Eamon Cahill	253	230	90.9	91.3	88.4
Elizabeth O'Brien	856	633	73.9	79.7	84.6
Emma Toal	261	216	82.8	86.0	86.4
Eoin Byrne	2	2	100.0	90.3	62.2
Evelyn Leyden	8	4	50.0	79.7	86.7
Fergus O'Connor	387	368	95.1	89.1	87.1
Helen Johnson	5	5	100.0	88.5	79.5
Hilkka Becker	98	42	42.9	80.1	81.3
James Nicholson	166	166	100.0	85.4	97.8
John Buckley	3	1	33.3	72.4	62.2
John Cheatle	1	1	100.0	91.6	98.9
John Hayes	59	55	93.2	93.4	86.4
John Noonan	10	6	60.0	86.9	62.2
John Ryan	1	1	100.0	96.6	68.5
John Stanley	6	4	66.7	96.7	84.6
Joseph Barnes	3	1	33.3	97.7	91.3
Judy Blake	53	47	88.7	92.1	87.1
Kevin Lenehan	2	2	100.0	91.0	62.2
Kieran Falvey	3	3	100.0	84.1	85.0
Kim Walley	25	20	80.0	85.5	76.5
Laura MacKenna	95	85	89.5	93.1	86.4
Majella Twomey	607	513	84.5	87.7	86.1
Margaret Browne	5	2	40.0	84.9	62.2
Margaret Levey	534	525	98.3	91.3	86.2
Marguerite Fitzgerald	4	3	75.0	82.5	81.8
Mark Byrne	220	202	91.8	86.1	80.6
Mark White	1	1	100.0	88.3	85.0
Mark William Murphy	23	12	52.2	83.9	68.4
Mary Forde	1	0	0.0	91.6	62.2
Mary Laferty	13	9	69.2	91.2	85.4
Michael McGrath	1	0	0.0	86.4	62.2
Michael O'Kennedy	147	115	78.2	90.5	85.3
Michelle O'Gorman	1438	1366	95.0	87.7	90.0

Moira Shipsey	56	46	82.1	82.6	76.1
Nehru Morgan Pillay	230	227	98.7	87.6	86.9
Nicholas Russell	5	3	60.0	89.2	61.9
Noel Whelan	10	7	70.0	92.4	88.2
Olive Brennan	734	624	85.0	85.8	85.6
Patricia O Connor	8	5	62.5	89.0	70.5
Patrick Hurley	451	391	86.7	87.2	88.9
Paul Brennan	7	4	57.1	75.5	69.3
Paul Christopher	433	421	97.2	80.4	85.8
Paul Gormley	149	142	95.3	85.0	87.4
Paul McGarry	187	106	56.7	73.1	84.6
Peter Shanley	1	1	100.0	86.4	62.2
Ricardo Dourado	166	165	99.4	88.3	85.2
Ronan Maguire	34	33	97.1	91.1	94.3
Rory de Bruir	16	13	81.3	83.0	78.7
Rory MacCabe	76	60	78.9	87.3	84.6
Rosemary Kingston O'Connell	3	2	66.7	87.5	62.0
Samantha Cruess Callaghan	55	53	96.4	93.2	86.9
Sean Bellew	192	187	97.4	86.5	91.9
Sean Deegan	106	105	99.1	92.2	95.4
Shane McCarthy	3	0	0.0	83.9	85.0
Shauna Gillan	142	80	56.3	86.4	76.9
Simon Brady	3	1	33.3	81.0	62.0
Stephen Boggs	1	1	100.0	90.0	62.2
Susan Nolan	200	190	95.0	92.2	86.2
Terence Coghlan	2	1	50.0	91.2	85.0
Una McGurk	50	37	74.0	86.5	71.3

Appendix 4: Number of decisions issued in ATA 2006 – 2018 by
Country (as stated in the ATA) and rate of refusal by country

Country (as stated in the ATA)	Total Decisions	Decisions Refused	Refusal Rate
Afghanistan	522	359	68.8%
Albania	331	295	89.1%
Algeria	311	298	95.8%
America	4	4	100.0%
Angola	135	122	90.4%
Argentina	1	1	100.0%
Armenia	57	46	80.7%
Azerbaijan	13	8	61.5%
Bahrain	3	2	66.7%
Bangladesh	309	284	91.9%
Belarus	63	41	65.1%
Belize	1	1	100.0%
Benin	34	34	100.0%
Bhutan	75	71	94.7%
Bolivia	19	15	78.9%
Bosnia	3	3	100.0%
Bosnia And Herzegovina	1	1	100.0%
Botswana	11	8	72.7%
Brazil	29	28	96.6%
Bulgaria	1	1	100.0%
Burkina Faso	3	3	100.0%
Burma	13	10	76.9%
Burundi	66	59	89.4%
Cameroon	339	313	92.3%
Canada	3	3	100.0%
Cape Verde	3	3	100.0%
Central African Republic	1	1	100.0%
Chad	19	13	68.4%
Chile	3	3	100.0%
China	123	114	92.7%
China (Including Hong Kong)	34	25	73.5%
Colombia	1	1	100.0%
Comoros	1	1	100.0%
Congo	57	51	89.5%
Congo, The Democratic Republic Of The	232	155	66.8%
Congo, The Republic Of The	25	20	80.0%

Cote D'Ivoire	28	25	89.3%
Croatia	59	47	79.7%
Cuba	4	4	100.0%
DR Congo	509	482	94.7%
Egypt	52	44	84.6%
Equalorial Guinea	1	1	100.0%
Equatorial Guinea	1	1	100.0%
Eritrea	171	153	89.5%
Ethiopia	84	66	78.6%
Fiji	2	2	100.0%
Gabon	1	1	100.0%
Gambia	16	14	87.5%
Georgia	492	445	90.4%
Ghana	348	329	94.5%
Guatemala	1	1	100.0%
Guinea	104	89	85.6%
Guinea Bissau	4	4	100.0%
Guinea-Bissau	1	1	100.0%
Guyana	4	4	100.0%
Honduras	1	1	100.0%
India	91	87	95.6%
Iran	295	229	77.6%
Iran (Islamic Republic Of)	63	38	60.3%
Iraq	299	205	68.6%
Israel	62	55	88.7%
Ivory Coast	79	65	82.3%
Jamaica	11	11	100.0%
Jordan	12	10	83.3%
Kazakhstan	9	6	66.7%
Kenya	173	154	89.0%
Kosovo	88	79	89.8%
Kosovo / UNSCR 1244	29	25	86.2%
Kuwait	59	49	83.1%
Kyrgyzstan	6	3	50.0%
Lebanon	15	12	80.0%
Lesotho	9	7	77.8%
Liberia	108	104	96.3%
Libya	17	16	94.1%
Libyan Arab Jamahiriya	14	10	71.4%
Macedonia	3	3	100.0%
Malawi	187	151	80.7%
Malaysia	12	11	91.7%

Mali	8	6	75.0%
Mauritania	2	2	100.0%
Mauritius	71	69	97.2%
Moldova	248	221	89.1%
Moldova, Republic Of	35	30	85.7%
Mongolia	23	22	95.7%
Morocco	46	40	87.0%
Mozambique	4	2	50.0%
Myanmar	28	15	53.6%
Namibia	2		0.0%
Nepal	63	58	92.1%
Nicaragua	1		0.0%
Niger	33	31	93.9%
Nigeria	2853	2689	94.3%
Other	1	1	100.0%
Pakistan	1077	934	86.7%
Palestine	64	49	76.6%
Palestine (Egypt)	1	1	100.0%
Palestinian Territory, Occupied	18	8	44.4%
Peru	2		0.0%
Philippines	7	7	100.0%
Portugal	1	1	100.0%
Romania	90	87	96.7%
Russia	94	77	81.9%
Russian Federation	21	9	42.9%
Rwanda	84	62	73.8%
Saudi Arabia	4	4	100.0%
Senegal	5	5	100.0%
Serbia	15	10	66.7%
Seychelles	1	1	100.0%
Sierra Leone	108	103	95.4%
Somalia	542	455	83.9%
South Africa	284	248	87.3%
South Korea	2	2	100.0%
Sri Lanka	43	34	79.1%
Stateless	7	7	100.0%
Sudan	427	368	86.2%
Swaziland	14	13	92.9%
Syria	32	28	87.5%
Syrian Arab Republic	16	13	81.3%
Taiwan	1	1	100.0%
Tanzania	7	7	100.0%

Tanzania, United Republic Of	3	3	100.0%
Thailand	1	1	100.0%
The Former Yugoslav Republic Of Macedonia	3	3	100.0%
Togo	100	84	84.0%
Tunisia	2	2	100.0%
Turkey	14	12	85.7%
Uganda	141	119	84.4%
Ukraine	116	87	75.0%
United Arab Emirates	2	2	100.0%
Uzbekistan	15	12	80.0%
Venezuela	28	25	89.3%
Viet Nam	9	8	88.9%
Vietnam	12	11	91.7%
Yemen	16	8	50.0%
Yugoslavia	1	1	100.0%
Zambia	5	5	100.0%
Zimbabwe	575	461	80.2%
Total	13798	12005	87.0%