

**MANAGING THE LABOUR MARKET:
IMPLICATIONS OF EU EXPANSION AND IRELAND'S EXPERIENCE**

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Introduction

I am very pleased to be here with you today. I must confess that my knowledge of the University of Notre Dame up to this point was limited to its sporting achievements, its Catholic ethos and Mario Cuomo's famous speech of 13 September, 1984 on Public Morality and Religious Belief.

The last twenty years have seen extraordinary changes – some positive, some less so – take place in Ireland. Immigration is not a uniquely Irish phenomenon at this time but it is challenging for us because it exposes our society to pressures never encountered before. How we deal with them will, I expect, test our mettle as a nation.

The Changing Face of Ireland

The population of the Republic of Ireland in 2006 was 4,239,848¹. It is believed that the Irish Diaspora exceeds ten times this figure. So it is perhaps ironic that I should be addressing you on the subject of immigration when emigration has for so long been the concern of our country. It is a turnaround that should make us happy but such is not the case. One controversial commentator² explained it like this:

“Immigration is now not merely the dominant feature of Irish life, it is the greatest threat to the existence of the Irish nation as a coherent, and cohesive whole.

No country has ever accepted, never mind assimilated, the volumes of foreigners now present in this State. We have some 400,000 legal immigrants; but everyone knows that the army of illegals, especially Africans and Chinese, is vast, and probably tops 200,000. In all Ireland has received 600,000 immigrants, most of them within the past five years. It could be many more. No one has the least idea”.

This is not a view that would be expressed by many. Its author is on the far right of the political spectrum at least in an Irish context. Nevertheless I expect it would be privately

¹ Central Statistics Office of Ireland: http://www.cso.ie/statistics/population_1901-2006.htm

² Myres, Kevin (2007) “The Problem isn't Racism; it's the Tidal Wave of Immigrants”. *The Irish Independent*, 5 Sept. 2007

endorsed by a significant number of people. The key phrase has to do with identity and in that respect it mirrors a debate taking place in the United States. To some extent it resonates with views on identity expressed by Samuel Huntington³.

But it is the labour market dimension of inward migration to Ireland that I want to focus on. It may be helpful if I take a few minutes to explain some of the features of the Irish economy by way of context.

The Economy of Ireland in Context

In the Eighties Ireland was a basket case. The public finances were in chaos, inflation was running at 15 per cent, unemployment was 17 per cent and up to 1 per cent of the population emigrated every year. Things started to change for the better in 1987 and by 1994 economic growth and employment began to grow rapidly⁴. Today economic growth continues, albeit at a more moderate rate of about 5 per cent and we have an unemployment rate of 4.4 per cent. Since 1994 the workforce has doubled and upwards of 80,000 new jobs are created every year.

The truth is that economic expansion of this magnitude could not have happened without immigration. To give a couple of examples; our health service could not function without the thousands of Filipino nurses who staff the hospitals and the construction industry employs large numbers of people from Eastern Europe. Construction accounts for 20 per cent of GDP and represents a boom within a boom.

The most significant event affecting the labour market was a decision by our Government not to impose any restrictions on mobility of labour following accession of 10 new member states to the European Union in May 2004. Britain and Sweden were the only other EU countries to take this position. This greatly accentuated the inward flow of people. In practical terms this meant that a labour market of 2 million was opened to one of 72 million. Moreover, it was a virtually unregulated labour market. Ireland's ambition to attract US foreign direct investment over the years has caused it to operate a very flexible liberal economy model. Interestingly, however, this co-existed with a quite sophisticated European model of social dialogue called "Social Partnership" in Ireland. This system has been in existence since 1987 and is widely credited as a major contributor to the economic achievements already described⁵. It is a system in which Government, Employers, Farmers and other civil society actors agree upon a set of social and economic objectives to be pursued. At its core is a public and private sector wage agreement⁶.

Problems and Solutions

³ Huntington, Samuel P. (2005) *Who Are We? America's Great Debate*. Simon & Schuster UK Ltd., London

⁴ O'Hagan, J.W., ed. (2000) *The Economy of Ireland*. Gill & Macmillan, Dublin

⁵ Lawrence, Paul R and Nohria, Nitin (2002) *Driven: How Human Nature Shapes our Choices*. Jossey-Bass, San Francisco P. 271-276

⁶ Hastings, Tim, Sheehan, Brian and Yeates, Padraig (2007) *Saving the Future: How Social Partnership Shaped Ireland's Economic Success*. Blackhall Publishing Dublin.

It was naive of Government to think that employers, faced with the prospect of an abundant supply of vulnerable, and understandably compliant, labour would not succumb to the temptation to exploit them. That, of course, is what happened. Initially it was below the radar screen activity in horticulture, hotels and other low pay industries. But the issue burst into serious public prominence with a scandal in the construction industry involving a company called GAMA and the Irish Ferries disputes. Parallel developments with the Laval and Viking cases in Sweden and Denmark focussed critical attention on the implications of the EU Services Directive which was proposed at that time⁷. In Ireland on December 9 2005, over 160,000 people voted with their feet to support the Congress National Day of Protest against exploitation, displacement and a race to the bottom. Very deliberately, the banner we chose to lead the main march read: “*Equal Rights for All Workers*”.

This issue of employment standards, compliance and enforcement in the labour market was made the central demand of the unions in the new round of Social Partnership negotiations. We were somewhat sceptical about the willingness of employers and Government to seriously contemplate moving away from the extremely flexible labour market model which had been so resisted only three years earlier. For this reason we sought certain assurances about the principles involved before entering talks and this took three months to achieve.

In the event our scepticism was well founded. By way of preparation Congress engaged the services of a prominent Senior Counsel and legal team to assess the type of legislative changes that would be necessary to prevent a “Race to the Bottom” in employment standards. The legal team created an elegant solution to be achieved through a single new piece of legislation rather than the amendment of various existing Acts relating to employment. When the talks started the Employers’ Representative Body, IBEC and the Construction Industry Federation (CIF) made it clear that, while they could support improved enforcement, they would not countenance any change whatsoever in the existing framework of laws. This seemed like a totally impossible situation!

It gradually emerged that the real problem lay with the Foreign Direct Investment companies, and in particular, I would say the American Chamber of Commerce. Ironically these were not the target of our campaign but they saw any change in the legal framework on this issue as a watershed – a fundamental shift away from a pro-business totally accommodating and, by definition, unregulated labour market. The power of this

⁷ Irish Ferries is a shipping company plying the short sea route between Ireland and Britain. In late 2005 an industrial dispute erupted when the company replaced its Irish crew with one from Eastern Europe supplied by an Employment Agency and paid a fraction of the wages of the Irish crew. Because the crew were seafarers they were outside the scope of the employment protection laws of Ireland and Britain.

GAMA was a Turkish construction company which was able to undercut indigenous contractors competing for major infrastructural projects. In this case the dispute was about systematic under payment of wages of its Turkish employees in Ireland.

The Laval and Viking cases were somewhat similar but they had the effect of galvanising opposition to a proposed EU Directive aimed at liberalising trade in services across the entire European Union. It was feared that the Directive would facilitate large scale undercutting of wages and conditions in the “old” Europe by companies basing themselves in the lower wage economies of the new accession countries but operating in the higher cost countries from that base.

FDI sector is very great – not just as an influence group within IBEC but also in terms of their direct political access to and clout with the Government.

This veto on legislative change made for a very difficult negotiating environment and was ultimately unsustainable. It does, however, explain why, having spent three months talking about talks, it took a further five months to actually secure the package of employment protection measures incorporated in the new agreement.

The employers, while eschewing legal remedies, asked us to outline our concerns and vowed to find remedies for those concerns within the existing legal and industrial relations framework. The problem with this was that we had to submit every proposed solution to the test of our earlier evaluation of the weakness of the existing legal framework. In practice it was not possible to deal with the issues identified by us without recourse to at least amending legislation. That is the way agreement was eventually reached. There will be extensive legislative change. It will not be as elegant as the single act we proposed but it will be effective.

What, in practice, were we trying to achieve? It can be reduced to three critical areas, viz:

- We had to make a working assumption that, if not addressed, it was only a matter of time before we had another Irish Ferries situation, albeit on land. Without a robust legal and enforcement architecture to deal with it our evaluation was that such a dispute would release very damaging racial and social tensions;
- We had to factor in the experience of the Gate Gourmet dispute in the UK which allowed the employer to contrive an industrial dispute to justify a collective dismissal of the existing workforce and its replacement with a completely new group of workers. Existing Irish law would also allow this although this is not well known;
- We had to deal with large scale abuse of employment standards, including extensive use of bogus self-employment, principally, but not exclusively, in the construction sector.

The new agreement “Towards 2016” deals comprehensively with these issues. A complex series of measures detailed over 15 pages commits the Government to extensive legislation to be enacted by the end of this year. While the provisions of the agreement are technical and not easy to access for the lay reader the following are some of the key provisions:

- The establishment of the National Employment Rights Authority (NERA) with an increase to 90 in the number of Labour Inspectors backed up by 23 new positions of a legal, accounting and administrative support nature;
- NERA will work closely with unions through agreed Memoranda of Understanding to tackle problems of non-compliance;

- The Revenue Commissioners, Social Welfare and NERA will collaborate IN joint investigation units to target serious abuses of employment standards;
- The tax system will be reformed to prevent people in the building industry and elsewhere from being forced into bogus self employed status to allow employers to avoid pension contributions etc;
- Employers will be obliged, under pain of a fine of €250,000 or imprisonment, to keep accurate employment records in a prescribed format for inspection by the Labour Inspectors;
- The Minister for Enterprise, Trade and Employment will take new legislative powers to allow him to publish the outcome of investigations like the GAMA case;
- There will be a new Employment Rights procedure to allow easier access to Rights Commissioners, the Court and the Employment Rights Tribunal and with compensation where rights are denied. Up to now only monies owed and expenses could be awarded. Powers to award up to two years pay by way of compensation is a very significant change and will help many migrant workers whose cases are usually about bread and butter issues like payment of correct wages;
- Penalties for non compliance in all areas of employment will be increased as follows:
 - On summary conviction - €5000 in the District Court and/or imprisonment,
 - On indictment – penalties up to €250,000 fine.

I have no hesitation in saying that these measures in their totality, and in the context of the legislation necessary to implement them, represents the single biggest leap forward in social policy initiated in Ireland. Other important social policy changes were inspired by the EU but this is the biggest thing we have ever done of our own volition. It is also the most difficult project Congress has ever undertaken both in terms of its complexity and in overcoming the opposition to it.

The present position is that about two thirds of the legislative programme needed to give effect to these measures has been enacted. Agreeing the detailed provisions of the outstanding legislation has been problematical. The regulation of employment agencies, in particular, is a sticking point. Even since the agreement was concluded it has become apparent that employment agencies are proliferating and being used by employers to circumvent the conditions of the direct employment contract that the new agreement requires. Thus it is possible, for example, for an employer to avoid equality legislation using an employment agency. The danger is that this type of employment relationship could become the norm. According to Government representatives the European Commission is objecting to some of the regulatory measures proposed on the grounds that they disproportionately affect the right of freedom of establishment of business. It is still possible that disagreements over the detail of the legislation could collapse the Social Partnership Agreement.

To sum up; we have achieved a reasonably protective labour market regime which, when implemented, should prevent the worst abuses by employers. However, it is not yet in place and workers, indigenous or foreign, have not seen the benefits of it. Even when it is fully implemented it will not prevent immigration from exerting downward pressure on wages. That is because large numbers of workers are excluded from collective bargaining and anyway the only legally enforceable wages are a minority of sectors covered by what are known as Registered Employment Agreements (REAs) and the minimum wage. Although it is achieved through the collective bargaining system (Social Partnership), and though it is the second highest in Europe, the minimum wage has become the default wage for many immigrants.

And there are darkening economic clouds on the horizon. The crisis of confidence caused by the sub prime mortgage debacle in the United States and increased interest rates imposed by the European Central Bank (ECB) is beginning to hit the construction sector. Economic growth (GNP) is forecast to decline to 4.8 per cent in 2007 and 2.9 per cent in 2008 as a result. Unemployment is forecast to rise from 4.4 per cent now to 5.6 per cent in 2008⁸.

A fall in employment growth will have implications for immigration, unemployment or participation or probably some combination of all three⁹. This is uncharted territory for Ireland. Managing immigration up to now has been in a positive economic context. Even so there have been difficulties as has been explained. One looks towards these changing circumstances with some trepidation.

Global Migration and its Discontents

International migration is not unique to Ireland and of course some of the solutions to the problems it raises have to be sought in an international context too.

The late 19th century experience of immigration indicates that, absent international institutions which can restrain individual countries' policies, globalisation can undermine itself. Labour market integration undermined itself by increasing income inequality in the New World, which in turn led to immigration barriers¹⁰.

In the trade sphere the lessons that were learned from this experience was that international institutions were needed to spur international cooperation, a role eventually filled by the GATT and WTO. On the other hand there was never an international organisation dedicated to the management of migration flows. The Treaty of Versailles did establish the International Labour Organisation and some countries – such as France, Italy and Poland – argued that the ILO should be involved in regulating migration. New World countries disagreed, however, and the result was that the ILO found itself limited to issues of domestic regulation; immigration control was left to the discretion of

⁸ *Quarterly Economic Commentary* ESRI, Autumn 2007

⁹ *Quarterly Economic Commentary* ESRI, Summer 2007, P.31

¹⁰ O'Rourke, Kevin H. and Sinnot, Richard (2003) 'Migration Flows: Political Economy of Migration and Empirical Challenges', *IIS Discussion Paper No. 6*, July, 2003. P. 11

individual countries¹¹. Differences of interests between countries has had a debilitating effect on the development of effective international law in the field of migration.

As Ruhs¹² points out, international labour migration generates a complex set of economic, social, political, cultural, environmental and other consequences for the receiving country, for migrant workers and for their countries of origin. Whereas receiving countries can regulate immigration, sending countries cannot regulate emigration as it is a human right to emigrate and to return. These asymmetries in the regulation of international labour migration make it more difficult to have an effective international law framework.

The problem may be stated thus. This current phase of globalisation is not like anything that has happened in the past. Patterns of migration may not appear to be different but the push-pull factors are. The economic integration which is happening will have strong implications for labour markets¹³ and demographic patterns in the developed countries will mean a continuing need for immigration for the foreseeable future. In labour market terms the developed economies need more skilled people at the upper end but, conversely, immigration concentrated at the lower skill levels will cause downward pressure on wages and perhaps resulting social tensions.¹⁴ That this confluence of events is also leading to exploitation of migrant workers is becoming evident. Apart from the more extreme cases of human rights abuse associated with trafficking, discrimination in wages and conditions of employment is widespread. For example a recent Economic & Social Research Institute Report¹⁵ revealed a 45 per cent gap between immigrants and indigenous workers in Ireland when the survey upon which it was based was adjusted for qualifications.

The Importance of International Law

These developments have profound political consequences. In fact it has been suggested that there is an international moral panic afoot about migration as an adjunct of globalisation¹⁶. An understandable political desire to respond to fears of the electorate by being seen to exercise sovereignty by clamping down on migration is like trying to eat soup with a fork. At the same time there is some evidence¹⁷ of the judiciary trying to promulgate human rights based approach to the issues raised. The most obvious dichotomy between the approaches of law and politics is the extremely poor record of ratification of human rights international law instruments relating to migration.

¹¹ (Ibid, P.17)

¹² Ruhs, Martin, (2005) 'Managing the Immigration and Employment of Non-EU Nationals in Ireland', *Studies in Public Policy, No. 19*, The Policy Institute at Trinity College, PP. XII, 79,80.

¹³ Stiglitz, Joseph (2006) 'We Have Become Rich Countries of Poor People', *Financial Times*, 8 September, 2006. and Brittan, Samuel (2006) 'Globalisation Depresses Western Wages', *The Financial Times* 20 October, 2006.

¹⁴ Irish Department of Enterprise, Trade & Employment, and Report of the Expert Group on Future Skills Needs. *Tomorrow's Skills: Towards a National Skills Strategy*, 2006

¹⁵ Barrett, Alan et al. (2006) *An Analysis of Immigrant Earnings and Welfare Usage in Ireland*. ESRI October, 2006.

¹⁶ Dauvergne, Catherine (2004) "Sovereignty, Migration and the Rule of Law in Global Times". *The Modern Law Review*. Vol. 67, No. 4, pp 588-615

¹⁷ Juridical Conditions and Rights of Undocumented Migrants, Advisory Opinion OC – 18/03 (Inter-AM. Ct. H.R. Sept, 17, 2003) available at http://www.corteidh.or.cr/juris_ing/index.html>

So, what can be done? An immediate objective should be to promote ratification of the existing corpus of legal instruments relating to migration – most especially the International Convention on the Rights of all Migrant Workers and their Families (MWC). For reasons outlined above it is unlikely that politicians will campaign for this. But lawyers, NGOs, trade unions and other non state actors should. As Amy Gurowitz¹⁸ has demonstrated in the case of Japan this approach can have considerable success. If a movement similar to ‘Jubilee 2000’ or ‘Make Poverty History’ could be built for ratification of MWC it could be very successful.

Conclusion

Ireland has not yet woken up to the challenges posed by immigration and consequently it has made insufficient provision to deal with them. I have outlined the belated efforts being made to deal with labour market issues. But no serious planning has gone into providing the social infrastructure required by an expanding population. When schools opened this Autumn an acute shortage of places was discovered. In a town close to my home emergency pre-fabricated schools had to be provided – for a total African student population. Clearly this militates against integration.

It is sobering to reflect that an advanced and socially aware country like Denmark has 500,000 second generation immigrants unemployed even though it has full employment otherwise. Moreover, it is hard to find Danes who can explain why this is so.

Ireland embraced immigration enthusiastically because the business community wanted it to support economic expansion. What we must now realise is that it is not a transient phenomenon and that it requires substantial planning and investment in integration if social cohesion is not to be sacrificed for economic growth.

¹⁸ Gurowitz, Amy (2004) “International Law, Politics and Migrants Rights” in Christian Reus-Smit (ed) *The Politics of International Law*. Cambridge University Press, Chapter 6. UK.