

The New Irish Question: Citizenship, Motherhood and the Politics of Life Itself

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In 2004, voters in the Republic of Ireland supported a constitutional amendment removing the automatic right to Irish citizenship by birth in favor of granting citizenship through a combination of 'blood' and residence rights. The referendum attracted enormous public attention, especially to the perceived attempt to restrict citizenship claims arising from asylum seekers with Irish born children. Significant scholarly attention has also been paid to the role of the Irish state, and the relationship between the state and 'race'. This article critically reviews this literature and goes beyond it in several ways: first, we re-open discussion of Irish citizenship through a critical examination of its legal underpinnings; second, we trace over the public debates in finer detail; and, third, we show the ways in which Irish citizenship is being reconfigured by broader international forces.

Somewhere there are still peoples and herds, but not with us, my brethren: here there are states. A state? What is that? Well! Open now your ears unto me, for now will I say unto you my word concerning the death of peoples. A state is called the coldest of all cold monsters. Coldly lieth it also; and this lie creepeth from its mouth: 'I, the state, am the people.' It is a lie! ...

The state, I call it, where all are poison-drinkers, the good and the bad: the state, where all lose themselves, the good and the bad: the state, where the slow suicide of all – is called 'life.'

– Friedrich Nietzsche, *Thus Spake Zarathustra*

Introduction

In 2004 an astonishing 79.2% of voters supported a constitutional amendment removing the automatic right to citizenship by birth in Ireland, *jus soli*, in favour of granting citizenship through a combination of blood and residence rights, *jus sanguinis* and *jus domicile*. The citizenship referendum and subsequent constitutional amendment continues to attract extraordinary levels of media and scholarly attention.¹ Broadly speaking, the amendment has been framed as an effort to restrict citizenship claims by asylum seekers with Irish born children, so-called IBCs. In a recent front-page *New York Times* article, Jason DeParle (2008: 1) cast the situation thus:

Ireland not only offered citizenship to children born upon arrival; until 2003 it also allowed their illegal-immigrant parents to stay, a shortcut many asylum seekers used to win residency. Word got out: with a visa

to Britain, a pregnant woman could reach Northern Ireland, take a cab across the border, and gain residency by giving birth.

Much of the media attention has been attracted by the striking ways in which 'race' and nationality have played out against the backdrop of dramatic changes to Ireland's economy and migration patterns. Ireland, for so long portrayed as a poor emigrant nursery suffering from what Seán O'Faolain (1955: 106) termed 'racial hemophilia,' was recently recast as a wealthy destination for immigrants. And, with dramatic increases in asylum applications, the Irish were apparently becoming white, again (cf. Ignatiev 1996). Indeed, some commentators argue that a generation of 'new Irish' will grow up as strangers in their own country, forever seen as an alien contaminant within the true blood of the nation-state.

The events of 2004 have also attracted significant scholarly attention, and it is clear that a certain consensus has emerged. In the main, discussions have centred on the role of the Irish state, conceptualized as a powerful discursive and institutional formation – an 'unfettered Leviathan,' to quote one commentator (Harrington 2005: 441).² There is also widespread agreement that the amendment must be understood as a statement on 'race'. The move in favour of *jus sanguinis* has been read as the successful dismantling of an open and stable form of citizenship in favour of legalized notions of blood descent, a thin disguise for 'new racism'.³ Female asylum seekers, according to Eithne Luibhéid, are specifically targeted because of the threat posed by their 'sex organs and reproductive capacities' (2004: 340). Thus, for these authors, the state, Nietzsche's 'coldest of all cold monsters' has returned and is now implicated in the government of biological life itself.

The important work of Ronit Lentin and Robbie McVeigh deals explicitly with the 2004 amendment through the lens of contemporary social theory. Jumping off from David Theo Goldberg's meditations on 'state racism,' they argue that we are witnessing the emergence of a biopolitical racial state. Biopolitics has become something of a leitmotif these days, especially following Giorgio Agamben's *Homo Sacer* and *State of Exception*. While biopolitics and biopower are notions that were originally developed in the seminal work

of Michel Foucault, it is the interpretations of recent interlocutors such as Agamben that inform much of this trend.⁴ However, the perspective that emerges is certainly a provocative one, as with Lentin's discussion of the 2004 referendum:

In the wake of the Citizenship Referendum there is no longer any doubt that the Republic of Ireland can be theorized as a racial state of exception. ... The Citizenship Referendum represented an act of political brutality disguised as upholding the 'common good'. ... In doing this, the Referendum created a bizarre new category of people who remain 'part of the Irish nation', yet have their citizenship removed. ... Ireland has thus created its own version of Agamben's *homo sacer* – people reduced to 'bare life', stripped of all legal and civil rights. (Lentin 2007: 400–443 *passim*)

In essence, there are several assumptions in scholarly discussions that deserve attention: (1) that a stable and open form of citizenship, *jus soli*, was amended to favour racialized principles of sanguinity; (2) that the state actively provoked racist sentiments and blood-nationalism and channelled them towards female asylum seekers; (3) that the state must therefore be accorded a central role in research; and, (4) that new racism, expressed as culture and partially disguised in legal instruments, is being exposed in this approach. Herein, we argue that assumptions (1) and (2) are far more problematic than they appear. The history of Irish citizenship must, we propose, be understood beyond the crude frame that a state-based approach provides; citizenship needs to be complicated and thought about alongside processes such as securitization.⁵ But what of those ostensibly targeted by the constitutional amendment? We survey the debates surrounding the 2004 referendum, showing how many important issues have been narrowly framed in public and scholarly discussions. The overall thrust of this article, however, is to argue that the state is not the most appropriate frame for the analysis of new forms of racism and that a broader approach is both necessary and possible (assumptions 3 and 4).

We are in broad agreement with Lentin and McVeigh's call for research on the relationship between 'race' and contemporary forms of biopower. However, here we argue that a closer reading of the original insights of Michel Foucault opens different research strategies and illuminates different readings of history. This is not merely a theoretical re-articulation. Foucault's position on the analytical valuation of the state is clear:

What if the state were nothing more than a way of governing? ... Then we would have to say that *the state is not that kind of cold monster in history that has continually grown and developed as a sort of threatening organism above civil society*. What we would have to show would be how ... a governmentalized society organized something both fragile and obsessive that is called the state. But the state is only an episode in government, and it is not government that is an instrument of the state. (Foucault 2007: 248 [our emphasis])

Complicating citizenship

Commentators have argued that the 2004 constitutional amendment may be read as a straightforward state-driven reaction to immigration (Harrington 2005). Others have called for attention to unpicking the nexuses between national identity, citizenship and the state. As an example of the latter approach, Fanning and Mutwarasibo argue that the referendum 'emerged from economic as well as cultural formulations of Irishness' and that a 'state-oriented approach is required' (2007: 440, 446).⁶ Here, however, we trace twentieth century articulations of Irish citizenship and emphasize both the domestic and international conditions for their possibility. Simply put, we suggest that Irish citizenship is far more complex and contested than it has so far been represented.

The first challenge is to understand citizenship as an emergent and context-specific legal code and as a set of practices. Citizenship is generally understood to denote the connection between the individual and the state composed of reciprocal rights and duties, which are generally confined to citizens. Here however, following Aihwa Ong (1999, 2003), we analyze contemporary citizenship as cultural processes of subjectification, involving self-making practices contingent on different power-laden and institutional settings, and as an always-emergent legal structure through which 'citizens' are made and remade. We argue that a necessary condition for any understanding of citizenship is to see it as more of a complex process than a straightforward status.

By 'complicating' citizenship we do not wish to simply look to the margins of dominant legal codes; rather, we argue that a processual approach is required for understanding both the emergent zones of graduated citizenship and sovereignty found in today's world (see Ong 2006, Agier 2008) and the legal reconfigurations (re)occurring in European and North American nation-states. Take for example the common legal pillars of citizenship, *jus soli*, the right of soil, and *jus sanguinis*, the right of blood, or variations thereof. *Jus soli*, which is rarely operated in an unmodified form, is an inherently territorial principle of citizenship, conferred by birth within a specified territory. It implies a civic form of identification with shared political and legal status, and it evokes a civic form of nationalism. *Jus sanguinis* citizenship, on the other hand, derives from birth to a citizen parent and is not constrained by territory, at least for the first generation in the case of foreign births. It implies a shared heritage and culture; it evokes the 'blood' nation. Thus, while there is no necessary connection between nationality and citizenship, it is often the case that laws (take the Irish case) make explicit connections between citizenship, nationality and belonging (see Neveu 2005: 199). Furthermore, while there are no necessary connections between 'race,' nationality and citizenship, it is often the case that laws, policies and public discourses make such connections – and it is the conditions under which

'race,' nationality and citizenship are brought together in Ireland that concerns us here.

To bring nations and nationalism into a discussion of citizenship is not to leave behind the smooth surface of legal codes and government for the rough ground of history, myth and sentiment. The last three decades of scholarship on nations and nationalism shows that while nations are thoroughly modern 'imagined communities' that successfully draw from history and pre-existing ethnicities, nations are also rooted in concrete institutional and governmental practices (see Anderson 1991: 163–185). Nations thus require a certain type of governmental and spatial activity in order to exist, and where the existence of a nation is most in question nationalism tends to emphasize the cultural production of roots – characterized by, to paraphrase Nikolai Berdyaev, aggressive parochialism in space. And, it is precisely these concrete dimensions of imagined communities that are important when considering how contemporary nations and states work to mutually constitute each other. The nation requires a mixture of governmental concreteness and mytho-history; the state requires a similar combination of the hard-to-grasp and the all too real. But beyond both one may analyze the conditions for the possibility of certain types of exercises of power, such as those with citizenship as their target.

A considerable body of scholarship focuses on typologies of 'citizenship regimes'. Such regimes are often assumed to arise from national 'philosophies' (see Brubaker 1998). For example, the civic republicanism that ostensibly undergirds the 'French model' of *jus soli*-based citizenship is often contrasted with German ethnic citizenship, understood as *jus sanguinis*-based. However, there is little empirical basis for such handy configurations and considerable potential for national clichés to be reproduced (cf. Koopmans *et al* 2005). In fact, for much of the nineteenth century France's nationality legislation was overtly *jus sanguinis* based, while over the past decade Germany has moved incrementally towards de-ethnicizing its nationality laws to accommodate multi-generational 'immigrant' populations.

If national philosophies fail to explain trends of convergence and divergence then what does? While there is a growing cognizance of how populations are imagined and governed – domestic, emigrant and immigrant – the emphasis on the nation-state has remained. For example, Stephen Castles and Alistair Davidson (2000) argue that the European nation-state remains the primary reference point for granting and defining citizenship. While this position is certainly more realistic than the view that globalization is sweeping nation-states away, herein we wish to expose the configurations of space, power and knowledge that run through and beyond the nation-state and manifest themselves in citizenship. In this regard, Ireland provides a very interesting case study.

Versions of Irish citizenship

Much may be said about Irish citizenship by first looking to the period after independence. The Irish Free State, *Saorstát na hÉireann*, was born of the 1922 Anglo-Irish Treaty. The Treaty allowed Northern Ireland to opt out of the *Saorstát*, which it did, and partition and Civil War soon followed.⁷ The post-Civil War situation was characterized by fragile nation building, however the 'constructive statesmanship' of the 1920s was not the only register in which nation building found a voice (see Maguire 1998: 109–120). Take for example the short-lived and controversial journal *To-morrow*. Its first issue included an erotic poem by WB Yeats featuring two male swans, a short story about interracial sex, and Lennox Robinson's 'The Madonna of Slieve Dun,' the story of a girl who finds out she is pregnant after a sexual assault and imagines she is the Madonna – Robinson's expectant protagonist falls due on Christmas day and is gradually believed by villagers until, that is, she gives birth to a girl. This striking and controversial journal released its first and last issues in a context in which identity politics was far more nebulous than subsequent historical treatments suggest (see Harrington 2005; cf. Graham 2001); in a nation without a nationality act, in which British subject status obtained, and in which 'citizenship' was the idiom of much debate and conflict.

If one briefly moves from the 'public sphere' of *To-morrow* to the Paris-based Irish Race Conference of 1922, citizenship appears at a very different scale. The conference aimed to forge a '... Greater Ireland, the *Magna Hibernia* across the seas' (*The Republic* 12 March 1921). This attempt to think in diasporic and racial terms collapsed under the weight of political maneuverings and failed to reconcile Irishness with so-called assimilation overseas.⁸ While the collapse of the conference signaled the temporary closing off a particular configuration of Irishness, the 1922 Constitution nonetheless reflects an emigrant consciousness. Article 3 refers to 'the jurisdiction of the Irish Free State'; Article 17 refers to both 'the common citizenship of Ireland' (the diasporic 'race') and allegiance to the British Crown. Thus, in the 1920s Irish citizenship was in practice local, in reality a British subject status and, in the imagination of some, the potential basis for a *Magna Hibernia*.

In the 1920s, 'orange skin' theory hypothesized that dominions could have graduated degrees of citizenship under the outer cover of British subject status.⁹ Nationality was no less complicated. It took until the *British Nationality Act, 1948* for the first formal recognition of Ireland's distinct nationality, wherein overseas Irish could simultaneously be Irish nationals, British subjects and Commonwealth citizens. This was overtaken by the declaration of the Republic of Ireland in late 1948, whereupon rapid legislative moves gave Irish citizens and British and colonial subjects with reciprocal rights in both territories.

By the time of the *Irish Nationality and Citizenship Act, 1956*, Irish citizenship had grown

to encompass every person born in Ireland and was therefore a unique case in the history of modern Europe: it was an irredentist effort to regulate citizenship by the extension of *jus soli* to another jurisdiction (see Ó Caoindealbháin 2006). Little wonder then that it provoked the ire of Northern Minister, Terence O'Neill, who refused the 'attempt by a small pastoral republic to create a vast empire of citizens' (quoted in Daly 2001: 403). Moreover, public representatives worried about the consequent legal 'loopholes'. One Senator commented on the dangerous possibility of children of parents of 'Nigerian or Korean citizenship' who happened to be in Ireland 'automatically acquiring Irish nationality' (*Seanad Éireann* 1956: 96–97). The 1956 Act remained in effect until the Good Friday Agreement in 1998, which through subsequent constitutional change removed the claim on Northern Ireland and enshrined citizenship as a birthright of every person born in the island. The result was the unsettling of citizenship, and the progressive dismantling of the Irish border. Brian Ó Caoindealbháin has argued that the Agreement has resulted in the 'unbundling' of citizenship in the face of 'post-modern' reconfigurations of the border and the state (2006: 14).

Thus, what is one to make of the assumption that in 2004 a stable and open form of Irish citizenship, *jus soli*, was amended to favour racialized principles of sanguinity? Even a brief survey of Irish citizenship in the twentieth century shows no straightforward relationship between stable analytical categories of 'citizenship' and 'the state,' indeed both 'citizenship' and 'the state' are better understood as complicated processes rather than finished artifacts.

Security and citizenship

Thus far, we have outlined the ways in which Irish citizenship may be seen as unfolding as a consequence of different processes at different scales, from the nation-state-based and post-colonial to the diasporic and racial. In order to draw attention to the workings of contemporary governmentality and biopolitics and their ramifications for citizenship, it is necessary to retell the story of the 2004 citizenship referendum in Ireland from perspective of migration and security. This narrative must include discussions of the Common Travel Area, British and Irish anti-immigration legislation, and the increasing role of EU policy connected with the reconfiguration of Europe as an area of 'freedom, security and justice'. And, again, here we are arguing that approaches to citizenship, migration policy and even (national) security must take greater account of forces that run through and beyond the nation-state.

While 'orange skin' denotes an early twentieth-century theory of British subject status it could equally refer to security policy. The *Saorstát's* immigration control systems were transposed from British policy. As Bernard Ryan (2001) has shown, the Common Travel Area (CTA) was composed of rules and agreement that

came without saying and largely went without saying. From the British perspective there was a need to ensure that labour migration continued while administrative overheads remained low; from the Irish perspective the needs of a 'transnational' community were foremost; and, from both perspectives, the simple fact was that the border was impossible to police.

Aside from the period of World War II, the CTA remained intact throughout the twentieth and early twenty-first centuries and encompassed not just travel but also migration management. From the 1920s onwards the British Government provided the *Saorstát* and later the Republic with copies of the UK's suspect-codex of *persona non grata* – the so-called 'Book of Aliens'. By mid-century a single index of entry and exit for 'aliens' operated. While the CTA was predicated by state sovereignty with respect to asylum, in practice immigration was a British phenomenon, and a deeply racialized one.

Scholars have justifiably read the debates surrounding the *British Commonwealth Immigrants Act, 1962* as reflective of a powerful, racialized worldview in which reactionary voices across the political spectrum imagined 'floods' of immigrants draining the vitality of Britain, whereas moderates confined themselves to simply being patronizing. Ireland was included in the Act in theory to counter claims that the legislation targeted non-whites. However, entry to the UK from Ireland was not covered, and British citizens could freely enter Ireland, unlike Commonwealth subjects after the *Irish Aliens (Amendment) Order, 1962*. Despite Irish government claims to the contrary, the changes followed a Home Office request to ensure against 'backdoor' migration—but Ireland went further than the UK's *Immigrants Act* by effectively excluding non-white holders of British passports (see Ryan 2001: 865).

With the exception of issues arising from the transposition of European directives and programme refugee resettlement, the next major changes to Irish migration laws accompanied the rapid increase in immigration from 1994 onwards. A steady stream of legislation flowed, such as the *Refugee Act, 1996* and the *Illegal Immigrants (Trafficking) Act, 2000*, both of which are illustrative of a steady move towards a 'tightening' of policy on asylum applications. In the period of the heaviest immigration to Ireland, Irish legislation was marked by efforts to harmonize with EU policy more than simply bearing the fingerprints of the state. And, while important differences will continue to exist between Member States, moving into the future the EU and not individual Member States will be the main driver of immigration and asylum policy.

The period from 1995 to 2004 saw just under half a million persons migrate to the Republic and, with a sharp decline in emigration; this resulted in a net immigration of 222,500 persons. In that same period, approximately seventy-five percent of immigrants were returned Irish citizens or migrants from EU Member States, especially the UK. Prior to 2004, all labour migrants who were not EU citizens required either a

Working Visa/Work Authorization, which was aimed at high skilled workers, or a Work Permit, aimed at non-European Economic Area (EEA) low skilled workers—a system which has since been extended and will continue to be reconfigured. From the late 1990s onwards, the numbers of applicants for Work Permits rose rapidly to 47,551 in 2003. In 2004, Ireland, along with Britain and Sweden, did not impose restrictions on labour movements from the new EU states but did restrict access to a full citizenship, and access to benefits and welfare payments. Work Permits for non-EEA low skilled workers were simultaneously tightened. Again in step with the UK, Ireland did not open to labour migration from Romania and Bulgaria in 2007.

The available data on asylum from the same period paints an equally dramatic picture: in 1994 the number of applications to Ireland for asylum stood at 362; while in 2004 there were 4,800 applications, but this was a dramatic decrease from the high-water mark of 2000–2003 when there were approximately 1,000 applications per month. Asylum applications have fallen worldwide as a consequence of several factors, including the ‘securitization of migration’ (UN 2006). One direct outcome of the ‘securitization of migration’ (*ibid.*) is that in most EU Member States the overwhelming majority of applications for asylum are rejected, even on appeal, and Ireland is no exception.

Unlike many EU countries, however, Ireland has no time restrictions on the length of the asylum determination phase, and individual asylum seekers may be in the system for several years. Moreover, asylum seekers in Ireland do not have the right to enter into paid employment or into most third-level education programmes. In March 2000 a system of dispersed direct provision accommodation was initiated in step, yet again, with policy shifts in the UK in order to prevent Ireland being perceived to be a handy ‘backdoor’ (the system also reacted to an acute housing crisis in ‘Celtic Tiger’ Dublin).¹⁰ The end result of domestic and international pressures is the network of ‘hidden villages,’ dotted about the country, a situation rendered all the more acute because asylum seekers are regarded as being outside of integration policy until they have been granted refugee status or other subsidiary protection.

To date the dominant scholarly position has been that, following the increases in migration to Ireland over the past decades, latent racist undercurrents in Irish nationalism and in the Irish historical experience have been exploited by the state. What, however, if we take cognizance of other forces, such as the securitization of migration, that move through and beyond individual nation-states? Rather than seeing ‘race’ and racism as the hidden motivation behind transformations of Irish legal codes, is it possible to argue that contemporary processes of racialization are not just disinterred relics of the past, but, also, a part of new configurations of biopolitics and security? Here, at the very least, we have argued that by surveying the relationship between security and migration in Ireland one is forced to question the assumption that the Irish state is the sole

author of policy changes.

Rethinking the citizenship referendum

One of the most provocative and frequently cited discussions of contemporary forms of racism in Ireland is Eithne Luibhéid’s essay, ‘Childbearing against the State?’ wherein she argues that a state-driven (re) nationalization has targeted and excluded asylum seekers in Ireland.¹¹ Her elegant description of the problematization of citizenship stresses both systemic exclusion and the biopolitics of reproduction:

With the growth of the Direct Provision system in Ireland, there remained just one ‘get out of jail’ card that could be played. This was to give birth to a baby. By birthing a baby, one could leave Direct Provision and instead move into private rented accommodation and receive regular welfare ... [and] become a legal resident of Ireland based on parentage of the child. It was as if a reversal happened: the child gave birth to the parents ... (2004: 338)¹²

It is certainly the case, as Luibhéid notes, that in 2004 many issues related to asylum in Ireland turned on the image of the childbearing asylum seeker. So much so, in fact, that in June 2004 an EU-wide advertising campaign to encourage voting in the European elections was banned in the UK and Ireland. The clever advertisement featured a woman breastfeeding under the caption, ‘You’ve been voting since you were born.’ It was banned in the UK because of its ‘sexual’ imagery and in Ireland because of fears that it could be construed as referring to immigration. While such controversies do serve to illustrate the bio-politicization of motherhood, how much has been explained by the hypothesis that ‘asylum seeker women [*were*] reduced to their childbearing bodies, their vaginas?’ (Luibhéid 2004: 343) The underlying equation set out by Luibhéid appears, at first glance, to balance: by birthing and Irish-born child asylum seeking women could ‘get out of jail’ and gain residency rights; by closing this ‘loophole’ the state could protect its sovereignty and gain national symbolic currency by playing to racist sentiments rooted in sanguinity. However, this equation provides a restricted view that takes the world as it finds it: nationalism and the state are always already there and are uncritically assumed to provide a reservoir of exclusionary sentiment and the driving force for new racism. And what of critical social theory? Its role appears diminished to the point of being unable to offer more than symbolically ‘unmasking’ migration policy as state racism.

If one revisits the media debates and public statements that surrounded the 2004 referendum one undoubtedly sees an attempt on the part of certain government spokespersons to vilify asylum seeking women as exploiters of Irish citizenship law – it would be disingenuous to describe this as anything other than deliberate racialization (for numerous examples see Deveraux, Haynes and Breen 2006; Brandi 2007;

Lentin and McVeigh 2006a, 2006b). However, as Bryan Fanning has recently pointed out, the 'state' cannot be attributed sole authorship, and state-driven racism cannot account for the astonishing 79.2% of voters who supported the constitutional amendment. Fanning calls for attention to 'culture' (though he generally discusses state policy), but in a way that analytically separates a triad of forces: 'state,' 'culture' and 'policy' (Fanning 2009: 129–137 *passim*). Here our argument is that by re-engaging with Foucault's work on biopolitics and governmentality it becomes possible to see such forces as in fact sharing a common grammar.

Moreover, the media and public statements during the referendum do not simply contain a hysterical reaction to the fecundity of asylum seeking women.¹³ Take for example an illustrative statement by Michael McDowell, former Minister for Justice, Equality and Law Reform, published in the *Irish Times* on 24 April 2004 and titled, 'We Must be Able to Manage Migration in a Sensible Fashion'. The statement suggests that late-term pregnant women were deliberately travelling – 'legally and illegally' – to Ireland to give birth in order to secure the entitlement of Irish citizenship. The phrase 'legally and illegally' points to the fact that asylum-seeking women were not the only concern; rather, Irish migration policy aimed to manage the potential citizenship entitlements of a substantial population of non-EEA immigrant work permit holders (see also Mancini and Finlay 2008: 582). This arose from the fact that by 2004 Ireland was in the position of being the only EU Member State to recognize unrestricted *jus soli*, which following the Good Friday Agreement meant that residence rights in the UK as well as other Member States was, potentially at least, up for grabs. One does not need to cite every public statement that openly points to this issue, but it was hardly hidden from view (see, for an illustrative sample, McDowell 2004: 16; Mansergh 2004: 16; Lenihan 2004: 18; O'Halloran 2004: 6).¹⁴ Moreover, the need to close off the so-called 'loophole' of *jus soli* was flagged in a International Organization for Migration report on migration legislation and practice in 2002 and was the substance of two of the most important legal cases for Irish migration policy, the 'Chen case' and the 'Lobe case', both of which pointed to the diverse claims to residency based on Irish-born children arising from non-EEA nationals and the fact that more people achieved residency in this way that did so via the asylum determinations process.¹⁵ Speaking of the Chen case to *Seanad Éireann* in the run up to the Referendum then Minister for Justice, Equality and Law Reform, Michael McDowell, TD, characteristically argued that the nub of the issue was the perceived advantages to be gained from birthing a child in Ireland:

Those advantages do not simply flow from an immigration-free status in the State. They flow from an immigration-free status for Irish citizens in the United Kingdom because of the common travel area. In addition, they flow from the extensive right of Irish

citizens to move freely throughout the European Union and the full extent of the implications are illustrated by the Chen case ... (*Seanad Éireann* 2004: 1612–1614 *passim*)

It is important to take statements such as this seriously. While the focus on 'race' and the Irish state in contemporary scholarship does provide insights into the racialisation of asylum seekers it has done so at the expense of in-depth analysis of the conditions which subsist behind international migration management strategies, the lock-step policies of the UK and Ireland, and the growing importance of EU-wide systems and processes.

It is also possible to add to discussions of the 2004 citizenship referendum by briefly considering an example of forthcoming legislative moves. At the time of writing the *Immigration, Residence and Protection Bill, 2008* remains to be transposed into law, and has been subject to a great many amendments. Nonetheless, the Bill provides a clear window onto governmental thinking on migration management. In essence, it provides for the restatement, modification and shoring up of the government's capacity to regulate the presence, movement and deportation of foreign nationals (again, not just asylum seekers). One of the impetuses for the legislation is the forthcoming (though stalled) end of the Common Travel Area between Britain and Ireland, originally scheduled for 2010. The UK government is moving in the direction of e-borders, as set out in the *UK Border, Citizenship and Immigration Bill, 2009*, and will be dispensing with older travel agreements that rely on the security of national identity in favour of the securitization of identity itself. Biometric technologies are the central pillar of the UK's approach to migration management, from proposals to reduce friction for high-end travellers to increasing individualized security for persons perceived to be a risk. According to the position paper *Controlling our Borders: Making Migration work for Britain*, the border of the future will be 'smart,' spread out through advanced passenger information systems, and, according to David Lyon (2009), driven by social sorting through categorical suspicion.

The Irish *Immigration, Residence and Protection Bill* and British migration management policy, not for the first time, appear to be isomorphic. The proposed Irish legislation empowers the Minister for Justice to prescribe the form in which visa applications are made and biometric data harvested. The Bill makes a clear distinction between authorizations for the retention, storage and/or comparison of bio-data for Irish citizens and similar processes for foreign nationals. In the case of asylum seekers, biometric data will be entered into the Eurodac database and shared with agencies throughout the EU and with other jurisdictions. What will this world of securitized and spread out borders look like, and what are the human consequences? Susan Bibler Coutin's important work on 'illegal' migration to the USA shows how clandestine routes are being followed with tragic consequences. Because their presence

is prohibited, according to Coutin, 'unauthorized migrants do not fully arrive even when they reach their destinations' (2005: 165). Because they use the body as a passport to spaces and privileges biometrics hold out not just the promise of enhanced security, but also the possibility of letting certain things happen, of allowing for the mobility necessary for participation in the global economy while managing that same mobility. In his 1978 lectures in the College de France, recently published as *Security, Territory, Population*, Foucault argues that the challenge for security is to allow

... circulations to take place [*but*] controlling them, sifting the good from the bad, ensuring that things are always in movement, constantly moving around, continually going from one point to another, but in such a way that the inherent dangers of this circulation are cancelled out. No longer the safety (*Sûreté*) of the Prince and his territory, but the security (*sécurité*) of the population and, consequently, of those who govern it. (2007: 65)

Foucault's prescient work on security, which still resonates so strongly, moved from considerations of the state to an attempt to map out a grid of spatial, power and knowledge-based relations of which the state is an outcome. The challenge of researching governmentality, he argues, is to understand the political mentalities implicated, such as those that construct the immigrant or asylum seeker and the truth of their being; to understand problematizations such as citizenship or integration, to understand actual interventions such as the 2004 amendment, and to understand the technologies deployed – those Jonathan Xavier Inda (2006) has termed anti-citizen technologies; those Didier Bigo and Elspeth Guild consider, following Foucault, as central to the *Ban-opticon* (2002). Our argument herein has been that, instead of investigations along these lines, contemporary scholarship on migration in Ireland is transfixed by the state – why, one might ask? Why the problematic assumption that the state must be accorded a central role in research?

Conclusions: Notes on the difficulty of statism

Back in 1977, the sociologist Philip Abrams, in his famous 'Notes on the Difficulty of Studying the State,' remarked: 'The state is not the reality which stands behind the mask of political practice. It is itself the mask which prevents our seeing political practice as it is' (1988: 54). Indeed, such a problematization of 'the state' may be detected in the foundational scholarship of political science, especially so in Hobbes. A similar problematization may also be located in modern anthropology with Radcliffe-Brown's exasperated demand that we abandon discussions of the state in favour of the more analytically useful 'government' (1940: xxii). This makes the less nuanced vision of political power in 'race' and state theories all the more curious, especially so considering that it is accompanied

by a focus on biopolitics. In this concluding section we suggest that the 'state' provides a simple mask that prevents a full engagement with biopolitics today.

Foucault's notion of biopolitics is something of an unfinished project. In essence, he uses it to draw attention to the anatomo-politics of the human body, on the one side, and the biopolitics of the population, on the other. Discourses that deploy the vital-ness of the human thus become discursively important, such as 'race' (see Foucault 2003: 239-265). But Foucault was careful to think in terms of how governmentality worked on the individual and on the conduct of conduct in ways that did not involve the state – take for example that which exists alongside the nation-state: the social, where a whole series of sub- and non-state institutions and discourses, from insurance to welfare and from medicine to notions of 'race' operate. A good example of the need to broaden analysis beyond the state is offered by the challenge of dealing with the contemporary use of biometric technologies to regulate migration (as above). Biometric security emerged in the nineteenth century in places as far away from each other as Argentina, India and France, linked with eugenics and generally operating in civil applications (Maguire 2009). In thinking about that example, the question becomes less about new forms of state surveillance of others and more about how fairly old technology couples the anatomo-politics of the human body (your prints), on the one side, and the biopolitics of the population (who's suspicious), on the other in ways that require and instantiate 'race' discursively.

Foucault also discusses the emergence of the biopolitics of population in ways that would have been 'absolutely foreign' (2007: 42) in earlier centuries, and suggests that modern biopolitics is accompanied by a new way of thinking about security. Today as nation-states around the world are attempting to manage the tension between promoting the mobility necessary for participation in the global economy while, at the same time, controlling that same mobility, the question revolves less around the power of the state and more around the ways in which biopolitics is connected to new articulations of 'state' power, racialization and citizenship. Such articulations often depend upon the figuration of motherhood to determine the legitimation of 'state' power and identity as well as threats to the same. Ireland, like many other nation-states, has enlisted matriarchal images to support its own sense of imagined community, and now enlists proximate and overlapping images to illustrate how that community may be unimagined, or to dramatize the unimaginable afflicting the community. The notion that motherhood can offer positive and negative political messages at one and the same time is no paradox or coincidence. Rather it offers something approximating the Freudian concept of *unheimlich* applied to the level of statist legitimation: the greatest supposed threat to a nation's identity and security must be immanent with that most profound physical symbol of unconditional love and intimacy. Biometric technologies that seek to facilitate the movement of bodies through states in ways that

streamline economic and political interests will not solve the 'problem' of how native and foreign bodies remain or become knowable, but rather shift its terms and terrain. As Georg Simmel has argued, the category of 'stranger' exists, not to be resolved or erased, but rather to be 'managed' in ways that continually reinforces and reinvents a network of institutional categories.

What, then, of the assumption that by according a central role to the state in research on migration in Ireland new racism, especially directed towards asylum-seeking mothers is being exposed? In this article we have not denied that overt racism was directed towards asylum-seeking mothers, but we do argue that social-scientific research that pits 'the state' against particular and vulnerable mother-victims erases too much and highlights too little. If anything, the state is a mother that is constantly giving birth to itself; a mother whose role and status shifts according to the needs not of her children but the needs of forces that deploy 'mother-child' dyads with powerful political charges. The ur-text of Irish statehood, the 1916 Independence Proclamation famously describes the aim of 'cherishing all the children of the nation equally'. Yet sustaining the unstable fiction of 'the nation' has proved largely a matter of unequal cherishing.

Notes

¹ The 2004 Amendment was accompanied by the *Irish Nationality and Citizenship Act, 2004*, which restricted access to citizenship to those children whose parents had resided legally in the state for three of the four years previous to the birth. For reviews of the enormous media coverage of the referendum and amendment see Deveraux, Haynes and Breen 2006; Conway 2006; Brandi 2007).

² An illustrative sample of the literature ranges from political geography (e.g. MacÉinrí 2007; Crowley, Gilmartin and Kitchin 2006), and from political science and political sociology (e.g. Mancini and Finlay 2008; Fanning and Mutwarasibo 2007; Garner 2007) to legal scholarship (e.g. Bacik et al 2004; IOM 2006). However, there has also been considerable comment from anthropology (see Lele 2008; Shandy 2008 and forthcoming; Tormey 2007), applied social studies (e.g. Christie 2006) and feminist thought (e.g. Luibhéid 2004). However, the most widely cited contributions are from Lentin and McVeigh (e.g. Lentin and McVeigh 2006a, 2006b; Lentin 2007).

³ Scholars tracking 'new racism' have identified the following notable features: (1) 'new racism' seems less directed by or towards specific groups than in the past; (2) it tends to be expressed through notions of cultural and social incompatibility; (3) perceived ability to assimilate and to perform in the economy – associated with language use – is as much a marker as skin colour; finally (4) institutional avoidance, ineptitude and poor policy.

⁴ Biopolitics may be taken to denote discourses about the vital nature of humans, their 'truth' and subjectivity;

strategies and tactics for actual interventions on every level, from the individual to that of the population, the health, welfare or security of which might be threatened or curtailed and thus must be defended.

⁵ Herein 'securitization' refers to the trend towards on the one hand, fortifying borders against poor, 'illegal' immigrants while, on the other hand, making use of security technologies to simultaneously speed up the flows of 'high-value' migrants. This trend is documented in the 2006 United Nations report on *The State of the World's Refugees*. However, we also take 'securitization' to be a useful term that denotes exercises of power that are neither recent nor confined to frontiers. Michel Foucault (2007), Didier Bigo and Elspeth Guild (2002), and Mark Neocleous (2008) have all argued for security to be considered as a discursive formation that links together a whole variety of social domains and is located at a variety of scales.

⁶ In arguing that a 'state-oriented' approach is required, Fanning and Mutwarasibo are following a line of thinking put forward earlier by Patrick Weil. In Weil's analysis, individual states' adaptation of immigration policies arising from, *inter alia*, UN Conventions, post-colonial restrictions/obligations, or EU harmonization cannot be understood without knowledge of individual states' priorities. While this argument has the virtue of refuting the fetishization of what Fredrick Jameson termed 'NATO high culture,' it simply fetishizes the state in instead.

⁷ The *Saorstát Éireann* Constitution Act was passed on 5 December 1922 and took effect from the 6 December onwards. Northern Ireland opted out of the *Saorstát* on 7 December. However, the so-called 'twenty-four-hour gap' meant that every ordinarily resident person in Northern Ireland on 6 December 1922 was automatically an Irish citizen.

⁸ Indeed, Eamonn de Valera had to reassure *Dáil Éireann* that no attempt would be made 'to dictate to those of the race who are citizens of other lands' (*Irish Independent* 28 January 1922).

⁹ Irish independence was modelled on the Canadian 'example' of graduated (local) citizenship. However, Canada was not the only imperial laboratory: the *British Nationality Act, 1914* acknowledged the rights of dominions to impose 'local citizenship,' which manifested itself in restrictions on immigration and political participation of colonial subjects. This, in effect, meant restrictions on migrants from colonies such as India in dominions such as South Africa.

¹⁰ Indeed, by the late 1990s this crisis was considered so acute that a policy of housing asylum seekers in floating hotels—so-called 'flotels'—in Dublin Bay was given serious consideration.

¹¹ Eithne Luibhéid's essay 'Childbearing against the State' is frequently cited in discussions of the 2004 referendum (see for example Lentin 2006, 2007; Garner 2007, Tormey 2007). Her work follows an important strand of feminist scholarship that argues that women occupy distinct roles in ethnic and national communities as the reproducers of the collectives' members, as reproducers of boundaries through procreative choices

and as reproducers of culture through childrearing (see Anthias and Yuval-Davis 1989). Such work takes the position that 'there are no necessary 'natural' social effects of sexual differences or biological reproduction (see Yuval-Davis 2000: 9); however, rather than see gender and sexuality as free-floating and socially constructed they call attention to power structures that 'play a central role' in providing the conditions for the possibility of particular configurations of sex, gender and community – structures like the nation and the state. This feminist perspective is book-ended by problematic issues. Firstly, the proposition that women are reproducers of the collective's members is based on a narrow-gauge biological reading of culturally mediated phenomena (take for example the ethnographic discussions of reproduction in the Amazon by Mader (1999)). Secondly, the unusual *a priori* presence of the state in, for example, Yuval-Davis's discussion of power structures is justified through a zero sum game in which one either focuses on the state or 'dispenses' with it (a position crudely ascribed to Foucault), with no alternative perspective presented.

¹² It is worth noting that data suggests that women in direct provision were presenting in maternity hospitals cognizant of the legal ramifications of giving birth in Ireland, as were much smaller numbers who migrated while pregnant (see Shandy 2008: 811-813). However, the available data indicates that the numbers were much lower than government statements suggested. Moreover, one must be mindful of the long periods in direct provision, and higher fertility rates in prior countries of residency: much of what was imagined to be 'citizenship tourism' instead evidenced women presenting at Dublin maternity hospitals having travelled from dispersed direct provision centres. Indeed, one must also ask serious questions about policies that present few opportunities for people in the majority world to migrate to wealthy countries, except through claiming refugee status, and then the same countries that canalize migration engage in efforts to 'unmask' claims for asylum. Finally, in a related way, there is the important issue of representation: why, we might ask, is discovering active agency so jarring to representations of the 'genuine' refugee?

¹³ It is also worth pointing out that a semiotic reading of public statements on the citizenship referendum does not reveal fears over African fecundity or sexuality; rather, the overwhelming impression one gets from public statements that vilify asylum seekers is that those statements are castigating African women for strategic motherhood – a racialized accusation that surely cuts deep, because it imagines an Other that values the lives of children only to the extent of their instrumental value.

¹⁴ Speaking in the run-up to the Referendum, Taoiseach Bertie Ahern claimed that it didn't matter if the issue was 'a few, a few hundred or a few thousand', and that he '... did not visualize in 1998 that Russians, Moldovans and Ukrainians would be coming to this country for two or three weeks simply for the benefit of Irish citizenship' (See O'Halloran 2004: 6; see also

Dáil Éireann 2004: 1482 passim; for a rebuttal see also Rafferty 2004: 16).

¹⁵ In the first instance, *ECJ, case C-200/02, Chen & or. v. United Kingdom* pitted Man Lavette Chen and Kunqian Catherine Zhu against the Secretary of State for the UK Home Department. Chen, a married overseas Chinese national, had been refused long-term residence in the UK. She became pregnant with her second child and could not return to China because of the one child rule. On legal advice, she gave birth in Belfast and thereby (following the ECJ overturning the British Supreme Court's decision to deport her) gaining UK residence rights. (All) Ireland's citizenship laws were used, it was argued, to gain access to the UK and to the EU. In the latter case, in January 2003, a majority of the Supreme Court ruled, in *Lobe v. Minister for Justice* that being the parent of an Irish-born child was no longer entitled automatic residency. Like Man Lavette Chen, David Lobe, a Czech Roma, did not conform to the image of the female African asylum seeker so thoroughly captured in media and public discourse.

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