1. **Irregular migration and migration control policies**

*Anna Triandafyllidou*

1. **COMPLEX MIGRATION AS A REALITY AND AS A POLICY CATEGORY**

Migration and particularly irregular migration and “fake” or “failed” asylum seeking emerge as policy concerns in Europe and North America in the late 20th and early 21st centuries. We also witness during this period a certain conflation – in reality and in policy – of migration and asylum-seeking flows. Indeed, the root causes of both irregular migration and asylum seeking lie in the intersections between people’s search for better work and life prospects, the lack of security at their places of origin, labour market demand and supply dynamics at destination countries, the absence of viable refugee pathways and, of course, highly restrictive immigration controls. Imposing increasing restrictions to legal migration or asylum seeking in fact leads to a vicious circle: it generates the incidence of irregular migration, increasing the risks and costs undertaken by migrants and their dependence on smuggling networks – which turn to more sophisticated methods to avoid controls – and providing reasons for even more restrictions.

The concern to clearly distinguish between asylum seekers and economic migrants instead of acknowledging the mixed motivations that characterise migration flows today is primarily associated with the policy agendas of destination countries, mostly in Europe, North America and the Asia Pacific. These reflect concerns over irregular migration and unfounded asylum claims, border controls and the return of refused asylum seekers. This perspective of a water-tight distinction between legal and irregular migration, “true” and “fake” asylum seekers or refugees is, however, detached from reality, where not only are pathways mixed but motivations are complex and difficult to disentangle.

Rather than an exception or social pathology, irregular migration should be understood as a structural feature of post-industrial societies and global inequality dynamics. The legal categories defining migrants in destination countries are rather complex, fluid and often overlapping. Irregularity is not an “end-state”, nor an “on–off” condition (Bommes and Sciortino 2011: 219). It rather entails an entire spectrum of categories involving various combinations of residence status and work or study arrangements and their compliance to national laws (Triandafyllidou and Bartolini 2020). The dynamic character of legal status may refer to the reversal of irregularity; e.g., as a result of extensive regularisation schemes or amnesties – it is best exemplified by what has been termed “befallen illegality” to describe situations such as those observed in Southern Europe, whereby migrants who have managed to sort out their status may shift back to irregularity when they face difficulties in renewing their permits; e.g., due to an inability to prove formal employment (Triandafyllidou 2010: 8). The fluidity of legal status thus depends not simply on individual circumstances or strategies, nor solely on
Irregular migration and migration control policies

conditions of entry, but crucially on changes in immigration policy and employment-related developments.

Irregular migration policies, though, focus overwhelmingly on the unauthorised character of the movement, seeking to assess whether and how control measures can stop or indeed limit irregular entry or stay (see, for instance, EMN 2012), largely neglecting the human reality behind the movement. By contrast, recent scholarly literature has been increasingly exploring the tensions between aspirations and capacity to move, focusing particularly on migrants that defy border controls and policy restrictions (Bal 2014, Belloni 2016, Carling and Schewel 2017, Koikkalainen and Kyle 2016, Nakache et al. 2015, Triandafyllidou 2019). There is also an increasing interest in the role of migration infrastructure (Xiang and Lindquist 2014), notably of different types of actors that may support or obstruct mobility. These are actors that provide services to the migrants such as employment agencies, lawyers, migration brokers, transportation agencies or smugglers; actors that seek to limit movement, such as police and border guards, or visa and asylum officers; and also civil society actors that may offer assistance and support during the journey or at destination.

The study of irregular migration and the related control policies needs to start with appreciating the complexity of the phenomena on the ground, which is usually obscured in policy and media discourses. In addition, from a research perspective it is important to distinguish between irregular migration as a policy category, as a subject of governance, and the lived reality of migration (and asylum seeking) – as a category of practice – in which, actually, for the people involved their migration project is legitimate and necessary even when it is “irregular” or “unauthorised” (Triandafyllidou 2017).

Having thus alerted us to the need of approaching this subject matter with due appreciation of its nuances and complexity, the following section turns to discussing definitions of irregular entry, irregular stay and irregular work, pointing to their complex character and to the nuances and ambivalence that they may entail. Section 3 turns to proposing an analytical framework for making sense of migration control policies and how states seek to regulate movement. The chapter concludes with reflections on how we could move away from fixed either/or categorisations or categories of irregularity and think more in terms of degrees and grey zones of irregularity.

2. A DYNAMIC AND MULTIFACETED ACCOUNT OF IRREGULAR MIGRATION

Changes in immigration control policies over the past twenty years have made them more selective, targeting specific groups such as irregular low or highly skilled workers, those engaging in marriages of convenience or “bogus” asylum seekers (see also de Haas et al. 2016). At the same time, the demand for cheap (irregular) labour in migrant-receiving countries, coupled with the aging populations at destination and booming young demographics at countries of origin, has created a powerful pull/push mechanism that defies border controls, visa restrictions and internal control measures.1

Migration control policies do not simply seek to restrict unauthorised flows; they actually produce illegal residence status and irregular work (De Genova 2004, Vickstrom 2014) to the extent that they reduce legal channels for labour migration, raise the requirements to be fulfilled for family reunification or family formation, and make regularisation of status difficult
to reach. One might argue that this is precisely the objective: to make the lives of irregular migrants impossible and cut them off from both jobs and welfare so that they leave or are discouraged from coming. However, as we know, migration is a phenomenon that can be managed yet not fully regulated. It is not a tap that can be opened and closed.

Irregularity is not entirely of the migrant’s making: it may have to do with complex administrative requirements or with labour market dynamics that privilege irregular stay and irregular work. Researchers have coined the term “befallen irregularity” (González Enríquez 2014, Vickstrom 2014) to specifically characterise the cases in which migrants in Southern Europe fell to irregular status because of complex bureaucratic rules around stay or work requirements that are impossible to fulfil. The terms “befallen irregularity” or “semi- legality” (Kubal 2013) are also used to emphasise the fact that migrants may alternate periods of regular stay and work with periods of irregular stay and irregular work and may live in conditions of partial regular status – e.g., with the right to stay although not to work – or participate in a regularisation programme yet eventually fail to fulfil all the conditions and obtain a durable regular status. Additionally, research has shown that irregularity is functional to labour market conditions in specific sectors such as construction, domestic work, agriculture and the food industry, as irregular migrant workers provide a cheap and plentiful workforce (Cheliotis 2017, Jordan and Düvell 2002, Van der Leun and Kloosterman 2006). In other words, by creating conditions of regular stay and work that are impossible to meet, states indirectly support the interests of unscrupulous employers and create ethnic segmentation and hierarchies in the labour market that are functional to the national economy.

Irregular migrants are often not completely deprived of formal papers that testify to their presence in a given country. They may be documented but still irregularly staying. Recent studies (Chauvin and Garcés-Mascaréñas 2014, 2020; Delvino 2020, Vasta 2008) have shown that irregular migrants may possess legal documents such as social security numbers, work contracts, certificates of enrolment for their children in school or local identity cards issued by municipalities while still not having a regular stay permit. Such documents testify to the de facto inclusion of the migrant in the labour market and social life, and are important in illustrating the dynamism and complexity of the irregular migration phenomenon as well as the fragmentation of its governance. A typical example of such fragmentation comes from Spain, where municipalities require all migrants to become empadronados – that is, to register with the local registry (padrón) – even if they do not have regular permits of residence, which are issued by the national administration.

2.1 Definitions of Irregularity

Although the concept of irregular migration is often treated as self-evident by media and political discourses, it deserves some careful reflection to avoid ambiguities and inconsistencies (Triandafyllidou 2010). A number of different terms and expressions are used for persons who enter a country illegally, overstay their terms of regular residence, live in a country without a residence permit or break immigration rules in a way that makes them liable for expulsion. At the academic level but also in the media and public debate, terms like “irregular”, “undeocumented” or “unauthorised” have been preferred to the more discriminatory “clandestine” or “illegal” immigrants. Indeed, even though no human being is illegal (Ambrosini 2013), specific practices and behaviours in breach of the law can be referred as “not legal” (for example, illegal border crossing).
For a complete and dynamic picture (Kovacheva and Vogel 2009), the distinction is made between irregular residents – foreigners without any legal residence status in the country and those who can be subject, if detected, to an order to leave or to an expulsion order (stocks) – and irregular entrants – those who cross an international border without the required valid documents (flows). Among those without a legal residence status we may include people with forged documents (hence documented but not legal, properly speaking) and people with precarious status such as Duldung (toleration) in Germany, people who had legal status for a period but then lost it because they lost their job and could not renew their stay permit for work purposes or people who got a divorce and lost their migration status because it was dependent on their ex-spouse. This list of examples is indicative of the variety and complexity of real-life situations that can lie behind the general label “irregular migrant”.

2.2 Flows of Irregular Migrants

Inflows and outflows of irregular migrants continuously contribute to the stock of irregular residents. Such flows may be demographic (births and deaths), physical (actual entries or departures) or legal, notably change of status from regular to irregular or vice versa. Geographical movements in and out the country may take place through unguarded border crossings or undetected unlawful entries at guarded border crossings. Unlawful entries may even take place under the control of the state in the sense that the irregular migrant may enter, be apprehended, and receive a return decision asking her or him to leave the country (usually within 30 days) but still stay in that destination country. For instance, the 2015–16 refugee emergency in Europe involved a large number of people entering countries like Austria, Germany, Italy or Sweden. Many applied for asylum and received it but others were rejected, often with summary procedures because they came from countries considered “safe”. Thus we may want to distinguish also between geographical entry and bureaucratic “entry” into legal or undocumented status.

Status-related flows concern people who fall into irregularity after a period of regular residence. The largest of such inflows is that of visa over-stayers: persons who enter with a tourist or other temporary visa and overstay the allowed period, possibly engaging in paid employment while their visa allows only for tourism/leisure activities. Status-related flows also include asylum seekers whose application has been definitively rejected or people whose permanent or temporary permit has been withdrawn as a consequence of a criminal offence. On the other hand, there are status-related outflows from irregular residence, ranging from regularisation through marriage to collective amnesty programmes (Baldwin-Edwards and Kraler 2009), which are now, however, less frequent and smaller in size compared with the 1990s and early 2000s (see also Ambrosini in this volume).

Immigrants may repeatedly shift from regular to irregular status and vice versa (Schuster 2005) as, for instance, Vickstrom (2014) has shown for Senegalese migrants in France, Italy and Spain. Migration policy reforms may create new status options or make established ones available for new groups of people. While widening legal options would represent a functional equivalent to regularisation for them, migration regimes at major destination countries in Europe and North America are becoming more restrictive both at their geographical borders and within the country. The pandemic has actually had contrasted implications here as it partly opened the “internal” border by providing extensions of stay and health coverage to everyone present in the territory in many countries, including, for instance, Portugal, Italy, or Canada,
but at the same time closed the border to prospective asylum seekers or confined them to relevant reception camps, as happened in Greece.

3. THE CLOSE LINKS BETWEEN IRREGULAR STAY AND IRREGULAR WORK

Irregular migration is to a large extent driven by labour market dynamics. This is an important issue that is often neglected in relevant political and policy discourses. For instance, the availability of jobs in agriculture or construction or the demand for live-in care workers can act as a pole of attraction for migrant workers who may decide to enter a country unlawfully or overstay their visa and violate its conditions because of the opportunities for work available to them. The connection between prospective employer and employee takes place through relevant networks (for instance, through referral from a migrant who already works for the same employer and recommends her or his friend, cousin or co-villager if there is a vacancy) while these same networks may mitigate the costs of (irregular) migration by providing accommodation and support to the undocumented newcomer. Such a plentiful and disposable labour force can be handy for unscrupulous employers and/or seasonal and temporary jobs as they incur no additional costs of firing or of paying for welfare or unemployment benefits.

Obtaining and keeping/renewing one’s legal status both in the European Union (EU) and in North America, when one is a temporary migrant, more often than not depends on employment. In theory, immigrant workers should be able to have jobs with proper contracts, respecting labour law and including welfare insurance. However, in practice it is often the case that they are employed in irregular ways; i.e., without being declared or having a proper contract, or with a contract that specifies conditions of work and salary that are not in reality respected. This is because migrants are often concentrated in labour market sectors where there is a high incidence of informal work, such as construction for men, or cleaning and caring work for women, or catering, tourism and agriculture for both men and women. In addition, migrants, particularly those recently arrived, have a lower bargaining power compared to settled migrants or natives as they may have only partial information about their rights, they may not speak the language of the host country yet and they may not know where to address themselves if they suffer an injustice. On top of this, they may be in absolute need for a job and an income even if this does not come with all the required conditions – as they may have no other source for income or any social support networks to rely on.

In addition to these socio-economic dynamics, attracting unauthorised migrant workers to a country to take up informal work or pushing legally staying third-country nationals to accept irregular employment, it would be important to consider how actual socio-economic exclusion interacts with symbolic inclusion/exclusion. As Ambrosini (2016) argues, we could conceptualise two levels of authorisation: one is that of legal authorisation regarding irregular migration status and the other is one of symbolic authorisation in the sense of recognition that the migrant is filling a job vacancy and performing a job that is socially valuable. Ambrosini points out that this distinction is also gendered, as usually the female care workers and cleaners are those represented positively and recognised as valuable, while narratives of “clandestine” migrant workers almost always refer to male migrants. Ambrosini points out that asylum seekers too, while temporarily authorised in the receiving country’s territory while their application is...
Irregular migration and migration control policies

Indeed, we should better speak of a continuum between regularity and irregularity, ranging from situations where one is a regular foreign resident allowed to work and with a formal employment contract to cases in which one is an irregular foreign resident with an undeclared job. Moreover, one’s status is not fixed. Changes in status (of residence, of permission to work, of employment conditions – for instance, the possibility to work also as a freelance) can be frequent and not necessarily in the direction of progressive improvement and stability (EMN 2016). “Spaces of” and “pathways to” illegality (Düvell 2011, Ruhs and Anderson 2006) are hence found within the triangle that includes: migration policies, labour market dynamics and the individual choices of social actors – the migrants themselves. Different types and degrees of irregularity can be produced and negotiated among all actors involved; semi-compliance with (some) rules might be a frequent case (Ruhs and Anderson 2006).

4. MIGRATION CONTROL: MULTI-LEVEL AND DE-CENTRALISED

While controlling irregular migration is normally a responsibility of the national state, we have witnessed in recent times the denationalisation of control policies and practices which develop both upwards towards transnational levels and downwards towards the local, particularly the city, level (see also Hudson and Atak 2021). It was more than 20 years ago that Aristide Zolberg (1999) spoke of “remote control” in migration management through restrictive visa regimes, and the delegation of part of the migration control responsibility and function to airline companies or to private security companies engaged to manage detention facilities. In exploring the political and legal implications of these changes, Guiraudon and Lahav (2000) had convincingly argued that states sought to bypass human rights and judicial checks and balances by shifting migration controls “upwards, […] downward […] and outward” (Guiraudon and Lahav 2000: 164). The two authors argued that states willingly limited their own sovereignty, incorporating different sets of actors at different implementation functions with a view to achieving efficiency in controls. National governments thus delegated their authority to mayors, private companies or international actors, relinquishing some of their autonomy with a view to gaining in efficiency (avoiding also judicial oversight) (Guiraudon and Lahav 2000: 190). This trend is further reinforced today as the role of international actors has become omnipresent, whether to reinforce controls (e.g., the work of Europol, Interpol), to regulate mobility (e.g., International Organization for Migration) or to protect the rights of people on the move (e.g., international non-governmental organisations, the United Nations High Commissioner for Refugees).

Looking at the sub-national level of migration governance and integration, there has been a growing literature on multi-level governance (Caponio and Jones-Correa 2018; Caponio et al. 2019; Scholten 2013) and the role of local actors in migration governance. However, this strand of research has predominantly focused on migrant integration rather than on the role of cities and the local level for the governance of flows. Recent studies, though, have highlighted the multi-level nature of migration controls or of resistance to such controls. Panebianco (2020), for instance, shows how local actors, such as civil society organisations and citizen groups, have been actively involved in addressing gaps in the reception of asylum seekers and
irregular migrants at border towns (Panebianco focuses on the small city of Siracusa, in Sicily) while Kutz and Wolff (2020), focusing on Tangiers in Morocco, explain how local authorities can mobilise and influence the national level.

In an earlier paper with Maurizio Ambrosini (2011), I have argued that we need to distinguish between “fencing” and “gatekeeping” strategies in migration control. Gatekeeping strategies aim at restricting legal access to a country and its institutions through a sort of remote control. Typically gatekeeping involves visa policies, but it can also include enforcing restrictions of stay or work status for migrants. Fencing measures, on the other hand, are most commonly implemented at the border, by apprehending and expelling migrants. Fencing, though, can take place also within a country’s borders through actual controls of people, stopped, for instance, at their place of work or at the street at random controls. Gatekeeping generally involves paper controls of people who come voluntarily forward, while fencing requires detecting persons who seek to enter unlawfully or who are in the territory without legal status and are hiding.

We should not neglect the fact that both fencing and gatekeeping have taken up important digital dimensions in recent years, with the advance of various types of information technologies, including biometric passports, large databases of identification of travellers – both visitors and migrants or asylum seekers – and their linking-up, and the implementation of advanced digital detection technology at borders. While these technologies do not fundamentally alter the purpose of the controls, they certainly make them more remote and possibly more effective. In addition, the digitalisation of controls raises even further the interests of the private sector as migration control becomes a multi-million-dollar business (Chelioudakis 2022). In a recent paper, FitzGerald (2020) notes that we are faced with the simultaneous de-territorialisation and hyper-territorialisation of migration control.

Elaborating further on the de-nationalisation of migration controls, I would like to borrow from my earlier work with Angeliki Dimitriadi on the policies of the EU where we identified three spaces of externalised control:

- the third countries, via the policy of externalisation of border controls and the Global Approach to Migration and Mobility (GAMM, European Commission 2011); the external border itself and its governance via Home Affairs agencies like Frontex and the European Asylum Support Office (EASO); and thirdly within the Schengen area where abolition of internal controls is counterbalanced with border surveillance of risk groups. (Triandafyllidou and Dimitriadi 2014: 151–2)

I would like here to add to the intra-EU level of controls within the Schengen area, the more generally applicable sub-national level of controls that take place within the territory of a state. We thus come up with a matrix of four spaces of policy and action: internal, at the internal EU border, external EU borders and transnational, within which we witness the development of both gatekeeping and fencing policies and practices.

5. CONCLUDING REMARKS

Media and policy debates tend to represent irregular migration as a black-and-white reality, a clear legal concept, an identifiable population that falls under specific policy parameters. However, a closer look at the complexities of entry, stay, prolongation and abuse of terms of stay shows that this is by no means such a clear distinction but rather should be understood at best as a continuum of more or less documented status types or as a fuzzy category given
Table 1.1  Spaces of policy and action

<table>
<thead>
<tr>
<th>Spaces of control</th>
<th>Gatekeeping</th>
<th>Fencing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-national</td>
<td>Labour market check and controls of access to welfare</td>
<td>Checks in workplaces or in public spaces</td>
</tr>
<tr>
<td></td>
<td>Checks in other spheres like education, or family life (marriage)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>In-land asylum processing</td>
<td></td>
</tr>
<tr>
<td>Internal EU border</td>
<td>Checks of financial means for subsistence in another EU member state or of purpose of stay</td>
<td>Checks at the internal EU border, temporary re-introductions of border controls</td>
</tr>
<tr>
<td></td>
<td>Proof of family ties with an EU citizen</td>
<td></td>
</tr>
<tr>
<td>At the border</td>
<td>Visa procedures</td>
<td>Border controls at EU external borders, outside ports of entry</td>
</tr>
<tr>
<td></td>
<td>Carrier sanctions</td>
<td>Detention, expulsion, removal and other procedures to enforce return</td>
</tr>
<tr>
<td></td>
<td>Paper controls at ports of entry</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Refused entry</td>
<td></td>
</tr>
<tr>
<td>Transnational</td>
<td>Cooperation with countries of origin farther away to prevent irregular migration (e.g., through migration partnerships or bilateral agreements)</td>
<td>Cooperation with origin countries for expulsion and readmission</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Detention, expulsion and removal and other procedures to enforce return in the territory of third countries</td>
</tr>
</tbody>
</table>

Source: Adapted from Triandafyllidou and Dimitriadi (2013), table 1, page 602.

also that the purposes and means of migration can change both en route and at destination. It would be more helpful to conceptualise irregular migration as “degrees” and “types” of irregularity, given that there are important real (physical) and administrative flows between the two categories, and significant “grey” zones of people with unclear or temporary status. Thus, we may have people who enter illegally but overstay, people who enter unauthorised but then regularise their status, and people who enter legally and stay regularly but at some point lose their regular status because they could not renew their permits.

In addition, when speaking of irregular migration we need to bear in mind how it is intertwined with relevant control policies that may contribute to producing or indeed undoing irregularity. Thus, a restrictive family reunification policy may create irregular status for family members that do not fit the requirements, while a regularisation program can produce legal migration out of formerly unauthorised populations.

Looking at the dynamics of irregular migration and its control, it is useful to adopt a multi-scalar perspective looking at the fencing and gatekeeping character of different policies and at their sub-national, national or transnational level of design and implementation. Going forward we need to pay more attention not simply to remote control as Zolberg put it more than 20 years ago, but also to the role of digital technologies in control, and to the strategies that migrants and other actors adopt in resisting those controls (see Hudson and Atak 2021 for reflections on this aspect, and also DeBono and Mainwaring, and Heller et al. in this volume).

NOTES

1. This and the following section are largely based on Triandafyllidou and Bartolini (2020), sections 2 and 3.
2. Births into irregularity of children of undocumented migrants.
REFERENCES


Irregular migration and migration control policies


