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Keep on moving, don't stop: anti-nomadic laws on the island of Ireland.

Abstract

As a consequence of the 2002 Housing (Miscellaneous Provisions) Act in the Republic of Ireland, the traditional practice of nomadism maintained by some Irish Travellers became a criminal offence. Subsequently, in many instances illegally encamped Irish Travellers are ordered, with less than 24 hours notice, to move elsewhere. When failing to do so, many are fined and some have received suspended prison sentences, whilst caravans have occasionally been impounded. Essentially, this Act has further exacerbated the social exclusion of nomadic people within the Republic. In Northern Ireland, if the proposed Unauthorised Encampments (Northern Ireland) Order 2004 becomes law, nomadic Irish Travellers may soon be placed in the same precarious position. In essence, these two pieces of legislation embody the frustration of governments within both jurisdictions on the island, with issues and concerns created by illegal encampments. Yet, ironically, they also magnify the failure of the two government's own local housing and planning authorities to consider and provide adequate culturally appropriate accommodation for this growing minority ethnic community. This paper demonstrates how nomadic people have been criminalised within the Republic of Ireland due to anti nomadic legislation, whilst considering the outcomes for them within Northern Ireland should proposed legislation become mandated.

This paper highlights one aspect of my PhD research concerning Irish Travellers and criminal justice in Northern Ireland and the Republic of Ireland [to be referred to henceforth as the north and south respectively]. The theoretical perspective taken here is that 'one of the primary objects of discipline is to fix; it is an anti-nomadic technique' (Rabinow, 1984, p.207).¹ Irish Travellers are a minority ethnic group indigenous to the island of Ireland and there is a lack of information on criminal justice and Irish Travellers on the island.² Indeed, exact figures concerning the

¹ Rabinow, in discussion of Foucault's consideration of power and control observed throughout bureaucratic institutions such as schools, prisons, psychiatric units, housing agencies, welfare agencies et al.

² There has been an almost entirely systematic failure to collect information on Irish Travellers as either an ethnic minority or as a distinct group ie. 'Irish Travellers' within institutions, especially those relating to criminal justice throughout the whole island. Examples of exceptions to this stance are: Police Service of Northern Ireland Community Safety Branch Statistics on Domestic Violence, Hate Crime and Youth Offences in Northern Ireland 2003/2004;

population count of Irish Travellers in Ireland remain contentious. According to The Department of the Environment , Heritage and Local Government it was *estimated* there were 6,991 Irish Traveller families recorded as living in the Republic of Ireland at the end of 2004.³ It is confusing that the department's figures were based upon families rather than individuals and as such, these figures have been disputed by the Irish Traveller Movement who believe that there may be at least 40,000 Travellers in the south.⁴ In the north their population can only be estimated at around 1200-1500.⁵

Occasionally Irish Travellers are referred to as Gypsies. Although this is incorrect, they share many common traits with the wider European Gypsy Traveller⁶ communities. Their origins and histories remain highly contested by academics such as Shuinear (2004) and Drummond Donnelly (2005). Many used to be nomadic as part of their culture. Yet as Acton et al have observed (1997) the majority of Irish Travellers (and Gypsies) no longer travel. Indeed, most are indistinguishable from the ethnic majority, having been integrated or even assimilated⁷ into the settled community throughout time. Even so, McVeigh (1997) has commented that those identifying themselves as Irish Travellers (or Gypsies) or being so labelled, continue to be stereotyped as nomadic by affiliation. Yet as Mayall (1995) has observed, for centuries nomadic practices and nomadic people have been regarded with suspicion. They have been labelled as primarily anti-disciplinarian, anti-control and essentially anti-state. In short, the perception has been forwarded that nomadic practices or association with nomadic culture equates to criminality. This situation is exemplified by the media in Ireland⁸ and such labelling impacts on the social exclusion of many within this community.⁹

Traditionally, Irish Travellers have set up camps illegally in order to continue to ply trades such as tinsmithing, tarmaccing, fortune telling, begging and harvesting. Yet, in the main their nomadic lifestyles have been subjected to bylaws on the island. This meant that they were constantly threatened with eviction notices handed out by local authorities, and occasionally, private landowners, to move on to another area. Often

http://www.psnl.police.uk/community_safety.pdf#xml=http://www.psnl.police.uk/scripts/texis.exe/webinator/search/xml.txt?query=Traveller+Community&pr=internet&order=r&cq=&id=42a6c54d27; Volume 8 of the Census 2002 Republic of Ireland, Irish Traveller Community: Table 27 Irish Travellers enumerated in communal establishments, (prisons in particular) classified by type of establishment: http://www.cso.ie/census/documents/vol8_t26_34.pdf and the Northern Ireland Statistics and Research Agency Census results 2001 http://www.nisra.gov.uk/census/Census2001Output/standard_tables.html

³ According to figures collected within the Annual Count, 'Traveller Families in Local Authority Assisted Accommodation and on unauthorised sites' which took place on the 26/11/04. Written reply received from Danny McElhinney, Traveller Accommodation Unit, The Department of the Environment , Heritage and Local Government, 04/05/05.

⁴ Email communication estimating population count based on large Traveller family size eg. 8-10 persons per family, received from David Joyce of the Irish Traveller Movement, Dublin, 02/10/04.

⁵ In a recent reply to my question regarding the exact Traveller population in Northern Ireland, the Northern Ireland Housing Executive revealed that 'Due to their nomadic lifestyle it is difficult to put an exact figure on the number of Travellers resident in Northern Ireland at any given time'. (written reply received from Aidan Brannigan, Traveller Project Team, 04/05/05).

⁶ Gypsy/Traveller is a generic term, accepted by these communities and academics alike to describe Irish, English, Scottish, Welsh or Romany Travellers. See Acton, T. et al (1997) *Gypsy Politics and Traveller Identity* University of Hertfordshire Press.

⁷ My understanding of integration is to retain culture/identity/religion whilst competing as an equal within society. Alternatively, in my view, assimilation means competing as an equal whilst *choosing* to relinquish cultural obligations or affiliations and identity.

⁸ The situation is identical in Britain and all British media is widely available on the island.

⁹ Outside the law? Comment, (08/06/04) *The Irish Independent*, p.8;

Farrell, N. 'Traveller faces sentence for stabbing at school,' *Belfast Telegraph*, 26/05/04 p.16.

Travellers stayed in these illegal encampments, moving just before the date set by which they were likely to be evicted or summoned to court for failure to comply with by-laws. Yet as civil law cases could often take weeks to compile and come to fruition, Travellers could encamp and move on frequently without necessarily being fined.

Today, illegal encampments of nomadic Travellers are frequently visible on the island. So too are the caravans and trailers of those who reside on official and often poorly maintained sites. These are placed very often close to main roads or, conversely, out of sight next to garbage tips. In cities in the south thousands remain trapped on official sites that are overcrowded due to the reticence of government to provide sufficient Traveller specific accommodation such as group housing schemes, halting and transit sites. As will be made clear, this situation has also been further exacerbated by anti nomadic legislation. Alternatively, in the north, although fewer in number, illegally encamped Travellers reside on the outskirts of urban areas awaiting urgently needed accommodation provision.

Any visitor to the north or south of Ireland may observe huge boulders at the sides of roads blocking lay-bys and entrances to fields that have for hundreds of years been traditional stopping areas for this community. Conversely, halting sites are often surrounded by high walls or mud mounds to hide these communities from view of the sedentary masses. Consequently, the forced termination of an ethnic cultural practice, that being nomadism, is thus embodied not only within legislation but also within physical impediments to continuity of that culture. Moreover, alongside Irish Travellers, we the sedentary classes, cannot help but read the message of these boulders, mud mounds and high walls, being that Traveller lifestyles are unacceptable. For me the irony of this situation is that it typifies the violence of the law, and surely Sarat & Kearns et al (1995) would have something to say about such practices. For if Travellers themselves were to put in place such physical obstacles they would certainly be found guilty, at the very least, of obstructing the highway or of breaching planning laws.

Although nomadism is an important part of Irish Traveller culture, there has never been a right to a nomadic lifestyle on the island of Ireland. Neither the Constitution in the south nor laws in the north contain provisos for nomadism. Even the Human Rights Act 1998, incorporated within the laws of the north in October 2000 and within the south in 2003, offers no right to travel as a lifestyle. As such, the request by Irish Travellers and Irish Traveller support groups to the recognition of nomadism as a valid way of life, must be a thorn in the side of both governments. Yet as will be made clear, government departments in both parts of the island have at times accepted that nomadism is a part of Traveller culture and have vowed *tenuously* to make provision for nomadism.

As already stated, although the practice of illegal encampment continues today, the circumstances of nomadic Irish Travellers in the south have altered drastically with the introduction of the Housing (Miscellaneous Provisions) Act 2002. Moreover, this may soon be replicated in the north if the proposed Unauthorised Encampments (Northern Ireland) Order 2004 is mandated. The Housing (Miscellaneous Provisions) Act 2002 criminalizes trespass on public and private land. The main thrust of this Act in the south is that it made illegal encampment a criminal offence. This is despite the fact that the Irish government in the south have failed to provide adequate accommodation provision for Irish Travellers.¹⁰ Consequently, this failure, coupled with the deleterious effects of the Housing (Miscellaneous Provisions) Act 2002 has forced Travellers to have contact with the criminal justice system in a negative sense whilst criminalising them at the same time.

The ramifications of the Housing (Miscellaneous Provisions) Act 2002 are that Travellers can be moved on with less than 24 hours notice. If they refuse to move on, they may be arrested without the need for a warrant. Failure to comply with a Gardai's¹¹ request to leave an illegal encampment can result in Travellers receiving fines up to € 3000 or, being imprisoned for a month or both. Moreover, caravans and vehicles may be impounded and charges are levied for each day that a vehicle or caravan is kept in storage. In addition, the courts are rarely consulted within the framework of this legislation as the Gardai have extensive powers to decide when an offence has been committed and they do not need to consult the judicial process. Subsequently the use of this law is undocumented; un-monitored by the legislator, courts and the executive. The Irish Traveller Movement believe this legislation to be a gross interference with the Constitutional rights of Travellers. Also, it is discriminatory contrary to the Equal Status Act 2000¹² in the south which offers protection to members of the Irish Traveller Community as well as other named groups on grounds of access to services and goods. In addition, the Act is in opposition to the European Union Race Directive (2000) 'implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.' (Goldston, 2005, ERRC web site document).

In many instances local authorities have a duty to provide permanent *and* transient accommodation to Travellers. Even so, this Act is allowing them to avoid their responsibilities. As the Irish Traveller Movement legal department make clear, two Acts of law passed previous to the 2002 Act in the south proposed that a transient lifestyle be catered for. Both the Housing (Traveller Accommodation) Act 1988 and

¹⁰ In 1995 The Report of the Task Force on the Travelling Community recommended that 3,100 new units of Traveller specific accommodation and standard housing be provided by 2000. Of these 3,100 the Task Force identified a need for 2,200 halting site bays and transient bays leaving a remainder of 900 units to be used for standard and group housing. Yet, very little progress has been made since 1995. In total, 1068 families were provided for leaving a shortfall of 2032.

By 2003 this shortfall had grown to 2,556 ref: Parliamentary question No. 384 put to the Minister for the Environment, Heritage and Local Government asking the number in total of Traveller accommodation units yet to be provided by each local authority under their respective 5 year Traveller Accommodation Programmes for 2000-2004, 18/05/04, Ref No. 14130/04

¹¹ Irish police.

¹² The Equal Status Act 2000, <http://www.irishstatutebook.ie/ZZA8Y2000.html> accessed 02/06/05.

the Housing Act 1998 state that the housing authority must, in the first instance and I quote, ‘ ‘ make further provision for transient and temporary sites...’ and in the latter case ‘ ‘have regard to’ the need for transient halting sites....’¹³. Yet the wording contained within both cases may be regarded as ambiguous. Between July 2002 (when the Act was implemented) – October 2003 over 150 evictions have been recorded by the Irish Traveller Movement. This monitoring also suggests disruption to educational, welfare and health provision whilst severely impairing or destroying the chance of social integration for these families.

In the north although the population of Irish Travellers is much lower, the situation for them is equally precarious as in the south. In 1996 the Department of the Environment for Northern Ireland established a working party to consider the accommodation needs of Travellers up until 2006.¹⁴ Within this report it is clearly stated that the Department ‘ *accepts*’ nomadism, (ibid; p. 9) whatever this means in practice. Furthermore, in 2002 The Office of the First Minister and Deputy First Minister in ‘A Response to the Promoting Social Inclusion Working Group Report on Travellers’¹⁵ identified the shortfall in Traveller specific accommodation and vowed to make amends to this by 2004. Even though responsibility was later shifted from the Department of Environment to that of the Department of Social development, this has made no discernible difference on the ground for Travellers.¹⁶ Indeed, despite admitting that accommodation provision for Travellers is dependent upon land acquisition and availability of finance, and despite acknowledging a timescale running out in 2009 by which to implement *limited* accommodation for Travellers, the Department of Social Development submitted the Unauthorised Encampments (Northern Ireland) Order 2004 to parliament in May 2005. This was despite criticism from the Equality Commission Northern Ireland, related to concerns at the time of the initial draft and its subsequent submission. Similar to the situation within southern law, these concerns related to lack of accommodation provision and the wider impact on social exclusion such as police discretion; lack of police accountability to the courts; the adverse impact on police/Traveller relationships, and contraventions of international laws such as the European Union Race Directive (2000), the Human Rights Act (1998)¹⁷ local laws such as the Race Relations Order (Amendment) Regulations (Northern Ireland) 2003¹⁸ and Good Relations Duty under Section 75 of the same Act. However, at time of writing, there is still a serious shortfall in Traveller

¹³ Irish Traveller Movement document 2005, *Travellers and the Law: Legislation*, ITM website.

¹⁴ Department of the Environment for Northern Ireland. (1999) New Policy for Accommodation on Travellers.

¹⁵ <http://www.newsnni.gov.uk/travellers/annex4.htm>

¹⁶ At time of writing this is being passed on once more to the Housing Executive of Northern Ireland.

¹⁷ Human Rights Act 1998 Chapter 42 <http://www.opsi.gov.uk/acts/acts1998/19980042.htm>

¹⁸ Statutory Rule 2003 No. 341 Race Relations Order (Amendment) Regulations (Northern Ireland) 2003,

<http://www.opsi.gov.uk/cgi->

[bin/htm_hl.pl?DB=opsi&STEMMER=en&WORDS=race+order+2003+&COLOUR=Red&STYLE=s&URL=http://www.opsi.gov.uk/sr/sr2003/20030341.htm#muscat_highlighter_first_match](http://www.opsi.gov.uk/cgi-bin/htm_hl.pl?DB=opsi&STEMMER=en&WORDS=race+order+2003+&COLOUR=Red&STYLE=s&URL=http://www.opsi.gov.uk/sr/sr2003/20030341.htm#muscat_highlighter_first_match)

accommodation provision.¹⁹ This makes the proposed introduction of anti trespass provision even more serious for Travellers with no where to reside.

As with legislation in the south, if enforced, such a situation will exacerbate the island wide social exclusion of Irish Travellers. It will force criminal records upon Irish Travellers in the north for no reason other than lack of accommodation provision by local authorities. It will worsen the commonly held stereotype that Irish Travellers are criminal by nature whilst putting at risk the life chances of this community. Perhaps worse still, if this legislation is passed in the north it will ensure that equality for Irish Travellers on the whole island of Ireland will not correspond to equality measures taken on behalf of the settled (non Traveller) community.

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¹⁹ Within a recent document the Northern Ireland Housing Executive, Chief Executive Paddy McIntyre admits that: 'There is still a long way to go in respect of meeting the accommodation needs of Travellers but I remain confident that through partnership working the various statutory organisations will continue to tackle social disadvantage within the Travellers Community,' (Foreword; p. 2, Evaluation of Traveller Grouped Housing Schemes, 2005).

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