

Family and State

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Introduction

ONE OF THE DIFFICULTIES IN DEALING with the question of similarities and differences between the family in Ireland north and south of the border is that we do not know enough about the family in the two regions separately. There have been no in-depth studies of the family in the Republic since Hannan's work on the rural family in the 1970s¹ and none on the urban family since Humphreys' research of the late 1940s (Humphreys, 1966). The record of research on this subject in the North is, if anything, even weaker.² The one area where data are readily available and some analysis has been carried out in both parts of the island—demographic aspects of family behaviour—is the subject of David Coleman's chapter in this volume and so outside our brief here.

In the absence of the information needed for a broad approach to North-South comparisons of family patterns, the present paper focuses on the narrower question of state-family relations in the two jurisdictions. This focus is of interest not only as a comparative case study of family policy but also as a perspective on the origins and nature of the two states.

¹ See Tovey (1992) for an insightful review both of Hannan's work and of the tradition of rural ethnographic research, dating back to Arensberg and Kimball (1940/1968), out of which it grew.

² As in the Republic, family studies in the North began within the rural/ethnographic framework in the shape of Rosemary Harris's research in a rural community in the North in the early 1950s (Harris, 1972/86; see also Leyton, 1970; 1975). However, only ten of almost 6,000 entries in the 1982 bibliography of Northern Irish social science material (Rolston *et al.*, 1983) were indexed under 'family', and none of these studied the family in depth. A more recent bibliography on women in Northern Ireland (Montgomery and Davies, 1990) showed a similar picture.

Diverging projects for the family were built into the processes which led to the fracturing of the colonial state in Ireland in the late nineteenth and early twentieth centuries and to the emergence of new state formations on the island following partition. Catholic nationalism in the South, and the independent state which it created in 1921, was overwhelmingly rooted in a 'peasant' or small-farm society and in the anachronistic family system that entailed, while Northern unionism was heavily committed to capitalist industrialisation and (despite many reservations) to the industrialised family forms which went with it. These differences were far from absolute, given the strong agrarian connections of Unionism and the many accommodations with urban industrialisation reached by Catholic nationalism. But they were enough to affect the nature of the two states and to influence the way they approached family issues.

Because concerns related to the family were built into the dynamic which created the two states, we have to think of state-family interactions as a circular relationship rather than a one-way action of the state on family life. A comparative analysis must therefore go beyond a decontextualised focus on family policy and consider historical, macro-level factors affecting both the family and the state which provide the background to the more recent evolution of state-family interactions in the North and the South.

The present paper pursues these issues, first, by providing a broad overview of the historical development of state-family relations in the North and the South. This is dealt with in the following section, which examines the pre-partition era and the colonial legacy, and in the section following that, which outlines post-partition developments. To illustrate the way broad contextual factors filter down to the details of family policy, the paper then presents a case study of a particular field of family policy—child protection—where North/South differences in the role of the state have been especially acute, and which has been the focus of considerable recent policy attention in both states. The final section provides a summary and conclusion.

Family and State Prior to Partition

The pervasive influence of the colonial link with Britain on the development of Irish social policy prior to, and following, independence is often described in terms of the importation of British social policy into Ireland. However, the legacy of the colonial state on family policy goes beyond simple 'importation' and beyond social policy in the usual sense. The state in Ireland in the latter half of the nineteenth and early twentieth centuries

evolved a two-stranded approach to issues affecting the family, one strand of which comes under the heading of social policy as normally defined, but the other strand of which was oriented to agrarian concerns and affected social and family structures through mechanisms not normally considered a part of social policy. We will now look at these two strands in turn.

The Industrial Strand

One of the two strands derived from the model of state intervention in the market system which had been developing in Britain since the pre-industrial period. Since its major proximate influences lay in the social and political circumstances of capitalist industrialisation in Britain, we will refer to it here as the 'industrial' strand of British social policy in Ireland. The more distant origins of this aspect of social policy lay with the pre-industrial Poor Law and was influenced by the Poor Law heritage until well into the twentieth century. The Poor Law was legislated much later in Ireland (1703) than in England (1601) and was never as extensive in Ireland, North or South, as in Britain. In contrast to England, the Irish poor had no legal or statutory right to be provided with relief, under either the 1703 Act or the Irish Poor Law Relief Act of 1838, (O'Connor, 1995: 66). In addition, implementation was weak and only three workhouses existed in the eighteenth and early nineteenth centuries.

One of the important legacies of the eighteenth-century Poor Law for family policy in Ireland was the abiding fear of the state as a possible agent of proselytism which it created. The reorganisation of the poor law along the lines of the British model in 1838 attempted to distance social welfare provision from such proselytism, but the issue continued to inform the development of child custody, guardianship and adoption law in the Republic in the present century (O'Halloran, 1994; see section 4 below).

Modern industrial social policy proper began after 1900, as social provision in Britain began to move away from a Poor Law basis towards modern social welfare principles. Three of the key developments—old age pensions in 1908, child protection, also in 1908 (The Children Act), and social insurance for employees in 1911—were applied in Ireland. A fourth development, health insurance, though installed in Britain, was fought off in Ireland by the medical profession in the period 1912–18 (Barrington, 1987). These measures, alongside the remaining elements of the Poor Law, laid the foundations for much of the welfare system in the post-partition period in Ireland, though, as we shall see in the next section, to quite different effect in the Free State than in the North.

The Agrarian Strand

The second strand of state intervention in social and family structures in Ireland arose as a response to land agitation and separatist politics in rural Ireland in the latter decades of the nineteenth century (and thus we refer to it here as the agrarian strand of British policy in Ireland). In an attempt to deal with these political pressures (to ‘kill Home Rule with kindness’), the British state threw its liberal economic principles to the winds and instituted a massive programme of state intervention in Irish rural society. The components of this programme which were significant from a family point of view were fourfold.

First and most important was the reform of land tenure, which was brought about through a series of land acts initiated in the 1870s and largely completed by the 1920s. Under the aegis of the Land Commission established in 1881, this radical reform transferred ownership of some 15 million of the 17 million acres of land in Ireland from a small landlord class to a large class of family farmers. It thereby made small family farmers into the largest class in the Irish social structure.

The second component was the programme of regional economic development launched by the setting up of the Congested Districts Board in 1891, a unique experiment in state-led development at the time. This programme was directed at the poor rural areas in the west, the boundaries of which eventually comprised one-third of the area of the country. Its primary remit was to consolidate and enlarge the myriad of tiny and often fragmented small holdings in the west by buying up and redistributing land, but it also aimed to develop economic infrastructure and fishing, by investing in land drainage, farm buildings, stock breeds, roads, ports, fishing fleets and housing. By 1919 it had built or improved close to 10,000 houses, as a result of which the worst classes of rural hovels and cabins were largely eliminated from the Board’s counties (Aalen, 1992: 143–4).

The third component of agrarian policy was the housing programme for landless agricultural labourers brought about through the Labourers’ Acts, the first of which was passed in 1883 and the most important of which was passed in 1906. These acts were ‘closely linked to, indeed almost corollaries of, the various Land Acts’ and amounted to ‘the first public housing programme in the British Isles and probably in Europe’ (Aalen, 1992: 138, 140). By 1921, 48,000 houses (for rental tenure) had been constructed under the programme, as a result of which ‘by the First World War Irish rural labourers were among the best housed of their class in Western Europe’ (Ibid.: 146).

The final component of agrarian policy has been little noted in historical accounts but provided an important adjunct to the other components

noted above. This was the broad educational drive conducted through the National School System, the Department of Agricultural and Technical Instruction and the Congested Districts Board to raise standards of domesticity in rural households, focusing on cleanliness, diet, clothing and, most of all, on the diligence and home-making skills of the housewife (Bourke, 1993: 236–61). While the impact of this drive is hard to assess, it is notable as a further dimension of state activity in a central area of rural family life.

These components together amounted to a programme of state intervention in social and economic life in rural Ireland which was without parallel in any other major region, urban or rural, in western Europe at the time. Some elements of that programme, especially rental housing provision for rural labourers, clearly presaged later urban social housing activities and so are easy to grasp in conventional social policy terms. The backbone of the overall programme however, lay in the land reform activities of the Land Commission and the Congested Districts Board. These amounted to a quite distinctive kind of intervention, in that they were directed at the sphere of production (that is, focusing mainly on access to land and other rural capital, including housing), where social policy characteristically intervenes in the sphere of exchange (that is, focusing on the distribution of income and basic consumption necessities). Their effect was to push the family toward the centre of the system of agricultural production and to displace the market towards the edge. Land and labour, the two key factors of production in the rural economy, were largely decommodified and reorganised on a family basis (i.e., they were 'familised'). The treatment of land as a capital asset to be accessed through the rental or purchase market was largely supplanted by a view of land as a family possession, to be transferred through intra-family bequest (Crotty, 1966; Hannan, 1979). Rural wage labour likewise declined and was replaced by family labour (Fitzpatrick, 1980), in keeping with the design of new farm holdings as *family* production units (thus, uneconomic holdings were understood as those which could not support a family unit). Only in regard to the sale of output (and to a lesser extent, the purchase of inputs) did the market continue to be an important focus of the small-farm economy. Even here, non-commercial, non-capitalist orientations were prominent, so that much of farm output was geared to own-use consumption on the farm and subsistence standards of living rather than to the maximisation of commercial opportunities (Crotty, 1966).

Thus, agrarian policy promoted a family-based *alternative* to the capitalist production system in the countryside, even though the capitalist market economy continued to provide the wider, though often remote,

context in which family farming operated.³ In consequence, the property-owning, family production unit, with a considerable degree of economic self-sufficiency, became the dominant family form of rural Ireland. That family form was characterised, to some degree at least, by the range of family practices which together have been labelled the 'stem family' (a focus on impartible inheritance and family continuity on the land, the 'match' and the dowry system of marriage, delayed marriage, patriarchal control over adult children, the frequent occurrence of the three-generational household, etc.).⁴ It would be an exaggeration to say that the agrarian policies of the colonial state in Ireland were the ultimate cause of this development, or that this outcome was the conscious intention of state policy, but agrarian policy was undoubtedly the proximate means by which it was brought about and sustained within the wider capitalist environment.

The social and family dimensions of agrarian policy became more explicit as the land reform project was appropriated by Catholic nationalism in the final decades of British rule in Ireland. The political and literary elite of the new nationalist movement and the clerical leadership of the Catholic Church joined forces to generate a far-reaching ideological glorification of the small family farm and to elevate the pastoral idyll into a framework for emerging national identity. This outlook defined the countryside as the repository of true moral values and contrasted the authentic rural way of life with the social and moral danger of the city (exemplified in Patrick Pearse's pledge that there would be 'no Glasgows and Pittsburgs' in a free Ireland). Conservative, patriarchal and stable forms of family organisation were central both to this worldview and to the reality of the small-farm economy which underlay it. The groundwork was thus laid for the powerful rural focus of state ideology and state practice in the post-partition Free State, the consequences of which had a major effect on family policy as well as on the broad lines of national development in independent Ireland.

The Development of Family Policy Post-Partition

After partition, the divergences in family policy between North and South turned at a very general level on the differing emphasis given to the two

³ There is an extensive literature on the precise nature of the relationship between the 'peasant' economy and the capitalist economy in modern economic conditions. See Tovey (1992) for a review of this literature in the Irish context.

⁴ The precise definition of the stem family is a matter of debate, as is the question of the prevalence of its various features in rural Ireland (from a large literature, see, e.g., Hannan 1979; Gibbon and Curtin, 1983).

strands of the pre-partition legacy described in the previous section. In the Free State, the agrarian strand dominated and had implications for family life in the wider society at the level of values, rhetoric and 'moral' legislation, as well as on certain material issues. The industrial strand suffered from this dominance and limped along in a neglected condition for more than two decades, before reviving in the post-war period. In the North, the agrarian strand persisted in the form of a supportive stance towards agriculture and the family farm (or owner-farmer, the term favoured today by the main Unionist political party; UUP, 1997), but it lacked the ideological significance it acquired in the South. The industrial strand, which by the post-war period had evolved closer to the modern welfare state, took centre stage, reflecting British developments. However, the imperatives posed by a contested territory and political conflict meant that industrial social policy in Northern Ireland developed differently from that of Britain in a number of ways. Certain features of public administration in Northern Ireland, especially the large role played by unelected administrative bodies (or 'quangos', to use a more recent term), also left a distinctive imprint on social policy in the North.

The South—a Catholic Model of State Intervention

The state in independent Ireland from the 1920s to the 1960s has been described as minimalist in its approach to social issues and as particularly reluctant to intervene in what was constructed as the 'private sphere' of the family. This minimalism is normally explained as a consequence of the anti-statist stance of Catholic social teaching, as well as of the straitened revenue resources of the state (see, e.g., Breen *et al.*, 1990; Kiely and Richardson, 1995). There is some truth in this view, in that certain kinds of state intervention were resisted by Catholic social teaching and did not take place in Ireland in this period. But this is only part of the picture, since an alternative model of state intervention, much of it derived from the agrarian strand of British policy in Ireland, was quite congenial with Catholic social principles and was applied with some enthusiasm in the post-independence period, particularly under De Valera in the 1930s.

The twin pillars of this 'Catholic' model of state intervention were, first, an emphasis on widely distributed family ownership of key kinds of capital (especially land and housing), and second, the strict moral regulation of public and private life along Catholic lines. In connection with land as a form of capital, state policy focused on the completion of tenant purchase

(which was largely achieved by the end of the 1920s), the continuation of land re-distribution towards small-holders,⁵ a range of financial supports for farmers such as the easing of annuity obligations arising from tenant purchase (Rumpf and Hepburn, 1977: 124), and aspirational gestures such as the pledge by the state in the 1937 Constitution (Article 45.2.iv) to maximise the numbers of families living on the land. In the event, measures such as these proved insufficient to rescue agriculture from the inherent lack of commercial dynamism in the small farm system and its crippling dependence on the unprofitable British market. Even so, they reflected a quite interventionist effort on the part of the state to protect and support the small farm economy, for social as well as economic reasons, and thus to give some substance to the pastoral flavour of nationalist rhetoric.

On the housing front, though state intervention was slow to take off after Independence, it soon became exceptional both in its extent and in the degree to which it was directed at the goal of owner-occupation. One strand of this intervention was in the form of state aid to private house building for owner occupation, which was to remain a remarkably constant and prominent feature of Irish government policy from the 1920s to the 1980s, at which point it began to be scaled down (Aalen, 1992: 158; Kaim-Caudle, 1965; Power, 1993). The other strand, public housing, though long-standing in rural areas, took off in urban areas in the 1930s in the form of urban slum clearance programmes. Thenceforth, the scale of the public housing programme, combined with generous state aid to private house building, meant that state support for housing in Ireland was exceptionally high by European standards. For example, in the mid-1950s capital originating from government accounted for 75 per cent of total capital investment in housing in Ireland, the highest such share in Europe (the comparable figure for the UK was 56 per cent and for Sweden 36 per cent—Ó hUiginn, 1959–60: 63). The sale of public housing to tenants, which was initiated in the 1930s with a scheme of tenant purchase for rural cottages built under the Labourers' Acts, was an important element in the spread of home ownership. By the early 1990s, two-thirds of the housing built by local authorities (amounting to some 200,000 dwellings) had been transferred to tenant ownership and this accounted for a quarter of the total stock of owner-occupied housing (Fahey and Watson, 1995). Today, the Republic has the highest share of housing in owner-occupation (at 80 per cent) in western Europe.

⁵ Between 1921 and 1953, the Land Commission (into which the Congested Districts Board was merged in 1923) bought up and re-distributed to small holders some 1.2 million acres of land (Rumpf and Hepburn 1977: 124; see also Nolan 1988).

Where the Catholic model defined state promotion of widespread property ownership as necessary to the foundations of healthy family and social life, it demanded strong state support for Catholic moral regulation as an essential part of the cultural superstructure. The new independent state responded appropriately, with a particular focus on sex, reproduction, gender and childhood discipline. Censorship (1929), the banning of artificial contraceptives (1935) and the drive to control occasions of youth immorality (such as *The Public Dance Halls Act 1935*) were the main measures in the sexual and reproductive arenas. The promotion of a domestic role for women was pursued in the 1930s through the ‘marriage bar’ against female employment in teaching and the public service, and, for working-class women, the introduction of ‘protective’ legislation against ‘unsuitable’ work practices such as nightwork and heavy manual labour (Pyle, 1990). The family articles in the 1937 Constitution, which emphasised patriarchal rights, the domestic role of women and a Catholic view of the impermissibility of divorce, represented the culmination of this trend.

In regard to childhood, the protective impulse reflected in *The 1908 Children Act* stagnated (see below) and a disciplinary impulse took over. *The School Attendance Act of 1926* brought into being an extensive and harsh policing of childhood, over and above that already in place in the schooling system itself. In the 1940s, when this kind of policing was at its peak, prosecutions for non-attendance at school rose to over 10,000 per year, while warning visits to children’s homes by school attendance enforcers may have reached between 15 and 20 per cent of the relevant population (Fahey, 1992). Industrial schools, to which persistently truant children could be committed, were little more than prisons. In ordinary schools too, a harsh regime of corporal punishment was tacitly endorsed.

Catholic enthusiasm for state intervention in support of small-scale family capital and Catholic family morality entailed as a corollary a suspicion of state schemes of income distribution and other social services. In consequence, compared to the flurry of activity on the property and moral fronts, the distributive front represented by industrial social policy remained moribund in independent Ireland until the 1940s. Little movement toward social welfare principles of social provision took place, as a result of which the British Poor Law had a stronger contemporary role in Ireland than in Britain. The much-hated home assistance scheme lived on (though in ever-narrowing form) until the 1970s (Yeates, 1995; Ó Cinnéide, 1970). Old-age pension rates, notoriously, were cut back in the period 1924 to 1928, and no increase over 1924 rates took place until 1948 (Carney, 1985). There was little development of social insurance—by 1926, for example, only one in five of the Irish labour force was insured against

unemployment, though social insurance coverage was extended to provide widows' and orphans' pensions in 1935 (Yeates, 1995).

By the 1940s and 1950s, the demonstration effects of social welfare developments in other countries (such as the National Health Service and the Beveridge plan in Britain) became increasingly difficult to resist in Ireland. In addition, the growing contrast between social stagnation in Ireland and social progress abroad led to a crisis of confidence in national performance as a whole and in the capacity of Catholic models of social action to deliver the required progress. Catholic influence remained strong in some areas of social policy, such as health and education, and hindered the expansion of the role of the state, but other developments, such as the expansion of social security provision under the 1952 Social Welfare Act, indicated the declining capacity of Catholic social principles to cope with modern social policy concerns. A new phase of social policy development began to emerge at that time, with the introduction of children's allowances in 1944, The Social Welfare Act of 1952 and The Health Act of 1953.

Since the 1970s, the Catholic model of social action has been virtually abandoned, even though certain elements of that tradition live on under a more secular umbrella. A protective attitude towards family farming and the rural way of life persists in public policy, and indeed has been given new life, in the shape of the Common Agricultural Policy since Ireland joined the EEC in 1973. Likewise, the predilection for home-ownership as a goal of public policy has persisted and been normalised by policy movements in the same direction throughout Europe (not least in Thatcher's Britain). However, national development thinking in the 1960s switched its attention to urbanisation and industrialisation as the engines of future national progress. With that, the rural was edged somewhat towards the margins of national life, and family farming made complex adjustments to its more commercialised and urbanised environment (Hannan and Katsiaouni, 1977; Hannan and Commins, 1992).

The Catholic moral heritage in the fields of sex and marriage became more and more contentious. The initial major challenge came from an increasingly liberal Supreme Court in the 1960s and 1970s, most notably in the McGee judgement in 1973 which struck down the legal ban on contraceptives as unconstitutional. The growing feminist movement and associated liberalising campaign were aided at crucial points by the commitments to gender equality arising from the Treaty of Rome. Implementation of the various Equality Directives from Europe by successive Irish governments has been slow and reluctant, as a result of which the process extended over the whole of the 1970s, 1980s and early 1990s (Mahon, 1995). A concern for women's status was also to the forefront

in The Succession Act, 1965, the introduction of social welfare support for unmarried mothers in 1973 (Conroy Jackson, 1993; McLaughlin and Rodgers, 1997), the introduction of barring order procedures in the family courts (1976, 1981 and 1996) as a remedy for domestic violence, and the extensive powers to protect the interests of dependent spouses and children incorporated into the radical overhaul of legal separation procedures in 1989.

A conservative counter-attack against the liberal agenda came in the form of the campaign for the insertion of an anti-abortion clause into the constitution in the early 1980s. The concern of those who initiated the campaign was that existing anti-abortion legislation might one day be overturned either by the Supreme Court in Ireland or as a result of legislation enacted in Europe. The campaign led to a constitutional referendum in 1983, in which a two-to-one majority voted to accept a constitutional amendment guaranteeing the right to life of the unborn. However, judicial rulings in 1992 on what the amendment implied as far as foreign abortions were concerned caused the issue to erupt again and necessitated further referendums on questions related to foreign abortions in November of that year (see Girvin 1994 for a full account). At the time of writing, it is declared government policy to have a further referendum on detailed legislation on abortion in the foreseeable future.

Conservative forces scored another resounding victory in 1983 when a government-sponsored referendum to remove the ban on divorce from the constitution was defeated by a two-to-one majority. However, in a second run at the same question in November 1995, the government of the day carried through a pro-divorce constitutional amendment, though the margin of victory, at less than one per cent of the vote, could scarcely have been tighter. In the aftermath of that referendum, the government set up a Commission on the Family to investigate the relationship between public policy and family life. This Commission had not yet reported at the time of writing.

The North—the Impact of Conflict on Industrial Social Policy

Although social policy in the North is often described as following that of Britain, in the pre-war period (1920–39) social welfare support in Northern Ireland owed more to the pre-partition legacy of Ireland as a whole than to developments taking place in Britain. For example, the Poor Law continued in Northern Ireland until the end of the Second World War,⁶ whereas in

⁶ During the inter-war period the total number of people in receipt of Poor Law relief in Northern Ireland never fell below 9,741. In 1939 5,035 people were still being maintained in workhouses (Evason *et al.*, 1976).

Britain, Boards of Guardians were abolished in 1929 and their functions transferred to local authorities. This was to change after the war when the British Treasury agreed to underwrite the bulk of the introduction of the Beveridge welfare state in the North. Nevertheless the post-war Northern welfare system remained distinctive, as Unionist politicians, civil servants and professionals sought to achieve the (populist) benefits of the British welfare state through means which '[were] more in keeping with Unionist principles than those adopted in the system across the water . . . These Unionist principles were seen as being the protection of freedom for the individual and minimal state intervention.' (Connolly, 1990: 99). In addition, many unionist politicians and thinkers were quick to argue that the introduction of the welfare state 'proved' that the Union must stay and pointed to the 'less advanced' welfare system in the South.

Modifications to the Beveridge welfare system took three forms: firstly, tighter restrictions on entitlement to cash benefits; secondly, a greater role for unelected administrative bodies; and thirdly, more restrictive distributive public services and normative family law. All of these were related to the wider politics of the divided Northern state. Describing the development of social policy in the North as following an industrial path is, then, insufficient, insofar as it was shaped by the contested nature of the northern state as well as by the modernism and industrialism of Britain. The more restrictive conditions attached to some of the principle cash benefits, for example, were intended to protect the boundaries of the Northern state and inhibit population movement from the South to the North. Thus, a residence qualification of five years out of the last ten was introduced to establish entitlement to unemployment benefit to 'safeguard against infiltration from Eire' (Ibid.: 92). Similarly, the Family Allowances Act in Northern Ireland applied a residence test to British subjects not born in the UK, to aliens and to those from the Republic, with a stipulation that the family must have been resident in the UK in two out of the last three years (Ibid.: 90–1). Family Allowances were one of the most contentious elements of the post-war welfare package, and debate around them embodied and expressed the (still present) Unionist fears of higher demographic growth among the nationalist compared with the unionist Northern populations. Thus, the initial enabling Bill sought to give fourth and subsequent children less than the British benefits, partly in order to prevent Catholics in the North obtaining more benefit from this family policy than Protestants, and partly from a belief that generous Family Allowances would encourage 'undesirable' (i.e., Catholic) breeding.

The second type of modification of British industrial social policy—the greater role of unelected administrative bodies—reflected Unionist

ideology of the 'small state' (at least in social affairs). The 1948 Health Services Act and the 1946 Public Health and Local Government Act, among others, established a range of bodies with no parallels in Britain. These were centralised (having mostly removed functions and responsibilities from local authorities); they had members appointed by a Minister rather than elected by some appropriate constituency; they were relatively autonomous from the sponsoring Ministry; and were responsible for planning, policy, administration. Such bodies (or 'quangos' in contemporary language) were not 'corporatist' in the sense of incorporating a range of 'social partners', and were justified in political debate in terms of the inadequacies of the machinery of local government (Birrell and Murie, 1972; 1980). Ditch (1988) views the impetus for the establishment of these bodies at the expense of local authorities as the result of the power and influence of the Northern Ireland Civil Service. Whether that is so or not, the significance of these institutions was the way they provided opportunities for the representation, and influence, of key professional groups, such as doctors, planners, social workers, senior representatives of the voluntary sector and religious organisations, in the delivery and development of social policies.

The result, albeit for different reasons, was a similarity with the South, through the influence of professional and religious organisations on the shape and content of social policy, especially those areas which might be included within the remit of family policy. This was obvious in the way that both the Orange Order and the main Churches influenced education policy and laws on 'moral' issues such as homosexuality (Connolly, 1990: 117–18). However, it was also related to the third difference between Northern and British social policy—more restrictive distributive policies. Expenditure in 'family' areas (as well as housing) never reached equivalent levels to Britain, a problem which has continued, at least in respect of social services, since Direct Rule.

By the late 1960s, there were, then, parallel services and reciprocal benefits in the North and Britain but Northern Ireland had not simply transplanted British 'industrial' social policy. Rather, as Ditch (1988) argues, the Stormont government had devised its own principal of 'differential universality', reflecting the symbolic significance of social security benefits as status indicators of the link with Britain (and its putative welfare state) on the one hand, and as a token for attraction-avoidance *via-à-vis* the Republic of Ireland on the other. Meanwhile, public and welfare services—or distributive family policies—were more restrictive than in Britain and religious and professional organisations had greater influence on normative family policies.

Social Policy and 'Direct Rule'

Since 1972 and the introduction of 'Direct Rule', policy making within Northern Ireland has come much more within the overall thrust of British policies (Connolly, 1990: 127), but some of the distinctiveness of the earlier period remains. For example, the greater reliance on 'corporate' bodies instead of local authorities has continued. Indeed it has been expanded by the removal of remaining social welfare responsibilities from local councils and their transfer to existing or new administrative bodies (such as the Health and Social Services Boards and the Northern Ireland Housing Executive). The original reliance on administrative bodies in the North may have reflected Unionist ideology of the 'small state'. However, in some areas at least (such as child protection, which is surveyed in the next section of this paper), and particularly since 1972, the outcome has been the opposite.

'Direct Rule' has been associated with a rise in spending on social welfare, though there is reason to doubt that this rise has been sufficient to achieve 'parity of outcome' in terms of distributive family policies. Although spending per head had become higher in Northern Ireland than Britain by the late 1970s, once migration, different administrative arrangements and higher levels of social and economic need are taken into account, the apparently higher figure reduces dramatically, if not completely.⁷ It is, of course, difficult to establish whether parity of outcome exists in relation to distributive family policies, whereas it is relatively easy to ascertain parity in relation to social security, where entitlements rest on individuals' rights prescribed by law. However, continued under-provision in relation to preschool provision (Hinds, 1991) and social care services (McLaughlin *et al.*, 1997) have been documented for the late 1980s.⁸

In the normative arena, differences between Britain and the North have also continued. Abortion, for instance, is available in substantially more restricted circumstances than in Britain, the age of consent for heterosexual sex remains one year higher than in Britain, and decriminalisation of

⁷ In 1962/63, Northern Ireland's identifiable public expenditure was 8 per cent lower than England's, 7 per cent less than Wales' and 24 per cent less than Scotland's. By 1977/78, Northern Ireland's position had become much more favourable, when the comparable figure was 41 per cent above England and Wales and 13 per cent above Scotland. Connolly (1990) points out that the NIEC analysis of 1985/86 public expenditure showed that apparent over-expenditure reduced from 39.3 per cent to 5.4 per cent, once migration, different administrative arrangements and the cost of implementing new 'national' (i.e., UK) policies were taken into account.

⁸ McLaughlin *et al.* (1997) found that at the end of the 1980s, individuals with the same degree of disability, needs for care, and marital circumstances, were less likely to receive either residential or intensive domiciliary care in the North than their counterparts in Britain.

homosexuality was achieved only under pressure from the European Court of Human Rights. The North remains characterised by a cultural conservatism in the normative family arena. This phenomenon is not analytically separate from that of political conflict given the religious fundamentalism associated with the politics of the divided Northern state.

Child Welfare/Protection

This section documents the substantial differences between the North and South of Ireland in the balance between private and public family law regarding children and associated differences in outcomes. At the heart of these differences has been a greater reliance on private family law (and thus on parental rights) in the South, leading to limited powers of state intervention, and a much greater reliance on public family law in the North and with that a more interventionist role for the state in child welfare. These differences are of interest here as they illustrate how the broad features of policy regimes documented in previous sections are reflected at the level of detailed policy. At the same time, the match between the general character of a regime and detailed policies is by no means straightforward. The balance between family rights versus state interventionism in the realm of child protection may not necessarily be replicated in other aspects of family policy and is not explicable by reference to general, essentially ideological, principles such as the boundary between the public and private spheres. The social construction of these spheres is nuanced and variable so that in the South, a strong ideology of family privacy in relation to child custody, guardianship and adoption coexisted with a strongly interventionist stance in relation to school attendance and 'moral' areas such as contraception and sexual behaviour (Fahey, 1995). Meanwhile in the North, the supposed 'small state' favoured by Unionism, and hence the greater role of administrative bodies in the North than in Britain, paradoxically increased rather than reduced intervention in the 'private sphere', at least in relation to child welfare and protection (as is shown below).

The Legal Framework of Parental Rights

The legal foundations of parental rights in the South rest on Articles 41 and 42 of the Constitution. Few powers for direct state intervention exist (see below). Married parents are prohibited from shedding absolutely or acquiring rights exclusive of the other parent in respect of the child of a marriage under Article 42. But married parents have considerable discretion, free

from state intrusion, to make care arrangements which fall short of adoption (if these are agreed by both parents). The unmarried mother is permitted under private family law to personally place her child in the care of whomsoever she wishes,⁹ with or without the intention of permanently transferring all rights to that person. Non-consensual arrangements can be reviewed¹⁰ but in the case of married parents, this must be at the instigation of a parent or guardian of the child in question, not that of statutory authorities. As a result, in the South, the interface between matrimonial, care and adoption proceedings has been ‘virtually watertight’ (O’Halloran, 1994: 146). Professional assessment from the perspective of the welfare of the child has been a discretionary rather than standard statutory requirement in both matrimonial custody and adoption proceedings.

In the North, the introduction of The Guardianship of Infants Act shortly after partition (1925), established much greater powers of direct intervention by the State, deriving from the principle of ‘the welfare of the child’. Subsequently, both before and after the introduction of Direct Rule, few legislative initiatives regarding guardianship, custody and child care developed in Britain were introduced in the North. However, the particular development of public administration in the North led to an unusual integration of medical, social work and administrative structures with the judicial institutions which supervise marriage breakdown, especially from the 1970s onwards. For example, The 1973 Matrimonial Causes Act established that statements providing information about the future care of children, arrangements for maintenance and so on, had to be approved by a judge before divorce could be granted, and s/he could order a welfare report to be prepared focusing on the needs of the child/ren. The judiciary could decide whether the welfare of a child would be best met through adoption, matrimonial or wardship proceedings and could transfer proceedings between them. The necessary public administration corollary of this legal framework—the growth of the health and social services (see below)—introduced mechanisms for monitoring the standard of childcare and ‘led to the present position where socially approved standards must be met if parents are to retain their *prima facie* right to the custody of their children’ (O’Halloran, 1994: 28). The exercise of private parental rights by

⁹ The relative rights of unmarried mothers and fathers are unclear, though in both guardianship and adoption proceedings, the rights of non-custodial natural fathers in practice have been weak. Though the unmarried mother thus has a *prima facie* right to custody and to control the upbringing of her child, judicial opinion is divided as to whether this is of constitutional or merely statutory origin (O’Halloran, 1994: 16).

¹⁰ Under Part II of The Guardianship of Infants Act 1964, in respect of unmarried parents, and The Judicial Separation and Family Law Reform Act 1989, in respect of married parents.

married and unmarried parents have been equally subject to the interventionist powers of Health and Social Services agencies or the judiciary when child welfare considerations are deemed to arise.

Intervention in the Interests of Child Protection

As statutory authorities in the South can assume parental duties, but not rights, most intervention has taken place at the request of parents who have a right to request help from the health boards. Until 1991, the only powers which permitted a coercive intervention by a health board (i.e., which involved the assumption of both parental rights and duties) had their origins in the pre-partition era—the emergency intervention and place of safety procedures of The Children Act 1908. These were replaced by The 1991 Child Care Act (Parts III and VI) but the new provisions also contained a very guarded approach to emergency intervention.¹¹ Paragraph 18 of The 1991 Child Care Act placed a generalised duty on health boards to identify children at risk of neglect and to provide related services but this brief is informed by ‘the principle that it is generally in the best interests of a child to be brought up in his own family’ (O’Halloran, 1994: 158). Thus, although the Act represents an important step away from the previous non-interventionist stance, permanent provision (including adoption, see below) remains based on ‘complete failure’ of parents both in the present and for the future of the child’s life as a minor, a much stricter criterion than in the North or Britain. The result of the South’s largely non-coercive approach to child welfare was that, as recently as 1985, 73 per cent of children in health board care were there with the voluntary consent of their parents, that is, ‘by parental invitation and in support of an intended long-term continuation of care in the family of origin’ (O’Halloran, 1994: 149).

Until 1952, there was no legislation permitting adoption, consensual or non-consensual (since married parents were not permitted to place their children for adoption under the Constitution, and unmarried parents could make whatever private arrangements they wished). O’Halloran (1994) argues that it was concerns about proselytism which caused the absence of adoption legislation in the Republic (such legislation had occurred in England and Wales in 1926, Northern Ireland in 1929 and Scotland in 1930). Public pressure from two quarters led to the introduction of such

¹¹ A health board social worker must first apply to a District Court judge demonstrating ‘reasonable cause’; following the issuing of a Care Order by the Court, the health board is permitted to care for the child without parental consent in the family of origin, or with fosterparents, in residential care, or through adoption. The length of the order is determined by the court, not the health board.

legislation—from those who had ‘adopted’ illegitimate babies and were in a state of legal insecurity, and from the Catholic Church. The latter developed concerns that without an adoption law there were opportunities for Protestant couples to acquire the illegitimate children of Catholics and then use the law to permanently resist any claim for their return (Whyte, 1980).

However, provision for adoption in the South remains limited because of tight circumscription of the power of statutory authorities to place children who are in long-term care in adoption against their parents’ wishes. Parental rights cannot be terminated on the basis of culpability alone. There is no direct legal link between a statutory health board duty to secure immediate protection for a child known to be at risk and the adoption process which rests in the main on the discretionary decision of a relinquishing parent. It has been largely through voluntary admissions to care under the 1952 Act, rather than the involuntary provision under the 1908 Act, that children have passed from parental care into the adoption process. Movement of children from care to adoption has been low, so that (somewhat ironically) a distinguishing feature of Irish child-care policy has been the consistently high number of children remaining in residential care for long periods. In more recent times, through the 1988 and 1991 Child Care Acts, health boards have greater opportunities to facilitate prospective non-consensual adoption applications by making ‘placements with a view to adoption’. However, the parental failure which resulted in a Care Order being made continues to be insufficient in itself to warrant a similar outcome in adoption proceedings.¹² These features of the Republic’s family law are testament to the singular influence of the Constitution on the autonomy of the marital family unit and integrity of parental rights vis-à-vis the claims of third parties in relation to a child’s welfare interests.

In the North, until the mid-1970s, the majority of children in care were also there on a voluntary basis (i.e., at their parents’ request or with their parents’ approval), but since then, the majority of children in care in Northern Ireland have been there involuntarily. This seems to have been the result of The Children and Young Persons Act (NI) 1968 (under which parents in the North only had the right to request access to care for their children from the statutory sector if such action was clearly in the best interests of the child, not the parent). The establishment of Health and Social Services Boards and the expansion of such public services after the

¹² O’Halloran (1994) notes that a probable result of the 1991 arrangements will be that the ‘care population’ in the Republic will accelerate as compound growth rates result from more annual coercive committals and there continue to be few discharges because of restrictions on non-consensual adoptions.

introduction of 'Direct Rule' have also promoted this outcome. Health and social services agencies can assume both parental rights and duties if a professional assesses a child as in need of care and protection and admits children to residential care facilities on a temporary basis. Long-term care and responsibility for a child (whether residential, foster or adoptive) without parental consent has been relatively easily obtained by health and social services boards through the use of wardship proceedings. Wardship proceedings mean that the veto of a 'culpable parent' to arrangements being made for their child could be overcome. The grounds for dispensing with parental consent provided for a wide definition of 'welfare' and used the statutory ground of 'reasonableness' (rather than 'compelling reasons' as in the South).

Whether in care on a voluntary or compulsory (through wardship proceedings) basis, a child in Northern Ireland could, on the initiative of a Health and Social Services Board, be made available for an adoption placement. O'Halloran's view (1994: 188) is that:

The fact that freeing orders may be utilised by the Boards in respect of the children of non-culpable parents provides a vivid illustration of the extent to which interventionism is now given effect through the provisions of substantive law in Northern Ireland.

The high degree of coercive intervention in the North, mainly through the use of wardship proceedings, means that non-consensual adoptions have become the 'anchor tenant' of Health and Social Services' Boards child-care programmes (O'Halloran, 1994: 134). This has been exacerbated since 1987, when The Adoption (NI) Order restricted parental rights to give or withhold consent to adoption. O'Halloran notes that the extent of coercive interventionism has historically been stronger in the North than in Britain, as a result of close cooperation between the judiciary and the Health and Social Services Boards, firstly under wardship proceedings and more latterly under The Adoption Order. The extent of change likely to be introduced as a result of the implementation of The Children's Order 1996 is difficult to assess, though the explicit intention is to reduce the use of institutional care for children and to develop more modes of intervention which maintain children in their families of origin.

Overall, the greater interventionism characterising the North has meant that the proportion of children in care has been more than double that in the South, and, as noted above, has been largely involuntary. In parallel, the numbers of social workers employed in the South (in relation to the size of the population) has been about half that in North (O'Halloran, 1994: 193). However, the questions, which for many will seem to be the key questions, raised by these comparisons between North and South must

remain unanswered. What have been the costs and benefits of interventionism in the North, and on whom have those costs and benefits fallen? Has that interventionism resulted in a higher level of welfare for children in the North than the South? Or has interventionism in the North served more to control (some) parents than to benefit children? And if so, which parents? Data on the social class and political-religious status of parents and children affected by the practice of interventionism in the North is not available, though it might be anticipated that the well-established link between poverty and state intervention, and the higher incidence of poverty among the Catholic than Protestant communities in the North, resulted in the former community disproportionately experiencing judicial and professional intervention. There are undoubted benefits to children arising from protection from physical, emotional and sexual abuse within their families of origin. However, these benefits are tempered by the costs for children attached to the often unsatisfactory nature of traditional policy responses—institutional and foster care, and adoption—and the failure to develop other, more satisfactory, broad-based and preventative policies directed at families of origin and the wider cultural, social, economic and political environment which both permits and gives rise to abuse, and particularly abusive forms of masculinity. Whether the more child-centred, interventionist orientation of policy in the North compared to the South can be viewed as less patriarchal, more protective of vulnerable individuals and in that sense more egalitarian, depends, then, on the balance of answers to these questions rather than on any simple comparison of levels of interventionism.

Conclusion

This chapter has argued that the historical contrast between the agrarian, anti-colonial foundations of the state in the South compared to the industrial, metropolitan orientation of the state in the North is central to an understanding of the evolution of state-family relations in the two regions. Catholic nationalism generated much of its political dynamism and social ideology in the context of the land reform movement of the late nineteenth and early twentieth centuries. That movement nurtured the small-farm family into a dominant position in the social structure of the countryside, principally by means of a heavily interventionist set of agrarian policies which it won from the colonial state from the 1880s onwards. Given both its numerical preponderance and its ideological dominance in nationalist thinking, that family form was established as a core of the social system in the state established after Independence. The Southern state, therefore, was

partly founded on a particular family model, i.e., the family as a property-owning production unit, with a considerable degree of self-sufficiency and only limited contact with the capitalist market. That model also entailed a vision of what the state's role in family life should be, involving state support for a wide, family-based distribution of capital (especially land and housing) and a strictly Catholic and patriarchal regulation of moral life. Conversely, it entailed a minimalist view of the state's role in income distribution and in other social services identified with industrial models of social policy. All of these factors can be seen coming together in the South's distinctive private and public family law (for example, the distinction between married and unmarried parents, the long absence of adoption legislation, and the very limited powers of statutory authorities in child protection).

Although the state in the North also had a strong agrarian dimension, heavy industrialisation in the north-east, coupled with the North's subsumption into the UK state, meant a stronger emphasis on urban industrial family forms and associated policies. Family policy in the North, therefore, was drawn in the direction of British social policy, but developed distinctive elements—principally more restrictive distributive and normative policies, and a greater role for 'quangos' or 'corporate bodies' in the development and administration of social policies. The conservatism facilitated by the latter in the normative arena from the 1940s onwards, together with the religious fundamentalism generated by the politics of the divided Northern state, has been similar in some ways to the moral conservatism of Catholicism in the South. The complex balance of similarity and difference between Britain and the North can be seen in the field of child protection and family intervention. In that area, new forms of interventionist legislation in Britain often have not been introduced in the North, but new forms of public administration have developed in the North instead, leading to a higher rather than lower levels of intervention in the 'private sphere'.

Since the 1960s, the Catholic agrarian tinge to state-family relations in the Republic has faded a great deal, though a strong focus on the social fabric of the countryside is still evident, for example, in the Common Agricultural Policy. The general tenor of family policy has therefore tended to converge towards that in the North. In the 1990s, public debate in the South about the position of women in the family, abortion, child sexual abuse, divorce and adoption has intensified so that family issues are at the forefront of political debate and public controversy, a situation not paralleled in the North. Such convergence as has occurred between North and South in this period is by no means complete, since both the institutional and moral heritage of earlier periods still affects state actions on the family

on the two sides of the border. The extent of the gap is particularly clear in the area of child protection and family law. As we have shown, even The 1991 Child Care Act in the South has not come close to the high degree of interventionism characterising the Northern state since the 1970s, with its tradition of legitimisation by the judiciary of the professional belief system represented by Health and Social Services Boards.

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