working
notes

*facts and analysis of social
and economic issues*

Irish Policy at the Centenary

December 6, 1921.

The Jesuit Centre for Faith and Justice is an agency of the Irish Jesuit Province.
The Centre undertakes social analysis and theological reflection in relation to issues
of social justice, including housing and homelessness, penal policy, economic ethics
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Editorial

2021 marks the centenary of the signing of the Anglo-Irish Treaty. It is an apt moment to take stock of the history of policies pursued in the State since then, focusing particularly on the areas that comprise the core of our work in the Jesuit Centre for Faith and Justice.

We begin with a masterful account of Irish housing policy from Professor Padraic Kenna of NUI Galway entitled "100 Years of Irish Housing". By considering housing policy across the span of a century, Prof. Kenna allows us to get above the (appropriate) fury surrounding the contemporary housing and homelessness crisis to see that the challenges we now face are, in some ways, a consequence of our long commitment to expanding home ownership as a means to support the values of "civic republicanism … and self-reliance." This essay is an invaluable contribution to an issue which is so pressing for thousands of people today who are either homeless or facing housing precarity and our sincere hope is that it will be widely read and digested by those in positions of influence.

Dr Louise Brangan of the University of Strathclyde and Keith Adams of JCFJ have collaborated to produce "How I[reland] Learned to Stop Worrying and Love the Prison", which is one of the most striking pieces of analysis thus far offered in the decades in which *Working Notes* has been published. Drawing on Brangan's recently published work on the politics of punishment[1] and Adams' long-standing interest in how the social sciences are marshalled for political effect,[2] they offer a fresh account of Irish penal policy, disputing the idea that it was static through the initial decades of the State and instead proposing that a policy of "humane pastoral penality" held sway, particularly in the middle decades of the 1960s and 1970. Decisively, they propose that returning to consider the strengths and the humility of this approach may offer a more positive path forward for penal reform than the liberal incremental approach that is presently dominant.

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1. Louise Brangan, *The Politics of Punishment: A Comparative Study of Imprisonment and Political Culture* (Abingdon: Routledge, 2021)..
2. Keith Adams, "In Evidence We Trust," *Working Notes* 33, no. 85 (October 2019): 22–34.

The Jesuit Centre for Faith and Justice has, for over forty years, pursued social analysis of Irish society informed by Catholic Social Teaching, the Ignatian tradition, and the wider riches of Christianity. Theological reflection has always been the nexus of the Centre's work. And while we endeavour to serve wider, secular audiences with critical, rigorous research and policy proposals, we also are always writing with the hope of informing the institutional church and ordinary Christians committed to social justice. With this in mind, it was impossible for us to consider policy in the first century of the Irish State without commissioning an essay that explored the role of the church in that story. We are deeply grateful to Dr Daithí Ó Corráin of DCU for his piece, "The Catholic Church, the State and Society in Independent Ireland, 1922-2022". Written with an encyclopaedic grasp of the detail but with a keen balance, Ó Corráin "surveys the position and influence of the Church over a century and explains how its once dominant influence was gradually eroded."

Housing, prison, and the place of religion in public life were all live issues at the founding of the State. The same cannot be said for environmental concern. In our final essay of this issue, I have worked with my colleague Dr Ciara Murphy to present an account of the history of the emergence of environmental policy in Ireland entitled, "Greening Ireland's Second Century". We argue that environmental concern was present in the practices of the citizenry and the arguments of legislators in early decades, but in a fashion firmly subjugated to trade, agricultural yield, and economic growth. With membership of the European Economic Community and the growing global recognition of the environmental crisis, this slowly shifted from the 1970s onwards, especially informed by local, grassroots activism. Ireland now has a mature and sophisticated array of environmental law, policies, and regulatory frameworks, but there is a clear anticipation among the electorate that this policy domain will become increasingly central in the decades to come.

Michael Collins famously interpreted the Treaty as the path to freedom – "not the ultimate freedom which all nations hope for and struggle for, but freedom to achieve that end."[3] This issue of *Working Notes* bypasses the old contentious questions of the Treaty itself and instead offers an assessment of what Ireland has done with that freedom in the decades since. Policy is the mundane ground on which our grand visions land.

Our hope is that these pieces will stand as useful guides to students and newcomers to each of these areas but that they will also provoke fresh thinking in those who are already familiar with these narratives. For all that is awry with our society, the first century of our State has produced some remarkable achievements. It is appropriate to press our leaders and ourselves to ensure that our second century goes further to secure justice for all.

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3. Michael Collins, "Advance and Use Our Liberties," in *The Path to Freedom* (Cork: An Chartlann, 2021), 20.

100 Years of Irish Housing

Padraic Kenna

Professor Padraic Kenna lectures in housing law and policy and land law at NUI Galway. He is a specialist on housing rights, and has published six books and over 50 journal articles on these topics.

INTRODUCTION

The Democratic Programme of the first *Dáil* did not specifically address housing policy – although it affirmed that all right to private property must be subordinated to the public right and welfare, and that no child should suffer hunger or cold from lack of food, clothing, or shelter. The legacy of British rule, a new peasant proprietor class, a good public administration system, and a lot of poor housing, provided a unique foundation for Irish State policy-making. This paper traces the development of Irish housing from the foundation of the State in the Republic of Ireland (and does not cover Northern Ireland) to the current centenary celebrations. The periods before and after World War II involved significant State housing provision, although by the 1980s two-thirds of this housing had been sold to tenants, creating a basis for a housing market. Major structural changes after the 1960s had created a new landscape for policy making, although Ireland had avoided the housing challenges of other European countries – rebuilding of bombed cities, large scale migration, and problems of integration. Yet, many were excluded from Irish State policy, although it was only in the 1990s that an 'underclass' was identified, largely living in State housing and experiencing few of the opportunities of other Irish citizens. Of course, the Celtic Tiger utterly changed everything, representing the pinnacle of free-market and property ownership, but also the integration of Irish housing with global financial flows. The relentless push for more and more property ownership continues, but the financialisation of housing, globally, has altered the political debate. House price bubble risks to economic stability are now managed by EU institutions. New challenges are emerging, and the framing of housing exclusion debates in terms of international human rights means that the debate is no longer local. Maintaining the Irish property-owning democracy is becoming very costly.

LEGACY OF BRITISH RULE

The Easter Rising and the formation of the new State had built on the emancipatory struggles against the feudal system of landownership in Ireland, generated over 700 years of Norman influence.[1] The distribution of land to the many

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landless peasants across Europe from 1789 had led to significant social and political changes.[2] The new peasant proprietors "are always found to be conservative in the best sense of the word, deeply interested in public peace and order, self-denying and saving, prosperous and anxious to promote the good education of their children".[3] Concepts of autonomy, self-reliance, ownership and freedom from feudal and colonial oppression were layered into Irish Republican ideals of liberty, equality and solidarity. These principles informing early Irish State housing policy must be seen in the context of the existence of 316,000 small-holdings –"a peasant proprietorship of a certain standard"[4] which had been created by 1920 – covering half the population.[5] Freehold titles for the small land-holdings, could be registered in a State guaranteed Land Registry, making property and land ownership (and disputes) a central part of the Irish conversation and debate until recent times.[6] This elaborate State-backed property registration system provided the basis for widening and protecting home-ownership, with the rise of urbanisation. It facilitated the expansion of the original 'property owning democracy,' in land to one based on housing, and which also legitimised similar State subsidies to housing as had been applied to land ownership.

1. Michael Davitt, *The Fall of Feudalism in Ireland or the Story of the Land League Revolution*, (London and New York: Harper and Bros, 1904).

2. Since 1789, the greater part of feudal control of land throughout the republics of Switzerland, France, empires of Germany and Austria and Kingdoms of Holland, Belgium and Italy had started to break up into smaller estates. Great Britain and Ireland were the exceptions at the end of the 19th century.

3. Joseph Kay, *Free Trade in Land* (5th ed.) (London: Kegan, Paul, 1880), p 16.

4. *Dreher v The Irish Land Commission* [1984] ILRM. 94; Terence Dooley, *The Land for the People - The Land Question in Independent Ireland*. (Dublin: UCD Press, 2004): Murray Fraser, *John Bull's Other Homes. State Housing and British Policy in Ireland, 1883-1922*. (Liverpool: Liverpool University Press, 1996).

5. See Rachael Walsh, & Lorna Fox-O' Mahony, (2018) 'Land law, property ideologies and the British–Irish relationship' *Common Law World Review*, Vol 47, Issue 1, 1-34.

6. See Padraic Kenna. *Housing Law, Rights and Policy* (Dublin: Clarus Press, 2011). The fact that most of these small-holdings were not even economically viable at the time lead to major emigration for the non-inheriting family members as well as the Irish Census "Farmers and Relatives Assisting' occupation category of male non-married non-inheriting children.

But the new State also inherited a very poor housing stock, with some 10% of urban dwellers and 38% of rural dwellers living in third- and fourth-class homes – two- to four-roomed mud huts with windows and one-roomed mud huts, respectively.[7] The *Dublin Housing Inquiry Report* (1914)[8] showed that half of the city population lived in tenement houses or second- and third- class small houses.[9] Yet, an array of British public health and housing legislation provided a legal and regulatory framework for sanitation and slum clearance. The Housing of the Working Classes (Ireland) Act 1908 had provided a State subsidy for urban housing, although this only housed 2.5% of Dublin's population by 1914.[10] In rural areas the Labourers (Ireland) Act 1883 had created some 50,000 labourers' cottages by 1921.[11] The Housing (Ireland) Act 1919 had extended the British post-World War I "Homes fit for Heroes to live in" provisions to Ireland. Associated assessments showed (among the half of local authorities who carried it out) a need for 61,648 dwellings, remarkably similar to the 61,880 units required under the 2020 assessments of housing need – 100 years later (although the Irish population has increased by 50% in that time). After 1921, aside from the British civil service model, only two elements of British housing policy were implemented in Ireland; the provision of housing for returning Irish World War I sailors and soldiers,[12] and the Increase of Rent and Mortgage Interest (War Restrictions) Act 1915 (passed to avoid revolution in Red Clyde), renewed regularly after Independence and introduced permanently in 1946.

UP TO WORLD WAR II

The first *Dáil Éireann* was alive "to the urgency of the housing problem" and established the "Million Pound Scheme" creating 2,000 local authority homes by 1924, a feat all the more remarkable in the context of a shortage of State funds, and the need to rebuild much of the infrastructure damaged in the War of Independence. Legislation in 1924 marked the beginning of a long tradition of State assistance for private sector housing provision.[13] By 1932, some 10,000 dwellings were built by local authorities, and 16,500 by private builders. However, slum conditions persisted.

Housing legislation in 1931 which concentrated subsidies towards the poorer section of the population was inherited by the incoming *Fianna Fáil* Government, and the next decade established the formula for State assistance to local authorities in the form of annual subsidies on loan charges. In the decade after 1932 some 82,000 homes were built, the vast majority (public and private) with State subsidies. Indeed, by 1940, some 41% of the Irish housing stock had been built by local authorities, far higher than that in England and Wales (25%). Of course, this investment in housing, as today, had important wider effects. In many ways it amounted to a public works policy.[14] This required that Irish materials be used in all grant-aided houses, such as Killaloe slates, Dolphin's Barn bricks, cast iron from Hammond Lane and Irish cement.

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7. Cathal O'Connell, *The State and Housing in Ireland: Ideology, Policy and Practice.* (New York: Nova Science, 2007).

8. *Report of the Departmental Committee into the Housing Conditions of the Working Classes in the City of Dublin* (CD 7273), Parliamentary Papers, Vol. 19 (1914).

9. Frederick Herman Andreasen Aalen, *The Iveagh Trust, The First Hundred Years 1890–1990.* (Dublin: The Iveagh Trust, 1990).

10. Mary Daly, *The Buffer State. The Historical Roots of the Department of the Environment.* (Dublin: IPA, 1997).

11. Diarmaid Ferriter, *The Transformation of Ireland 1900-2000* (London: Profile, 2005), 51.

12. Irish Land (Provision for Sailors and Soldiers) Act, 1919. There was a great fear (similar to that in Britain) that these trained ex-World War I soldiers might become disaffected through housing shortages, and join the IRA.

13. Dáil Éireann, "Housing (Building Facilities) Act, 1924," Pub. L. No. 14/1924 (1924), https://www.irishstatutebook.ie/eli/1924/act/14/enacted/en/html.

14. Terence Brown, *Ireland, A Social and Cultural History, 1922-1985,* (London: Fontana, 1985), 44.

Corporation housing at Chancery Street in Dublin, designed in 1933 by Herbert Sims. Rights: Martina Madden

Up to 1940 Dublin's suburbs grew considerably, with the planned suburbanisation of the working classes and modern idealistic estates in Marino, Drumcondra and Crumlin being designed by Dublin Corporation Housing Architect Herbert George Simms. Ruth McManus suggests that the development continuum at the time involved interaction between the State, local authorities, public utility companies and private speculative builders, rather than a strict division between public and private development.[15] The outbreak of war in 1939 slowed housing activity, which did not recommence until 1948–1949.

WORLD WAR II TO THE 1970s

The 1948 White Paper, *Housing - a Review of Past Operations and Immediate Requirements,* indicated that 43,000 houses were needed in urban areas, and 16,000 in the countryside. Legislation in 1948 established regulations for the management and letting of local authority houses, with new priorities for newly-weds and elderly people, followed by those with a family member suffering from tuberculosis, and then persons living in unfit and overcrowded housing.

Expenditure on housing provision rose dramatically and continued throughout the 1950s.[16] By 1964, a further 74,000 private and 63,000 local authority homes were built with State support.[17] This period was described as the time when "Keynes came to Kinnegad" and even Ken Whitaker extolled the benefits of Keynesianism at the time.[18]

Eddie Lewis points out that between the 1930s and the 1950s local authorities had provided between half and two-thirds of total housing output. Remarkably, some 97% of dwellings built in Ireland in 1957 received some form of State aid, a situation only matched in Sweden – which had adopted a radical social-democratic programme in housing after World War II.[19] One American commentator pointed out in 1965 that:

> *The vast effort to create a large citizenship of home owning families has unleashed a thoroughly conservatizing force in the*

15. Ruth McManus, *Dublin 1910-1940 Shaping the city and the suburbs* (Dublin: Four Courts Press, 2021).

16. *Bord na Mona* built over 500 homes for workers in the Midlands, including the fêted estate of 100 houses at Rochfortbridge, Co. Westmeath.
17. White Paper, *Housing Progress and Prospects,* (1964), p 7.
18. TK Whitaker, 'Economic Planning in Ireland', *Administration* 14, No. 4 (1966), p. 279.
19. Eddie Lewis, *Social Housing Policy in Ireland – New Directions* (Dublin: IPA, 2019), 18.

Republic … The people of Ireland today live in what might be regarded as the world's most heavily subsidised houses built under the aegis of a most complex set of economic supports.[20]

Despite mass emigration (with a million people leaving the country in the 1950s and 60s), and the massive State investments, there was still a relatively high level of housing need in 1960s Ireland. In 1963, there was public outcry after two children were killed when a building in Fenian Street collapsed on them.[21] The Dublin Housing Action Committee, formed in the 1960s in response to housing shortages, took direct political action and successfully squatted buildings to oppose redevelopment plans.

The sudden population increase and urbanisation from the late 1960s created a new demand for housing, which largely translated into escalating house and development land prices, on the edge of the major cities. While the Catholic Church held enormous sway over the public, civil and social institutions of the State, including education, health and social policy until the late 1960s, major social developments were nevertheless taking place.[22] The *Buchanan Report* in 1967 recommended regional planning authorities, with national and regional growth centres in Athlone, Cork, Dublin, Drogheda, Dundalk, Galway, Limerick, Sligo and Waterford with large-scale housing provision.[23] The Housing Act 1966 consolidated all housing legislation and provided local authorities with a range of new powers. Arguably, the worst models of housing development were adopted with the system-build high rise housing, the pinnacle of which must be the seven 15-storey blocks named after the seven signatories to the 1916 Proclamation in Ballymun.[24] Little attention was paid to the need for housing

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estate management, amenities, shops and the social, educational or other needs of the new community established there.[25] The legacy of poor housing policy and deteriorating estates has since diminished the social and economic opportunities of many Irish citizens.[26]

However, it was boom time for developers. The *Kenny Report*[27] showed that the price of serviced land in County Dublin had leaped from £1,100 per acre in 1960 to £7,000 per acre in 1971. The Report recommended establishing designated areas where land for house building could be acquired by local authorities at pre-planning value, plus 25% of the value created by the zoning. The recommendations of the *Kenny Report* were never implemented, and it was only through the Tribunals of Inquiry of the 20th century that the true level of influence over politicians by developers was exposed.[28]

In rural areas, large-scale development of bungalows in the 1970s symbolised the new prosperity, based on the bible of bungalow standard house plans – *Bungalow Bliss*.[29] Home ownership in Ireland had reached its zenith by 1991.

20. Paul Pfretzschner, *The Dynamics of Irish Housing*, (Dublin: IPA, 1965), 125.

21. *The Irish Times*, 13 June 1963.

22. See John Henry Whyte, *Church and State in Modern Ireland*, (Dublin: Gill & Macmillan, 1971); Fintan O' Toole, *Enough is Enough – How to Build a New Republic*, (London: Faber & Faber, 2011).

23. *Regional development in Ireland a summary … a project of the Government of Ireland, assisted by the United Nations Development Programme*, Colin Buchanan and Partners in association with Economic Consultants Ltd. and *An Foras Forbartha*. (Dublin, Foras Forbartha, 1967).

24. The 'estate' model (not all in high rise apartments) of rehousing the poorest households in each city and town in Ireland into concentrated and underserved communities created major social dislocation and required enormous levels of State funding on regeneration and other measures to overcome its worst exclusionary effects – many of which are still being felt.

25. Frank McDonald *The Construction of Dublin*, (Dublin: Eblana, 2000).

26. Lewis, *Social Housing Policy in Ireland – New Directions*, 10.

27. Government of Ireland, *Committee on the Price of Building Land. (Kenny Report)* (Dublin: Government of Ireland, 1973).

28. Padraic Kenna, Could the Kenny Report solve the Irish housing crisis?, RTE, Wednesday, 18th March 2020, at https://www.rte.ie/brainstorm/2020/0311/1121605-kenny-report-1973/

29. Jack Fitzsimons, *Bungalow Bliss*. (Meath: Kells Art Studios, 1971).

	1946	1961	1971	1981	1991	2002	2006	2011	2016
Owner-occupied	52.6	59.8	70.8	74.7	80.3	79.8	74.7	69.7	67.6
Local Authority/ Social Rented	16.5	18.4	15.9	12.5	9.8	7.1	10.3	8.9	8.5
Private Rented	26.1	17.2	10.9	10.1	8.1	11.4	10.3	18.8	20.5
Other	4.7	4.6	2.4	2.6	2.1	1.7	4.7	2.6	3.4

Table: Jesuit Centre for Faith and Justice • Source: CSO • Created with Datawrapper

Table 1. Housing Tenure in Ireland 1946–2016.

THE 1980s AND 1990s

Recession in the 1980s had curtailed State expenditure, but some fundamental changes taking place in Irish social housing would have long-term effects on Irish society. The 'surrender grant' in 1984 led to tenants with higher incomes leaving local authority estates, and these estates were now becoming 'residualised' and stigmatised, by European standards.[30] Studies were showing major social exclusion and poverty, which was exacerbated by the heroin epidemic of the late 1980s and early 1990s. [31]

The management of these estates was described as having "all the faults of the British system which was its model – centralisation, paternalism, lack of tenant involvement."[32] From 1992 local authorities had to draw up and adopt a new written statement of their housing management policy.[33] After 1995, tenant involvement became a condition of central government funding for local authority estate management improvements – but the protection of the housing assets, rather than the personal, social and economic development of tenants appeared to a priority.

Aerial view of a modern Irish housing development. Rights: iStock 681602810

30. The term "residualisation" refers to the process whereby public housing is used largely to house those who are unable to go elsewhere, and who are on the whole economically and socially vulnerable. See Nolan, B and Whelan, C, "Urban housing and the role of 'underclass' processes: the case of Ireland", *Journal of European Social Policy* 10, no.1 (2000): 5-21.

31. Tony Fahey, *Social Housing in Ireland: A Study of Success, Failure and Lessons Learned* (Dublin: Oak Tree Press, 1999); Brian Nolan, *Where are the Poor Households? The Spatial Distribution of Poverty and Deprivation in Ireland* (Dublin: Oak Tree Press, 1998).

32. John Blackwell, *A Review of Housing Policy.* (Dublin: NESC, 1989), 89.

33. Housing (Miscellaneous Provisions) Act 1992.

Remarkably, and unlike most other European countries, there is no national representative body of social housing tenants in Ireland. The 'control of the poor' principle was again evident in legislation introduced in 1997 creating a new term 'anti-social behaviour' applying to social housing tenants and their families.

In the 1990s, Labour housing ministers pioneered major legislative and policy reform. This included requiring local authorities to counteract undue segregation in housing between people of different social backgrounds, protection for private tenants, and a new role for housing associations in the provision of social housing.[34] The Housing (Traveller Accommodation) Act 1997 created an obligation on local authorities to create Traveller Accommodation Plans. Towards the end of the 1990s, the economy was beginning to recover and house prices had again started to rise dramatically. This led to a number of initiatives, including the Planning and Development Bill 1999, modelled on British examples, which enabled local authorities to acquire up to 20% of sites (over four units) at pre-planning value, for social and affordable housing provision.

Of course, Irish constitutional property rights were not far below the surface and the Bill was referred to the Supreme Court to examine its constitutionality.[35] The Supreme Court held that the Bill did not constitute an 'unjust attack' on property rights. The proposals benefited individuals in need of housing at the expense of landowners, in the interests of the common good, but were constitutionally permissible. The Court stated that where Irish legislation interferes with a constitutional [property] right, it must: (a) meet a clear social objective; (b) be rationally connected to the objective and (c) not be arbitrary, unfair or based on irrational considerations, and impair the right as little as possible.[36] A total of 5,721 social housing units and 15,114 affordable housing units were delivered under Part V from 2002–2011.

But many were questioning whether there was something special about landed property in Ireland, and whether the law was acting as a barrier to the development of affordable housing. The *All Party Oireachtas Committee on the Constitution Report on Private Property* (2004)[37] examined the way development land acquired such high values, compared to agricultural land, arising from State largesse in planning, zoning, connection to water and other services and infrastructure. Sharing this increased 'value' or betterment between the landowner and the wider community is now regarded as integral to a democratic society. *Housing for All - a New Housing Plan for Ireland* (2021) promises radical, new, modern 'Kenny Report'-style powers to ensure sharing of the increase in land values from re-zoning decisions, and greater community gain.[38]

THE EXCLUDED

The Irish State excluded from its policy considerations many of those seen as outsiders by the influences of Roman Catholic norms, including people with disabilities,[39] homeless people, unmarried mothers, children born in poverty or to unmarried parents, lesbians, gay men and others. The State provided some institutional "care" through contracts with agencies (often religious agencies), thereby insulating it from political accountability for any breach of standards. The abuses which took place in these institutions and the

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34. Government of Ireland, *A Plan for Social Housing* (Dublin: Stationery Office, 1991); Government of Ireland, *Social Housing – The Way Ahead* (Dublin: Stationery Office, 1995).

35. *Re Article 26 and Part V of the Planning and Development Bill, 1999* [2000] 2 IR 321. In three significant decisions, *Blake v Attorney General* [1982] IR 117, *and Re Article 26 and the Housing (Private Rented Dwellings) Bill 1981* [1983] IR 181, the Supreme Court had invalidated restrictions imposed on property rights through rent controls, in place since 1915. Rent controls were again introduced in *Planning and Development (Housing) and Residential Tenancies Act 2016* through the creation of Rent Pressure Zones, while the law of residential landlord and tenant was codified and modernised through the Residential Tenancies Act 2004 and the establishment of the Private Residential Tenancies Board.

36. Limitations on property rights have been recently raised in relation to emergency housing measures to deal with homelessness, but it is clear that there is no major impediment to such legislation. See Hilary Hogan and Finn Keyes, "The Housing Crisis and the Constitution," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, November 16, 2020), https://doi.org/10.2139/ssrn.3731506.

37. Government of Ireland All Party Oireachtas Committee on the Constitution, *Ninth Progress Report: Private Property*, (Dublin: Stationery Office, 2004). http://www6.nuigalway.ie/media/housinglawrightsandpolicy/nationalpolicy/9th-Report-Property.pdf

38. Department of Housing, Local Government and Heritage, "Housing for All" (Government of Ireland, 2021), https://www.gov.ie/en/publication/ef5ec-housing-for-all-a-new-housing-plan-for-ireland/.

39. Almost all services for persons with disabilities were provided by religious bodies within institutions. People with disabilities were described as the neglected people of Ireland in the Report – The Commission for the Status of People with Disabilities, *A Strategy for Equality – Report of the Commission for the Status of People with Disabilities* (Dublin: Government of Ireland, 1996), http://nda.ie/nda-files/a-strategy-for-equality.pdf.

discrimination against groups of people is only now coming to light. Among the many groups of people excluded from housing policy were the 40% of the population who were forced to emigrate in the first 50 years of the Irish State.[40]

There was a noticeable absence of direct female influence on Irish housing policy formation. In the early years of the State in Ireland, where women had been largely charged with maintaining the home and children, poor housing conditions increased the burden. However, the poor design of houses built by the Land Commission and Local Authorities, alongside the fact that not all homes had a water supply until the 1970s, and electricity was only partially available after the 1950s, demonstrated the absence of women's influence on housing policy.[41] Only in 1964 did the Department of Environment set standards which required the provision of a separate bathroom, a WC, hot water facilities, and "liveability factors" including laundry and cooking facilities and adequate storage and shelving.[42]

Of course, those without property were also treated as outsiders in the State. The homelessness and nomadic lives of Travellers has long been recorded, yet all housing legislation and Government housing reports until the late 1980s failed to refer to Traveller accommodation needs. The *Report of the Commission on Itinerancy* (1963) showed that there were 1,150 Traveller families living on the roadside,[43] but there were still 591 in 2019.[44] A Report by the Irish Human Rights and Equality Commission (IHREC) shows that Traveller children comprised 12% of homeless children in emergency accommodation,

although Travellers accounted for only 1% of the population in 2020. Housing associations, (now known as Approved Housing Bodies) with charitable and public benefit objectives, and often founded by religious organisations, today provide specialist housing and support services for many hitherto excluded groups.

NEW CHALLENGES

Housing rights

Irish housing policy is increasingly being measured against Ireland's human rights obligations, advanced in terms of the unenumerated rights and social policy of *Bunreacht na hÉireann*,[45] and the adoption of the *International Covenant on Economic, Social and Cultural Rights* (ratified in 1989) and the *European Social Charter* (ESC) ratified in 1964 and *Revised Charter* ratified in 2000). While these are not justiciable in national courts, the Irish State has accepted obligations to apply these international housing rights, providing regular reports to international monitoring bodies. However, the State is now raising the Irish Constitutional property rights provisions as a barrier to further incorporation of housing rights.[46]

The UN report on Ireland (2015), highlighted insufficient social and Traveller housing, homelessness and lack of access to affordable rented or bought housing, as housing rights issues.[47] It also expressed concern over increasing numbers of homeless families and children, and the lack of culturally appropriate housing for members of the Roma and Travelling community. In *FIDH v Ireland* [48] the Council of Europe held that Ireland violated Article 16 ESC [on the right of families to legal, social and economic protection] by

40. The levels of homelessness and poor housing conditions of Irish emigrants in the UK and the US have been described in many reports - *Irish Homeless Families in London*, (London: Brent Irish Advisory Service, 1988). See also: John Fitzgerald, *The Irish Times*, 26 November 2021, https://www.irishtimes.com/business/economy/john-fitzgerald-the-north-is-losing-a-third-of-young-graduates-this-needs-to-stop-1.4739010.

41. See Caitriona Clear, Women of the House – *Women's Household Work in Ireland 1922-1961* (Dublin: Irish Academic Press, 2000); Aileen Heverin, *The Irish Countrywomen's Association* (Dublin: Wolfhound Press, 2000).

42. Ruth McManus, 'Suburban and urban housing in the twentieth century" in Elizabeth Fitzpatrick & James Kelly (eds.) *Domestic Life in Ireland* (Dublin: RIA, 2012).

43. *Report of the Commission on Itinerancy,* (Dublin, The Stationery Office, 1963).

44. See Department of Housing, Local Government, and Heritage, *2019 Estimate: All Categories of Traveller Accommodation* (Dublin: Government of Ireland, 2021) https://www.gov.ie/en/publication/6f4e1-2019-estimate-all-categories-of-traveller-accomodation/.

45. Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland, 2nd ed*, (Dublin: IPA, 2015); Jerome Connolly, *Unfinished Business – The Case for Housing, Health and Other Social Rights in the Irish Constitution.* (Dublin, 2014).

46. See European Committee of Social Rights (2021) *Fourth Report on Non-Accepted Provisions of the European Social Charter – Ireland.* 6. "Article 31 of the Charter [on the right to housing] could not be accepted because of existing provisions in the Irish Constitution which have not changed since the ratification of the Charter… The issue of accepting Article 31 will be re-examined if and when the constitutional position changes." https://rm.coe.int/4th-report-on-non-accepted-provisions-of-the-esc-by-ireland-2021/1680a3c1b4

47. UN Doc E/C 12/IRL/CO/3, *Concluding Observations on the Third Periodic Report of Ireland* [2015].

48. *FIDH v Ireland*, Complaint No. 110/2014, Decision issued on the Merits, May 2017.

failing to provide adequate standards of housing for a sizeable number of families living in local authority housing. The case of *ERRC v Ireland*[49] found a violation of Article 16 ESC through the practice of habitual evictions of Travellers, and the adoption of inadequate housing legislation. The *European Convention on Human Rights* requires that any eviction from home requires an official proportionality assessment.[50] The *UN Convention on the Rights of Persons with Disabilities* (ratified in 2020) requires that persons with disabilities have the right to live independently in the community, with appropriate in-home and community services.[51] The *European Union Charter of Fundamental Rights* contains a range of housing rights, including the right to respect for Services of General Economic Interest as set out in national law - such as social housing. [52] EU consumer law is also impacting Irish housing, with all mortgages being examined for unfair contract terms.[53] Both the Mercy Law Centre, and Irish Congress of Trade Unions' *Homes for Good* campaign, among others, promote a referendum placing the right to housing in the Irish Constitution.[54]

Homelessness and housing need

The Democratic Programme of the first *Dáil* promised to end the institutionalised poverty of the Poor Law system and workhouses.[55] The Report of the Commission on the Relief of the Sick and Destitute Poor in 1927 found 3,257

homeless people including 901 children, and in January 2021 there were 5,987 homeless adults and 2,326 homeless children in Ireland.[56]

Religious groups were encouraged to take on a major role in this area in the new State, and only in the 1970s did emerging voluntary groups adopt new approaches beyond charity.[57] The Housing Act of 1988 officially defined homelessness for the first time, although State obligations involve only providing funding to agencies to provide accommodation. The definition is based on a local authority assessment in relation to absence of any form of shelter, although housing needs are also examined in relation to other criteria.[58] These local authority assessments of housing need and homelessness have taken place since 1989, and the latest in 2020 shows that there were 61,880 households assessed by local authorities as qualified for housing support, with almost half unable to afford their housing costs, and 10.5% living in a homeless shelter, institution or emergency accommodation.[59] Significantly, the numbers living in unfit housing are very low due to the level of housing development since the 1990s.

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49. *ERRC v. Ireland,* Complaint No. 100/2013, Decision issued on the Merits - May 2016.

50. *Donegan v DCC & Gallagher v. DCC* [2012] IESC 18.

51. Department of Economics and Social Affairs (Disability), "Article 19: Living Independently and Being Included in the Community of the Convention on the Rights of Persons with Disabilities (CRPD)" (United Nations, 2006), https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the-community.html.

52. Padraic Kenna, *Integrating EU Charter Housing Rights into EU Economic Governance and Supervision*. (NUI Galway: Centre for Housing Law, Rights and Policy, 2020), http://www.nuigalway.ie/media/housinglawrightsandpolicy/files/Briefing-3-Integration-EU-Charter-Housing-Rights-into-EU-Economic-Governance-and-Financial-Supervision--.pdf.

53. See Padraic Kenna & Héctor Simón-Moreno, 'Towards a common standard of protection of the right to housing in Europe through the charter of fundamental rights'. *European Law Journal, 25, no.6* (2019): 608–622.

54. Mercy Law Centre, "Second Right to Housing Report: The Right to Housing in Comparative Perspective" (Mercy Law Centre, June 2019), https://mercylaw.ie/wp-content/uploads/2019/06/MLRC-Presentation-on-Comparative-Perspective-of-Right-to-Housing-to-the-Joint-Committee-on-Housing-Planning-and-Local-Government-12-June-2018.pdf; Home for Good Coalition, "Why a Referendum," Home for Good, December 12, 2019, https://www.homeforgood.ie/referendum/.

55. Dáil Éireann, "Democratic Programme Debate" (Houses of the Oireachtas, January 21, 1919), Ireland, https://www.oireachtas.ie/en/debates/debate/dail/1919-01-21/15.

56. See: Department of Housing, Local Government and Heritage Monthly Homelessness Report, Gov.ie, January 2021: https://www.gov.ie/en/publication/36f5f-homeless-report-january-2021/

57. Eoin O'Sullivan, *Homelessness and Social Policy in the Republic of Ireland* (Dublin: Trinity College Dublin, 1996)), 2.

58. Section 9(2) sets these out as: homeless persons; Travellers; those in unfit or unsuitable accommodation; those involuntarily sharing accommodation; young persons leaving institutional care without family accommodation; those in need of housing for medical or compassionate reasons; older people; persons with disabilities (including handicapped (sic)); and those in the opinion of the local authority who are not reasonably able to meet the cost of the accommodation which they are occupying. or to obtain alternative accommodation.

59. The Housing Agency, *Summary of Social Housing Assessments 2020: Key Findings* (Dublin: The Housing Agency, 2021).

Legislation in 2009 redefined State housing obligations to providing 'social housing support', opening a range of responses other than the provision of council housing, such as the extensive leasing schemes from the private sector – Rental Accommodation Scheme (RAS) and Housing Assistance Payment (HAP). The subtle but profound change has not yet been recognised by many political advocates today. In fact, this new form of 'social housing support' mainly through State increased financial support to private rental tenants has to led to Ireland being regarded in 2019 as among the EU Member States with the highest level of social housing – defined as the proportion of the population of tenants with below market rents (22.3%).[60]

In the same year, legislation ushered in major reforms in Irish land law "to repeal enactments that are obsolete, unnecessary or of no benefit in modern circumstances," and to modernise the law. Home loan mortgages were redefined as consumer or 'housing loans' – a major and historic divergence from the general law of mortgages in land law, almost unique to Ireland in its integration of EU consumer law with Irish property law.[61]

Prices and rent

In 2021, housing has become unaffordable to rent or buy in Ireland for many, but the State provides significant subsidies to the market to ensure that those excluded by that market have a home. The capital housing budget for 2021 was €2bn while some €1.3bn is spent on current expenditure, including €218m on homelessness services and €20m on Traveller Accommodation.[62] The annual expenditure on the various supports to the private rented sector, including RAS (€133m.), HAP (€558m.) and Rent Supplement means that over one-third of private tenancies are subsidised by the State. This was before

Housing for All was announced in October 2021 promising a capital spend of €4bn per annum.[63]

Climate change

Climate change will impact significantly on housing in Ireland and already the Climate Change Advisory Committee has suggested that Irish homeowners will need to spend between €25bn and €75bn on retrofitting over the next 30 years.[64] The National Development Plan (2018-2027) allocated exchequer funding of €4 billion from 2018-2030 to support energy efficiency improvements across the residential sector.[65] The 2020 Programme for Government, formulated with the Green Party as a negotiating party, is providing €5 billion in additional funding for retrofitting.[66]

THE CELTIC TIGER TRANSFORMED IRISH HOUSING FOREVER

The accession to the European Union in 1972 had a profound impact on Irish society and economy and on the housing system. Aside from the increased prosperity following European Aid in the 1980s, the integration into the European economy impacted on housing in some unanticipated ways. The 'social partnership' (and associated NESC Reports) consensus policy-making between the social partners of employers, trade unions and the State between the 1980s to 2010 led to the development of a modern European welfare state. This was hastily constructed, described by O' Donnell as 'building a ship at sea' – with rapid growth from the late 1990s, on top of a highly politicised infrastructure.[67] In this rapidly evolving State expansion period controlling the property developer

60. Eurostat – *Distribution of population by tenure status, type of household and income group - EU-SILC survey*. See https://ec.europa.eu/eurostat/databrowser/view/ILC_LVHO02__custom_1250789/default/table?lang=en

61. Land and Conveyancing Law Reform Act 2009.

62. Department of Housing, Local Government and Heritage, "Minister O'Brien Announces €3.1 Billion Housing Budget," Gov.ie, October 14, 2020, https://www.gov.ie/en/press-release/96dba-minister-obrien-announces-31-billion-housing-budget/. See also: The Housing Agency, "Housing Budget 2021 Explainer" (The Housing Agency, October 2020), https://www.housingagency.ie/sites/default/files/2020-10/budget-2021-final.pdf.

63. Sandra Hurley, "'Unprecedented' €4bn State Funding a Year for Housing," *RTE.ie*, October 3, 2021, https://www.rte.ie/news/2021/0901/1244222-government-housing-plan/.

64. Evidence to the Joint Oireachtas Committee on Climate Action, reported at RTE News, "Irish Households to Pay up to €75bn for Retrofitting," *RTE.ie*, October 16, 2019, sec. News, https://www.rte.ie/news/politics/2019/1016/1083848-cost-of-retrofitting/.

65. Project Ireland 2040, "National Development Plan 2018-2027" (Dublin: Government of Ireland, 2018), https://assets.gov.ie/37937/12baa8fe0dcb43a78122fb316dc51277.pdf#page=null.

66. *Programme for Government: Our Shared Future*, p. 21, also available at https://www.gov.ie/en/publication/a4d69-long-term-renovation-strategy/.

67. See Rory O'Donnell, "The partnership state: building the ship at sea," Chapter 4 in Marie Adshead, Peadar Kirby & Michelle Millar, (eds.) *Contesting the State – Lessons from the Irish case*. (Manchester University Press, 2008).

and associated financial actors in the housing system proved impossible. The period of the 'Celtic Tiger', from the 1990s to the crash of 2008, was without precedent, especially for our understanding of Irish housing. Significantly, between 1998 and 2007, almost 300,000 Irish women joined the labour market, historically increasing female activity rates from 57% to 67%.[68] The two-person mortgage became the norm.

Sadly, the economic revival from the mid-1990s turned into a full scale credit-driven house price boom – where any increases in productive income were almost immediately captured in rising house prices. Such was the extent of capital flows into housing (increasing from 32% to 70% of GDP between 2000 and 2006) that Ireland experienced the fastest rise (350% between 1997 and 2007) and deepest fall (50% between 2007 and 2012) in house prices of any nation in the world. The consequences were catastrophic, with the State bailing out the main banks, nationalising all building societies, and then being forced to seek an EU bailout for the State itself in 2010. The crash led to a recession and crisis for heavily indebted mortgagors, with 14% of home loan borrowers and 24% of buy to let borrowers in arrears in 2015. Banks then began to sell portfolios of distressed loans to international investor 'vulture funds' and a major surge in mortgage possession cases occupied the Circuit Courts – even until 2019.[69]

Difficult as it is to accept, Irish housing policy killed the Celtic Tiger.[70] The regulatory capture of financial regulation and the hegemony of a developer/banker/politician regime had been intensified by the ideological and utopian notion that everyone should be a homeowner.[71] The idea of housing as a right (and not a commodity) was overwhelmed by the heady ideology of property ownership and 'market-

speak'.[72] Legislation in 2009 created even more routes to home-ownership, where new local authority tenants could switch from renting to the 'incremental purchase' of their dwellings.[73] Of course, the financialisation of housing had begun in the 1980s with the deregulation of Building Societies, and integration of housing finance with global capital flows,[74] but failure to address the impact of a Euro credit bubble after 2004 was devastating.

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After the crash the EU reconfigured banking supervision and financial governance across Europe, with direct prudential supervision of the main banks from Frankfurt, and new policies on levels and limits to mortgage lending. The risks of Irish credit-driven house prices bubbles are now closely monitored.[75] The fact that the ECB licenses and franchises financial institutions to create vast amounts of credit, based on lending against rising house and associated land prices, has enormous effects on the ability of Ireland and other EU Member States to implement holistic, tenure-neutral, and inclusive housing policies, and ensure a supply of adequate and affordable housing for all.[76]

68. Helen Russell, Frances McGinnity, Tim Callan, & Claire Keane, *A Woman's Place: Female Participation in the Irish Market* (Dublin: Equality Authority/ESRI, 2009).

69. See Padraic Kenna, *A Lost Decade – Study on Mortgage Possession Cases in Ireland* (NUI Galway: Centre for Housing Law, Rights and Policy, 2020), http://www.nuigalway.ie/media/housinglawrightsandpolicy/files/A-Lost-Decade---Report-on-Mortgage-Possession-Cases-in-Ireland-.pdf.

70. Michelle Norris and Dermot Coates, 'How housing killed the Celtic Tiger: Anatomy and consequences of Ireland's housing boom and bust'. *Journal of Housing and the Built Environment*, 29, no. 2 (2014): 299–315.

71. Sean O'Riain, *The Rise and Fall of Ireland's Celtic Tiger: Liberalism, Boom and Bust* (Cambridge: Cambridge University Press, 2014).
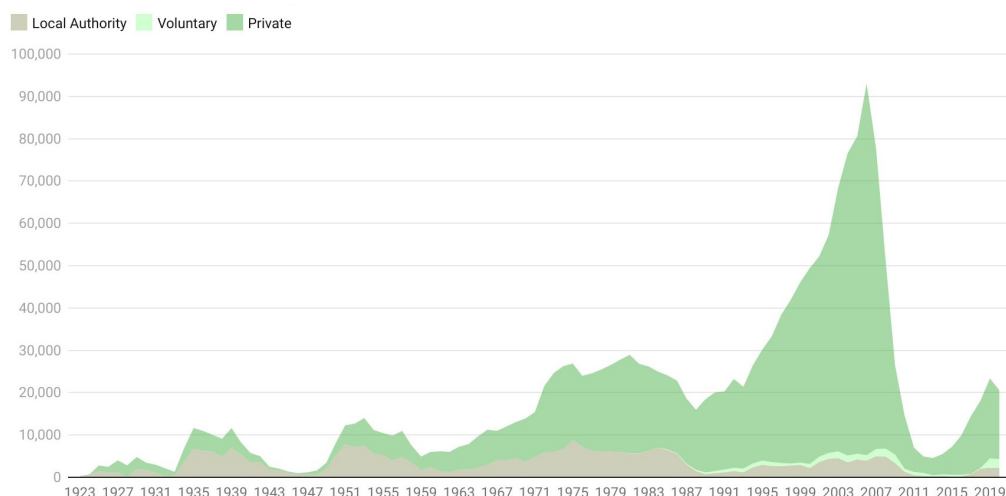
72. P.J. Drudy, P.J. and Michael Punch, *Out of Reach: Inequalities in the Irish Housing System* (Dublin: tasc/New Island, 2005).

73. Housing (Miscellaneous Provisions) Act 2009, Part 5.

74. Manuel B. Aalbers, *The Financialization of Housing* (Oxford: Routledge, 2016).

75. One example of the relevance of EU economic governance on housing rights can be seen in the 44-page European Commission report on post-programme surveillance of macroeconomic imbalances in Ireland (2019); the document contained some 78 references to housing, demonstrating the central position of housing for banking and financial stability. See https://www.sipotra.it/wp-content/uploads/2019/04/Post-Programme-Surveillance-Report-Ireland-Autumn-2018.pdf

76. See Padraic Kenna, *Briefing Paper: EU Economic Governance and Financial Supervision*, p. 32. (NUI Galway: Centre for Housing Law, Rights and Policy NUI Galway, 2020). Available at: http://www.nuigalway.ie/media/housinglawrightsandpolicy/files/Briefing-2-EU-Economic-Governance-and-Financial-Supervision--.pdf

Local Authority ⬛ Voluntary ⬛ Private

Adapted from Eddie Lewis, *Social Housing Policy in Ireland - New Directions (Dublin: IPA, 2019), 18.*
Chart: Jesuit Centre for Faith and Justice • Created with Datawrapper

Figure 1. Housing construction since Independence[81]

The European Semester promotes housing policies to tackle housing supply shortages, dysfunctional housing markets, macroeconomic imbalances and insufficient stocks of social housing. Of course, a great many EU measures, from environmental protection to construction products to public procurement have already impacted on Irish housing. These EU law and institutional measures are now actually constitutive of the Irish national housing system rather than marginal add-ons. Indeed, since 2001, Irish social housing has been defined in the context of a Service of General Economic Interest, which must comply with State aid rules.[77]

Yet, the ideology of property/home ownership persists, despite, or perhaps driven by, the decline of home ownership rates among 25-39 years olds. The latest Programme for Government (2020) states that:

…home ownership should be within reach of all our citizens. We will bring forward measures over the lifetime of the Government to enable home ownership for more people through increased supply and interventions that make

home ownership more affordable… An overriding objective of our housing policy is to make homes more affordable. We will: Progress a State-backed affordable home purchase scheme to promote home ownership.[78]

But subsidies for home ownership fuel rising house prices – the problem which the subsidised schemes are ultimately seeking to address.[79] As Eoin Burke-Kennedy has pointed out, the "dogma that increasing supply will unlock many of these issues is becoming increasingly jaded … Not once in our recent history has it [increased supply] improved affordability."[80]

Figure 1 shows the pattern of new housing construction from the foundations of the State, with the dramatic peak over 90,000 homes in 2006, followed by a cliff-like drop.

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77. See European Commission, State Aid N 209/2001 – Ireland. Guarantee for borrowings of the HFA. SG (2001) D/289528; Padraic Kenna, *Supporting the Irish housing system to address housing market failure - Cost Rental Housing and Services of General Economic Interest (SGEI)* Dublin: Irish Council for Social Housing and Centre for Housing Law, Rights and Policy, NUI Galway, 2021).

78. Programme for Government 2020 p. 61. *Housing for All*, Available at: https://static.rasset.ie/documents/news/2020/06/draft-programme-for-govt.pdf

79. Government's shared equity scheme risks driving up house prices, Central Bank warns. *The Irish Times* 15 March 2021. https://www.irishtimes.com/business/economy/government-s-shared-equity-scheme-risks-driving-up-house-prices-central-bank-warns-1.4510723

80. *The Irish Times*, 5 April 2021.

81. Adapted from Lewis, *Social Housing Policy in Ireland – New Directions*, 16.

Net depreciation 0%   ---- Net depreciation 1%
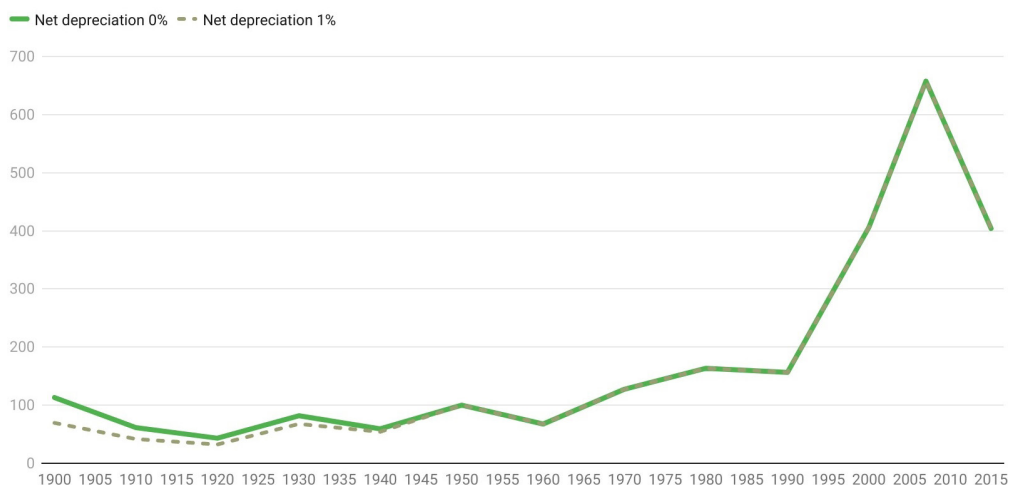
Graph adapted from Ronan Lyons, Measuring house prices in the long run: Insights from Dublin, 1900-2015. (2015) Available at: https://www.semanticscholar.org/paper/Measuring-house-prices-in-the-long-run-%3A-Insights-%2C-Lyons/bccda752b7bc3ec55525c8a8f8ffd2de51d07b52

Chart: Jesuit Centre for Faith and Justice • Source: Ronan Lyons • Created with Datawrapper

Figure 2. Dublin house price index, real (1950 =100)

Significantly, all boosts in 'supply' coincided with major increases in house prices. Ronan Lyons, who established the now ubiquituous website – *Daft.ie*, containing almost all houses for sale or rent in Ireland, prepared a Dublin house price index from 1900 to 2015.

What is interesting about these two graphs is that they show house prices increasing at the same time as a major boost in supply – the similarity patterns between 1995 and 2007 are too significant to be coincidental. The key to understanding all this is the flow of credit/finance into housing in this period. Of course, housing markets are unlike other markets. House prices do not fall with increased supply, as housing is both a consumption and investment commodity. This is now more true than ever, as international and institutional investors buy most new apartment blocks, both driving and anticipating higher prices. Indeed, periods of house price growth have coincided with massive increase in available finance – especially before 2007. However, access to mortgage finance to buy a home is now limited to those on the highest incomes who compete with international real estate investment funds. These are transforming

the housing landscape in Dublin, marking the globalisation of Irish housing 100 years after the founding of the State.[83] Is this what Wolfe Tone meant about Ireland taking its place among the nations of the world? The relationship between housing systems and monetary and financial policy has yet to be fully developed in Irish housing policy development.[84]

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82.   Adapted from: Ronan Lyons, *Measuring house prices in the long run: Insights from Dublin, 1900-2015.* Original available at: https://www.semanticscholar.org/paper/Measuring-house-prices-in-the-long-run-%3A-Insights-%2C-Lyons/bccda752b7bc3ec55525c8a8f8ffd2de51d07b52

83.   Rory Hearne, *Housing Shock – The Irish Housing Crisis and how to solve it.* (Bristol: Policy Press, 2020).
84.   Mark Stephens, 'How Housing Systems are Changing and Why: A Critique of Kemeny's Theory of Housing Regimes', *Housing, Theory and Society* 37, no. 5 (2020); 521-54.

CONCLUSION – BRINGING COHERENCE TO 'HOUSING' POLICY

Understanding how housing systems function and change is one of the most enduring challenges in social policy. While many policy reports such as the iconic NESC *Housing in Ireland: Performance and Policy* (2004)[85] identify key housing policy objectives, housing as property, and housing as a market, remain the dominant Irish policy paradigms. Almost all media and political debates treat housing as the central element of the Irish property market. Current lamentations that this 'market' model is not providing housing for those in need demand more supply side State subsidies to sustain this ideological construct. Norris characterises the Irish housing system as epitomising an asset-based welfare approach, where housing policy is imbued with strong property rights and self-reliance principles, although involving a high level of State financial and other support.[86] She identifies the major change as occurring in the late 1980s when the State was no longer able to provide funding for housing at the same level, and turned towards the finance markets (along with de-regulation of building societies) for housing funding.

Eddie Lewis presents the development of Irish housing in two phases – from independence, and after the Housing Act 1966, which for the first time provided an integrated and modern national framework for the management of social housing. While undoubtedly contributing to the housing stock and promoting home ownership, social housing has also left a legacy of deteriorating estates and crumbling infrastructure that too often has diminished the social and economic opportunities of those growing up in these estates.[87]

Eoin Ó'Broin TD points out that the key features of the Irish housing system are an under-provision of public non-market housing and an over-reliance on the private market to meet housing need.[88] This involves

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> Housing is too fundamental a right to be left to the boom-and-bust cycle of the market, and any alternative functional housing system must place the large scale provision of non-market housing at its very centre.

massive subsidies to landowners, developers, landlords and investment funds. Housing is too fundamental a right to be left to the boom-and-bust cycle of the market, and any alternative functional housing system must place the large scale provision of non-market housing at its very centre.

Aside from the sale to tenants of two-thirds of the 330,000 social housing units and other supports to home-ownership, in the first century of the State,[89] the push for more and more property ownership, as the underlying aim of housing policy, is patently clear. If the expansion of housing as property and wealth, leading to a 'property-owning democracy' was the objective of Irish State housing policy, then it has succeeded. Housing accounts for two-thirds of net worth household wealth of €830bn.[90] Ireland has a robust political system, which weathered the rise of fascism, numerous economic depressions, and even a bailout of the State itself. According to Eurostat, Ireland has among the lowest average housing costs and homes with the most rooms person on average in the European Union, with one third of home-owners owning their property outright.[91] There is relatively little unfit housing, although it has become too expensive for emerging new households, and the poorest are falling off the housing 'ladder' into homelessness. But it is not really surprising that Irish housing policy has been about expanding property ownership. Civic republicanism values autonomy and self-

85. NESC, *Housing in Ireland: Performance and Policy*. No. 112. (Dublin: NESC, 2004). Available at: http://www.nesc.ie/dynamic/docs/Background%20Paper%202.pdf.

86. See Michelle Norris, *Property, Family and the Irish Welfare State*, (London: Palgrave Macmillan, 2016).

87. Lewis, *Social Housing Policy in Ireland – New Directions*, 10.

88. Eoin Ó'Broin, *Home – Why public housing is the answer*. (Dublin: Merrion Press, 2019).

89. Padraic Kenna, P. & Sheerins, A. (2015) 'Development of Irish Housing 1900-1970s'. *Saothar: Journal of the Irish Labour History Society* 40, no. 1(2015): 7-17.

90. See Faris Baderand Cormac O' Sullivan, *New High in Irish Household Wealth: What is Different this Time?* (Dublin: Central Bank of Ireland, 2019). https://www.centralbank.ie/statistics/statistical-publications/behind-the-data/a-new-high-in-irish-household-wealth-what-is-different-this-time

91. See Eurostat Housing in Europe – Statistics Visualised - 2020 edition. Available at: https://ec.europa.eu/eurostat/cache/digpub/housing/images/pdf/Housing-DigitalPublication-2020_en.pdf?lang=en

> **If the expansion of housing as property and wealth, leading to a 'property-owning democracy' was the objective of Irish State housing policy, then it has succeeded. Housing accounts for two-thirds of net worth household wealth of €830bn.**

reliance (including freedom from control of feudal monarchs), enabling citizens to practice virtuous citizenship.

Property and housing ownership in Ireland have bestowed a set of values, and civic republican parties continue to promote these values today, through State funding, after 100 years. But these objectives are becoming very costly and difficult to sustain, and not everyone can participate on an equal basis.

That these values also overlapped with some parodies of Victorian petite bourgeois values of the Irish Roman Catholic Church is, of course, too obvious to be a coincidence. But of course, that is not the full story here, and it is important to recognise the role the Catholic Church as a social institution played in the stability of the Irish State. Catholic social teaching on respect for human dignity and participation in society for the common good in society, together with more recent teachings on oppression, the role of the State, subsidiarity, social organisation, concern for social justice, and issues of wealth distribution are contributing to the creation of a more inclusive, holistic and sustainable housing policy.[92]

These and other approaches, are inspiring and creating new ways of seeing housing, which act as a counter to the hegemonic discourse of housing as property, or an asset. This will promote new forms of housing which will be aesthetically and socially inclusive, but also based on equity in society and a sustainable planet.

Housing ownership in Ireland has bestowed an enduring set of values. But if there is any lesson from 100 years of Irish housing it is that housing policy can diminish, or it can reinforce, social and economic inequality.

> **If there is any lesson from 100 years of Irish housing it is that housing policy can diminish, or it can reinforce, social and economic inequality.**

92. Pope Francis, *Fratelli Tutti* (Vatican City: Vatican, 2020), §120 . "...the Christian tradition has never recognized the right to private property as absolute or inviolable, and has stressed the social purpose of all forms of private property. The principle of the common use of created goods is the first principle of the whole ethical and social order...it is a natural and inherent right that takes priority over others."

How I[reland] Learned to Stop Worrying and Love the Prison

Keith Adams and Louise Brangan

Keith Adams is the Social Policy Advocate at the Jesuit Centre for Faith and Justice. Dr Louise Brangan is a Chancellor's Fellow at the University of Strathclyde and most recently the author of *The Politics of Punishment: A Comparative Study of Imprisonment and Political Culture* (Abingdon: Routledge, 2021).

INTRODUCTION

This essay pieces together the history of Ireland's prison system. It does this by looking at prison from the formation of the State and tracing the changing penal priorities, policies, and practices up to the present day. In the short history of our nation, the prison was at one time shaped by an admirable, but now largely forgotten, humane pastoral penality, which gave way to an express punitive sentiment in the 1990s. This history should matter to those of us interested in penal reform and social justice today. In recovering Ireland's history of penal policy, an attempt is made to develop what Nellis has called "a historically tutored memory" so as "to ensure that our penal heritage is properly remembered." This can remind the Irish Prison Service of "its roots and its achievements, its turning points, its lost opportunities, its past ambitions," but also "its still unrealised possibilities."[1]

Many involved in the building of the newly independent Irish Free State in 1922 were former prisoners. While policymakers and prisoners can seem to occupy diametrically opposed positions in contemporary Ireland's social hierarchy, this divide did not always exist. Prisoners and former prisoners were active and prevalent in Irish political and civic life until the 1960s.[2] As we approach the 100-year anniversary of the founding of the Irish State, the archetype of the prisoner politician may have largely disappeared[3] but prisons have been ever-present during this time. The basic formula remains the same; a person is found guilty of a crime, as defined by the State, and if it is considered serious enough, then serves a sentence in a penal institution whereby the debt to society is considered paid.[4]

Prisons are ever-present in the Irish State.
Rights: Markus Spiske at Unsplash

When surveyed over a longer period, seemingly imperceptible shifts in penal priorities, policies and practices become much more obvious. Following a brief sketch of the penal infrastructure inherited from Britain in 1922, this essay will outline how penal scepticism and Catholic communitarian values had a formative effect shaping Ireland's penal policy in the 1970s. With humane pastoral penality of the 1970s understood as Ireland's unique approach to lessening the *problems of the prison*, it becomes necessary to discuss the often overlooked irony that Ireland's punitive turn was the result of a modernising and progressive social period in our history. The essay will conclude with a consideration of the role of human rights discourse within the Irish penal system, how it may legitimise current penal policy and practice, and what it might mean for the future.

INHERITANCE OF PENAL INFRASTRUCTURE, 1922-1960s

Ireland became independent following the Anglo-Irish Treaty in December 1921. The nascent Irish Free State inherited a prison estate of nine local prisons, four convict

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1. Mike Nellis, 'Community Penalities in Historical Perspective', in *Community Penalties: Change and Challenges*, ed. Anthony Bottoms, Loraine Gelsthorpe, and Sue Rex (Cullompton: Willan Publishing, 2001), 35.

2. Cormac Behan, 'The Benefit of Personal Experience and Personal Study: Prisoners and the Politics of Enfranchisement', *The Prison Journal* 91, no. 1 (2011): 9.

3. A number of civil and criminal cases have resulted in members of Dail Eireann being sentenced to short prison terms. In 2003, Joe Higgins TD received a sentence of a month for defying a High Court order. Two years later, Ray Burke, a former Minister for Justice and the most senior politician to be imprisoned, received a six month sentence for making false tax returns. Stephen Collins, 'List of the Week: 10 Politicians Who Have Been Arrested', The Irish Times, 14 February 2015, https://www.irishtimes.com/life-and-style/list-of-the-week-10-politicians-who-have-been-arrested-1.2103062.

4. Ievins, Jarman and Reimer probe the common justification of prison based on the idea of 'paying a debt.' They caution against the metaphor of punishment as debt extraction because it is "fundamentally exclusionary and does not help us think about what happens to people while thay are being punished." For a fascinating exploration of this penological metaphor and proposal of an inclusionary alternative, see Alice Ievins, Ben Jarman, and Thea Thomasin Reimer, 'False Accounting: Why We Shouldn't Ask People Who Commit Crimes to Pay Their Debts to Society', *Working Notes* 35, no. 88 (June 2021): 7.

prisons, and one borstal.[5] Ireland's colonial past shaped initially trenchant penal reform views within government. In November 1922, the first Minister for Home Affairs (with responsibility for justice, including prisons), Kevin O'Higgins, in one of his first statements to the newly established Free State parliament, laid out a scathing critique and the need for radical reform of Irish prisons:

> *"There is not a member of this present government who has not been in jail. We have had the benefit of personal experience and personal study of these problems, and although we have never discussed them, I think we would be unanimous in the view that a change and reform would be desirable. Personally I can conceive nothing more brutalising, and nothing more calculated to make a man rather a dangerous member of society, than the existing system."*[6]

Central to O'Higgins's entreaty was his experience of being a prisoner under British rule. With the ending of the War of Independence and the Irish Civil War, political prisoners were quickly released, resulting in a rapid decline in the prison population. The daily average population in custody in 1922 was under 700 people. Compared to other parts of Great Britain at that time, Ireland had a similar rate of imprisonment with England and Wales – 29 prisoners per 100,000 of population – and significantly lower than Scotland which had 52 prisoners for the same number of population.

In the decades following the State's independence, the overall picture of prison policy has been broadly accepted as "essentially one of stasis"[7] with minimal changes occurring in the prison system until the early 1960s. Yet, it is necessary to think about what is considered stasis, stagnation, or plain disinterest within early penal policymaking. If a proliferation of policy documents, strategy papers and regulations are a key benchmark of progress, then this

early period certainly had little activity of import. As the penal-welfarist turn[8] was accelerating in the US and the UK during post-war years, the notable highlight of Irish penal development was the 1947 Prison Rules, which was the exception in this period of penal minimalism by the Irish State.

Ostensibly the new Prison Rules were designed to replace the existing British Prison Rules. However, the 1947 Rules were introduced at a time when the imprisonment of IRA members was occurring after the conclusion of the Second World War[9] which had led to an increased public interest in the Irish prison system.[10] The new rules did represent the first attempt by an independent Irish Government to lay out the principles and regulations which undergird the day-to-day life of an Irish prison, and how prisoners could expect to be treated and what rights they could claim. Rogan suggests the new statutory instrument was not intended as a new grand vision for the Irish prison system but was rather "promulgated in response to more immediate political manoeuvrings."[11]

If, on the other hand, this early period between Independence and the 1960s is judged by a different metric – by the number of prisons and the people contained within – then the diagnosis of inertia may only partially illuminate Ireland's penal culture in the early twentieth century. While a "progressive welfarist and professionalised vision of penal reform"[12] may have been lacking, this period was empirically categorised by lowering

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5. Shane Kilcommins et al., *Crime, Punishment and the Search for Order in Ireland* (Dublin: Institute of Public Administration, 2004), 38.

6. Kilcommins et al., 40–41.

7. Mary Rogan, 'The Prison Rules 1947: Political Imprisonment, Politics and Legislative Change in Ireland', *Irish Jurist*, 2008, 90.

8. Penal welfarism was, in essence, a correctional approach to imprisonment seeking to utilise rehabilitative interventions to reduce re-offending and support the re-integration of the offender. Garland observes that penal welfarism was the dominant philosophy guiding British and US penality by the 1960s. See David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001).

9. During the Second World War, the IRA began a bombing campaign in Britain which claimed seven lives and raised fears among the Irish government that such activities may provide justification for an invasion of the Irish state. After the war ended, many of the imprisoned IRA members were released but a few remained in squalid and oppressive conditions. This situation came to the public attention creating the need for the 1947 Prison Rules. For a fuller account, See Rogan, 'The Prison Rules 1947', 91–92.

10. Rogan, 89.

11. Rogan, 89.

12. A key change to the administration of prison policy was the abolition of the General Prisons Board under the pretext of removing any intermediary bodies between the Minister for Justice and the prisons so the Minister would be better able to exert direct control and assume responsibility. By 1928, a cautious and conservative Department of Justice had assumed control of the penal institutions and the visiting committees appointed to monitor them. See Kilcommins et al., *Crime, Punishment and the Search for Order in Ireland*, 41–45.

> **This trend of decreasing prison committals and the overall population in Irish prisons was to continue from Independence until the late-1950s, dipping to less than 400 prisoners, and then remaining flat until the late 1960s. In 1965, there were only 560 people in Irish prisons.**

prisoner numbers and prison closures, provided for by the 1933 Prisons Act. By 1947, only five prisons were in operation, with a daily average number of prisoners of 584 (67 were women).[13] This trend of decreasing prison committals and the overall population in Irish prisons was to continue from Independence until the late-1950s, dipping to less than 400 prisoners,[14] and then remaining flat until the late 1960s.[15] In 1965, there were only 560 people in Irish prisons.

Viewed through a modern penal reformist lens, this period may be interpreted as one of stagnation and inaction. The understanding of how change occurs within a reformist position often relies on incrementalism; a series of smaller steps or milestones being put in place first, before a tipping point is reached where the ultimate goal is achieved. But if the ultimate goal is to close prisons and reduce prisoner numbers, especially with minimal governmental confrontation, then the early decades of the prison system ought not be viewed with such pronounced disappointment. Yes, fewer changes were being implemented to impact the day-to-day life of the prisoner but, in the background, what we would now consider the ultimate goal of penal reform was being realised with relatively little fuss and fanfare. A tepid penal culture may have existed but the system was not in pure stasis. In contrast with today's *modus operandi* of penal policy development, evident in the plethora

of reports, strategies and legislation, the first four decades had, despite an absence of any stated philosophy of imprisonment, witnessed steadily reducing numbers.

PRISON SCEPTICISM AND COMMUNITARIAN IDEALS, 1970s

However, considerable changes began to emerge in Irish penal policy by the 1970s. At the beginning of the decade, the prison population was still low, comprising 749 prisoners in total (almost all male). Even as the number of prisons and prisoners began to rise towards the end of the decade, the number of prisons was at its lowest. Categorised as either 'ordinary' or 'subversive,' the adult male prisoners were accommodated within three prisons: Mountjoy, Limerick and Portlaoise. Prisons were managed by the Prison Division, based within the Department of Justice, comprising of a small group of civil servants.

Within the space of a few years, the prison estate more than doubled, with seven adult male prisons in total, as prison numbers began to rise.[16] Seeking to counteract the phenomenon of overcrowding and the ensuing criticism, the Irish Government took the step to expand the capacity of the prison estate. The outbreak of violence in Northern Ireland presented a challenge for the prison system in the Republic due to the inherent challenge of housing politically motivated prisoners, combined with a general increase in the prison population.[17]

Yet, an impressive and humane penal transformation occurred in Ireland in the 1960s and 1970s, making this period of Irish imprisonment in some ways unrecognisable from the torpor of the previous four decades. New thinking around prisons began to emerge in the early 1960s[18] with the establishment of the Training Unit, a specialised unit in the Mountjoy campus. The Training Unit was a

13. Ian O'Donnell, Eoin O'Sullivan, and Deirdre Healy, *Crime and Punishment in Ireland 1922 to 2003: A Statistical Sourcebook* (Dublin: Institute of Public Administration, 2005), 147.

14. Ian O'Donnell, 'Imprisonment and Penal Policy in Ireland', *The Howard Journal of Criminal Justice* 43, no. 3 (2004): 253–66.

15. This essay focuses on the prison, however, other like other nations, it is well documented that in Ireland there were numerous sites of various kinds of "coercive confinement." For a much fuller account, see Eoin O'Sullivan and Ian O'Donnell, eds., *Coercive Confinement in Ireland: Patients, Prisoners and Penitents* (Manchester: Manchester University Press, 2012).

16. Cork and Arbour Hill prisons open in 1972 and 1975 respectively. Both were former millitary barracks which were converted to accommodate 90 prisoners each. For a fuller account of penal developments in the 1970s, see Louise Brangan, 'Pastoral Penality in 1970s Ireland: Addressing the Pains of Imprisonment', *Theoretical Criminology* 25, no. 1 (2021): 49.

17. Aogán Mulcahy, 'The Impact of the Northern "Troubles" on Criminal Justice in the Irish Republic', in *Criminal Justice in Ireland*, ed. Paul O'Mahony (Dublin: Institute of Public Administration, 2002), 275–96.

18. Mary Rogan, *Prison Policy in Ireland: Politics, Penal-Welfarism and Political Imprisonment* (Abingdon: Routledge, 2011).
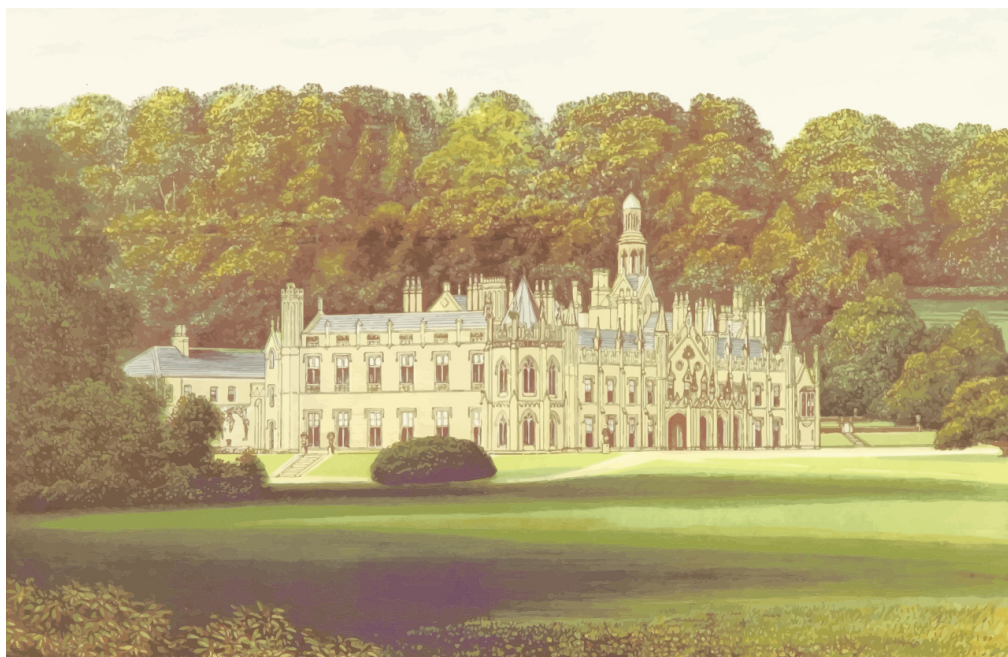
Drawing of Shelton Abbey from 1866. Rights: Adapted Open Rights Image

significant milestone in Irish penal policy as it was Ireland's first purpose built prison, but it also had a unique philosophy that marked it out as a progressive form of penal thinking.[19] In the early 1970s, and at a time of economic prosperity, the Training Unit was devised to provide vocational training to equip prisoners for reintegration, reforms of educational provisions and the provision of post-release accommodation. The central ethos of the design was to be "less incapacitative and confining."[20]

Ireland also established its first open prison at Shelton Abbey, and four full-time psychologists were employed alongside the inaugural positions of Directors of Probation, Education and Co-ordinator of Work and Training.[21] And perhaps most significantly, temporary release was enthusiastically expanded as a means to reduce the impact of

imprisonment on both the prisoner and his family. Temporary release meant prisoners were increasingly released for short spells mid-sentence or fully released before the sentence was complete. Regular amnesties at religious seasons – Easter and Christmas – were common, along with mass releases during events such as the papal visit in 1979.[22] Compared with today's increasingly restrictive criteria to qualify for temporary release, few crimes or length of sentence disqualified a prisoner from eligibility.

These forms of imprisonment were underpinned by new ideas of rehabilitation, which had begun to enter Irish policy discourse.[23] However, rehabilitation had a distinct meaning in Ireland. Irish government administrators during the 1970s conceived of rehabilitation as broadly as possible. Rehabilitation did not mean correction or reducing offending. Indeed, such aims were explicitly stated as not the "primary objective of imprisonment."[24] Instead, policymakers argued that the outcomes of rehabilitation

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19. Brangan, 'Pastoral Penality in 1970s Ireland', 49.

20. Many prisoners left the Training Unit during the day to attend employment and returned in the evening. Prisoners were allowed to move around the prison within supervision or monitoring and normal working and domestic routines were encouraged. See Brangan, 49.

21. Following a series of interviews with probation officers who began work in the 1960s and 1970s, Healy and Kennefick found that the officers were guided by a "practice philosophy embedded with Catholic social values and characterized by a deep sense of vocation." For a fascinating account of this period when officers protrayed themselves as "pioneers" and operated with a high level of autonomy, see Deirdre Healy and Louise Kennefick, 'Hidden Voices: Practitioner Perspectives on the Early Histories of Probation in Ireland', *Criminology & Criminal Justice* 19, no. 3 (2019): 346–63.

22. Ian O'Donnell and Yvonne Jewkes, 'Going Home for Christmas: Prisoners, a Taste of Freedom and the Press', *The Howard Journal of Criminal Justice* 50, no. 1 (2011): 75–91.

23. Rogan, *Prison Policy in Ireland*.

24. Department of Justice, 'Survey of Objectives' (Dublin: Houses of the Oireachtas, 1981), unpublished.

must be understood in terms of the prisoner's whole life, their social and personal relationships, their well-being, and not limited to reoffending rates:

> While "rehabilitation" is not the primary objective of imprisonment it is nevertheless an important and valid objective. It is intrinsically good and should not be abandoned simply because evidence does not prove that it is "successful". What is to be the measure of success? Is it to be that the prisoner never again engages in criminal activity, or is never again caught, or is never convicted again, or is not convicted again within a certain length of time, or engages in criminal activity less serious in nature than his original offence? What about the qualitative improvement in the prisoner's approach to living, his relationships with family and friends, his involvement in community activities, his willingness to help and support others, his physical and mental well-being?[25]

This reflected a more humanitarian understanding of change, one rooted in a social view of prisoners as people first, not as offenders. Rehabilitation here was explicitly connected to the qualitative idea of an 'approach to living': being kind and supportive to friends and family; committing less serious offences with less regularity; or being in a better frame of mind and physical health. Thus the concept of rehabilitation employed was multifaceted and not tied solely or even mainly to criminal justice metrics.

Rehabilitation, viewed this way, was also more ambitious and humane than merely reducing crime and criminality. It was interested in making better citizens, healthier people, and happier family members, rather than reformed criminals. In approaching the concept of rehabilitation, and accepting those in prison were people first rather than fundamentally criminal, Irish prison policymakers made the aims of prisoner rehabilitation more achievable because the idea of success had a wider set of more holistic criteria. Hence, some amount of re-offending was tolerated given that this was

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not instrumentally equated with rehabilitation. Consequently, prison expertise and support agencies aimed:

> to equip the offender with educational, technical and social skills which will help him to turn away from a life of crime, if he so wishes. However, even if the offender on release does not turn away from a life of crime, those services can be regarded as having achieved some success if they bring about an improvement in the offender's awareness of his responsibilities to himself, his family and the community.[26]

It was explicitly understood and accepted that prisoners, like us all, were perceived to be in a state of becoming. Change can be subtle and incremental, and therefore recidivism was not necessarily a failure of rehabilitation. This penal thinking reflects an understanding of change as something personally and socially complex, and thus beyond the capacity of a particular intervention or programme to realise. If a person achieved other kinds of personal change after imprisonment this meant those penal interventions had been a success. This tolerant and humane view was important in shaping rehabilitation policy in Ireland in the 1970s. It supported a less instrumental understanding of prison programmes. People in prison were to be supported in their relationships, employment and wellbeing because these were intrinsically good, not because they were predictors of reduced reoffending. What was seen as significant and meaningful was personal transformation to the lives of former prisoners, their treatment of their family, their health, and wellbeing and

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25. Department of Justice, 7–8, emphasis added.

26. Department of Justice, 'Annual Prison Report' (Dublin: Houses of the Oireachtas, 1982), 29.

their place in the community. To prioritise reducing reoffending first and foremost would have rendered negligible the many forms of post-prison success and transformation that they sought.

So the problems of Irish prison population were being met with new penal techniques that were *reintegrative, supportive,* and *sought decarceration*, rather than attempting to reduce recidivism or produce a crime control effect. How do we make sense of this peculiar turn of events? How were these prison regimes justified?

Ireland's approach to imprisonment in the 1970s has been conceptualised as a "pastoral penality." This was distinct from progressive penality or penal welfarism – the penal culture that had prevailed in the UK and USA until the 1970s – which located the locus of the problem within the prisoner. The prisoner was seen to be in need of individualised and expert treatment in order to be rehabilitated and ultimately reintegrated back into society. Penal welfarism therefore has an optimistic view of prison.[27] The distinction of the Irish pastoral penal policy was, first, the prisoner was viewed not as a defective person with skewed attitude and amoral values. Instead, they were understood as someone who most likely had fallen on hard times, crime was seen as a result of poverty and a lack of opportunity, which was felt to be endemic in Ireland. There was empathy with the prisoner.

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But crucially, "prisoners were understood to still be members of society,"[28] a fact that was recognised and reiterated through the heavy use of temporary release.

Secondly, that the prison, and not the prisoner, was viewed as problematic. The prison was viewed as inherently harmful to social cohesion and individual well-being. The Minister for Justice noted in the Dáil chamber in 1970 that the prison environment was "basically unsuitable for encouraging individuals to become adequate and responsible members of normal society."[29] As such, there was a deep scepticism of the prison and the positive claims made towards its usage. Indeed, the Division described penology as "an area where folly abounds."[30] There was an implied sense that new modern techniques of intervention overstated the good prison could achieve, and they overlooked the damage the prison always causes. Hence, the rationale behind new psychology and education services, like chaplains in the decades previous, were to assist prisoners to cope with the pains of imprisonment, rather than to regulate their potential for reoffending.

Thirdly, this scepticism of the prison was rooted in Ireland's traditional and conservative social order, which prioritised the values of community and family. As other countries were focused on furthering individual rights, which are a core aspect of a liberal democracy, Ireland was a "nation largely defined by its communitarian Catholic culture, where family life was paramount to the national order."[31] Penal prudence equally flowed from a view that "collective efficacy"[32] of family and community and the Church were all superior sites of social and moral regulation, rather than government intervention. Combined, these forces of empathy and communitarian ideals caused the prison in Ireland to be seen sceptically, and understood as detrimental to those conservative Catholic values of family and community.

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27. Alternatively, the creation of professionalised positions within Irish prisons has been identified by some as signs of penal-welfarism lite. See Rogan, *Prison Policy in Ireland*.

28. Brangan, 'Pastoral Penality in 1970s Ireland', 12.
29. Dail Debates, 26 May 1970, cited in Brangan, 56.
30. National Archives, (AOG/2014/23/1103).
31. Brangan, 'Pastoral Penality in 1970s Ireland', 48.
32. Robert J. Sampson, Stephen W. Raudenbush, and Felton Earls, 'Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy', *Science* 277, no. 5328 (1997): 918–24.

Of course, no system ever totally realises its ideals in practice. Yet here, in the 1970s, when the Department was known to be at its most secretive and insular, there was the flowering of a distinctly Irish humane and lenient politics of punishment. Ireland clearly did not replicate the Anglophone punitive turn[33] in the 1970s, instead it had matched the Nordic countries in its "restrained inclination to imprison" and was among the European countries with the lowest rates of incarceration.[34] By the mid-1990s, however, Ireland's prison policy had taken a bewilderingly swift and decisive punitive turn.[35] Social and political scandals in the 1990s destabilised Ireland's pastoral penal culture and saw its values, and thus its lessons, slip from view.

1980s TO PRESENT: DIFFERENT PROGRESSIVE POLICY, SAME PUNITIVE ENDPOINT

It is now well known that from the 1970s in the UK and USA, penal welfarism gave way to a punitive model of imprisonment. Pastoral penality, Ireland's unique form of progressive penal policy, found a similar fate. In the two decades between 1965 and 1984, the Irish prison population almost trebled, rising from 560 people to almost 1,600 people. By the mid-1980s, a punitive ethos emerged in the Irish prison system, with increased numbers and overcrowding becoming the most recognisable trait of prison life. Independent reports started to become a more common occurrence.

Two significant reports were published in quick succession which shaped policy discourse. In 1983, the Council for Social Welfare, a committee of the Irish Catholic Bishops Conference, published *The Prison System* outlining the rights of prisoners. Prompted by ongoing discussions, the Whitaker Report was established with an accompanying committee and chairperson to provide an account of conditions in Irish prisons and to provide

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recommendations for reform.[36] The report was unequivocal in its values as it asserted that "the fundamental human rights of a person in prison must be respected and not interfered with or encroached upon except to the extent inevitably associated with the loss of liberty."[37] The department also published a report, *The Management of Offenders*, which reiterated their commitment to a less total form of incarceration, where their primary aim was to maintain a cap on prisoner numbers.

Despite this, in the 1990s, a new program of prison building was initiated. O'Donnell describes this as "the central paradox of Irish penal policy," where there appears to be a political consensus on penal restraint, yet numbers continually rose to new levels.[38] Rogan has suggested that one of the risks of the Irish State having an under-developed conceptualisation of imprisonment, whether for good or ill, and a flexible ad-hoc approach to penal reform, is that prison policy is left susceptible to the vagaries of national events or the whims of electoral politics.[39] However, it was not electoral politics but instead a confluence of socio-political factors and events that conspired in the 1990s to lead to a dramatic penal transformation.

33. Penal-welfarism was replaced by a punitive turn in the late 1970s, gaining pace in the 1980s, with heavily-politicised 'wars' on crime. Emanating from emerging criminological theories in the US and the UK, this latter turn culminated in higher rates of committal and imprisonment.

34. Kevin Warner, 'Resisting the New Punitiveness: Penal Policy in Denmark, Finland, and Norway and Contrary Trends in Ireland', in *Global Perspectives on People, Process, and Practice in Criminal Justice*, ed. Liam Leonard, Advances in Criminology (USA: IGI Global, 2021), 128.

35. Warner, 130.

36. As a member of the Whitaker Report Committee, McVerry reflects on this unique period in penal policy. He describes the contradictions when "[e]ven as the Committee was recommending fewer committals to prison, the government was busy expanding the prison system. Spike Island was opened, single cell accommodation was abolished, and some educational and training facilities were being taken over to provide more accommodation for yet more prisoners." See Peter McVerry SJ, 'The 1985 Whitaker Report', Jesuit Centre for Faith and Justice, 12 October 2021. https://www.jcfj.ie/2021/10/12/the-1985-whitaker-report/

37. 'Report of the Committee of Inquiry into the Penal System' (Dublin: The Stationery Office, July 1985), 12. A full downloadable pdf of the Whitaker Report is available on the Jesuit Centre for Faith and Justice website, see McVerry SJ, 'The 1985 Whitaker Report'.

38. O'Donnell, O'Sullivan, and Healy, *Crime and Punishment in Ireland 1922 to 2003*, 126.

39. Mary Rogan, 'Yes or No Minister: The Importance of the Politician-Senior Civil Servant Dyad in Irish Prison Policy', *The Prison Journal* 91, no. 1 (2011): 32–56.

Ireland had been inching further away from the traditional society and the perceived social efficacy of the family had dwindled. At the same time, the Catholic Church's authority seemed to collapse, irreparably undermined through a series of exposés.[40] Crime risen through the 1980s. By the 1990s, drugs, gangland crime, and joyriding were all major national issues. Then, in June 1996, Garda Detective Jerry McCabe was murdered during the attempted robbery of a post office vehicle by the IRA in Limerick. This was quickly followed by the assassination of journalist, Veronica Guerin, which proved to be a tipping point for a nation already disorientated by the speed of its social changes. A moral panic and political emergency gripped the national mood, with the government coming under attack for their restrained approach to law and order.

In this febrile atmosphere, Fine Gael and Fianna Fáil – like their Anglophone counterparts – understood the political advantage to be secured by presenting as 'law and order' parties. There can be a tendency to present this period of penal transformation as the product of entrepreneurial vigour and opportunism on the part of John O'Donoghue and Fianna Fáil. But this belies much deeper social change that was happening in Ireland, and only by understanding this can we understand the dramatic punitive turn that was to occur in the country.

There was a feeling that something must be done about Ireland's new dangerous classes; that the government could no longer be so moderate and discreet. Someone must take charge. Without the Church as a shadow authority structure, the Irish government of the 1990s had to carry this greater responsibility: to intervene, to protect communities from crime, to take control, to direct social relations. These forces combined to radically alter the conduct of government and the meanings of Irish imprisonment. There was a reinvention and expansion of the political apparatus.[41] The Irish Prison Service was established, placing prison management physically outside the Department of Justice, which also underwent a transformation, renamed as the Department of Justice, Equality and

Law Reform in 1997. The Department was now intended to be focused on developing policy.[42] The prison in Ireland was reorganised as a tool of crime control.

The prison estate was intentionally expanded, with expenditure rising from £96m in 1993 to £189m by 1999.[43] Prisoner numbers rose exponentially: mandatory minimum 10-year sentences were introduced for non-violent drug possession charges,[44] the temporary release system was severely restricted, the use of remand was increased – quite the opposite of what had preceded it. The nation appeared to be on an "incarceration binge."[45] This took place to such an extent that:

> *the changes in Ireland's imprisonment regime were so clearly punitive; the prison lost something… It was a concerted effort at changing the imprisonment regimes so that their walls were less permeable, that people moved less freely from prison back into society, that their exclusion and punishment could be more certain and that the prison sanctions of the court could be better enforced. These changes reorganized the prison as a law enforcement tool, a crime control mechanism and an expression of intemperate social feelings.[46]*

By July 2004 the average daily prison population stood at 3,231. This compares with 2,141 in 1994 and 1,594 in 1984.[47] The most recent Irish Prison Service figures have the average daily population in custody as 3,824 people.[48]

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40. Tom Inglis, *Moral Monopoly - The Rise and Fall of the Catholic Church in Modern Ireland*, 2nd ed. (Dublin: University College Dublin Press, 1998). But see also, Daithí Ó Corráin's essay in this issue of *Working Notes*.

41. Department of Justice, 'Strategic Management Initiative, Appended in Tackling Crime' (Dublin: The Stationary Office, 1997).

42. Louise Brangan, *The Politics of Punishment: A Comparative Study of Imprisonment and Political Culture* (Abingdon: Routledge, 2021), 98.

43. Ian O'Donnell and Eoin O'Sullivan, 'The Politics of Intolerance—Irish Style', *British Journal of Criminology* 43, no. 1 (2003): 43.

44. O'Donnell, O'Sullivan, and Healy, *Crime and Punishment in Ireland 1922 to 2003*, 100.

45. Following a 1997 report recommending the capping of prison places, Jim Higgins T.D., the chair of the Oireachtas Committee subgroup publishing the report, accused the Minister for Justice of being on an "incarceration binge" since taking office. With two out of every five prison committals (2,173 people) in 1994 due to non-payment of fines, Higgins continued in his assessment that prison was being used as a first resort, rather than a last resort. See Kevin Rafter, 'Committee Criticises Policy on Prisons', The Irish Times, 3 March 2000, https://www.irishtimes.com/news/committee-criticises-policy-on-prisons-1.251479.

46. Brangan, *The Politics of Punishment*, 102. For a detailed account of the changes in Irish penal politics and imprisonment from 1970-2000, see Brangan (2021) *The Politics of Punishment: A comparative study of imprisonment and political culture,* Oxon: Routledge.

47. O'Donnell, O'Sullivan, and Healy, *Crime and Punishment in Ireland 1922 to 2003*, 118.

48. Irish Prison Service, 'Annual Report 2020' (Longford: Irish Prison Service, 2020), 32, https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-web-FINAL.pdf.

Figure 1: Average Annual Prison Population, 1975 to 2014

Michael McDowell later continued in this mode of penal excess, providing the vision and ardour for the proposed construction of a new large prison at Thornton Hall in north county Dublin, with 2,200 places.[49] Plans for the mega-prison were mothballed in 2011 following the global economic crash of 2008 and opposition from many quarters.[50] Despite official reports recommending a cap on prison numbers, the trifecta of political opportunism, economic surplus, and electoral support opened the way for a more punitive prison system.

The curious context of the Irish punitive turn is seen when we recall that it also took place within the context of a modernising and progressive social period. This was a time in which pastoral penality could have flourished, when opportunities for work and education proliferated. What had supported the

pastoral penal policy was an empathy for the prisoner, which itself was rooted in Ireland's traditional social order and communitarian class structure. In Celtic Tiger Ireland, as Irish society was becoming more affluent and liberal it was also becoming deeply divided, "the punitive carceral developments that took place reflected Irish society's growing estrangement from the prisoner and the annulment of his social belonging."[51] Thus, the prison became a new and vital tool of social control.

THE FUTURE, LEGITIMISATION AND SCEPTICISM

During the early years of the American 'War on Terror', the invasions of Afghanistan and Iraq were supported by a torture regime centred in Guantanamo Bay, and nightmarishly exposed in the photos from Abu Ghraib prison. Reflecting on this time, Samuel Moyn, a law professor at Yale, suggests that the success of the activist campaign to end State-sanctioned torture did not bring the war to an end and had unintended consequences. In Moyn's own words, "the noble cause of prohibiting torture has functioned to legitimate ongoing war."[52]

49. Warner, 'Resisting the New Punitiveness: Penal Policy in Denmark, Finland, and Norway and Contrary Trends in Ireland', 129.

50. The Jesuit Centre for Faith and Justice were vocal in their opposition to the plans to develop the proposed prison campus at Thornton Hall. As the political arguments were being made for the advantages of this expansion of prison places, Tony O'Riordan SJ was unequivocal that the "prospect of imprisoning, on one site, some distance outside Dublin, 1,400 men, women, and children, many of whom will be among the most vulnerable in our society, might be equally referred to as a 'penal colony.'" A *Working Notes* editorial, a year later, argued that, alongside the increased incarceration, there is a "grave danger that its [Thornton Hall] existence will also serve to constrain the development of more enlightened approaches to both prison policy and forensic mental health services." See Tony O'Riordan SJ, 'Thornton Hall Prison: Solution or Problem?', *Working Notes* 56, no. 21 (November 2007): 37; 'Editorial', *Working Notes* 57, no. 22 (March 2008): 2.

51. Brangan, *The Politics of Punishment*, 164.

52. Rebecca Panovka and Kiara Barrow, '"A New Form of War" - An Interview with Samuel Moyn', The Drift, 9 September 2021, https://www.thedriftmag.com/a-new-form-of-war/.

He suggests that the ostensible end-goal of the anti-torture campaigning was the delegitimisation of the invasion. In essence, it was an anti-war movement. Ultimately, it failed as it simply delegitimised one form of war craft and legitimised another emergent form of war. Protocols and legal procedures were implemented with considerable fanfare so that policies like extra-judicial killings, geo-location tracking, and drone strikes could be "properly humanized and regulated."[53] Thinking to the future, Moyn argued that, in order to avoid such paradoxical consequences, lessons should be learned; if a person wants to be against war, then they have to be against war and not just against particular features or by-products of war which are most brutal.

In a similar vein, Moyn's astute reflections on torture should cause anyone involved in penal policy—whether politician, civil servant, academic or activist—to take pause. Like the anti-torture campaigners, there may be unintended consequences for being simply against certain features of the Irish penal system in its current form. A particular form of confinement may be delegitimised in the public's eyes while another form, equally pernicious in effect, if not in description, may emerge. The harm of the system to prisoners may be maintained as the system enjoys fresh legitimacy by heeding tactically to campaigning and the language of civil society. This entrenchment is then placed beyond challenge in public discourse, established as a new status quo.

Since their emergence in the 1980s, the role of human rights institutions and discourse has had a positive impact on Irish prisons. The most rudimentary of prison estate upgrades became possible, most notably with the drastic reduction of "slopping out,"[54] the refurbishment of the prison estate, the expansion of education and occupational training, and the creation of oversight and inspection frameworks. Human rights discourse has matured and developed among

penal policy stakeholders to the degree where human rights are regularly cited within official documentation. The Irish Prison Service, in their 2020 Annual Report, situate their operation within "the parameters set out in Irish, European and international human rights law" with the stated aim to "promote equality and human rights through our policies and procedures."[55]

Yet, to adapt Moyn's theorising on war and torture for a moment more, by focusing on the incidental features of imprisonment in Ireland, something unexpected has occurred. Those people and agencies who helped to seed the human rights discourse[56] with the Irish Prison Service (and the Department of Justice) would no doubt be surprised by the increased and widespread usage of prison as a sanction for even the most inconsequential crime such as shoplifting or social order offences.[57] Might it be the case that as we improved prisons, we also increased the utilisation of prison?

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53. Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (New York, NY: Farrar, Straus and Giroux, 2021), 283.
54. Slopping out, or the use of containers for defecation overnight, still occurs in Irish prisons. Sixty-seven prisoners in Portlaoise continue to have to carry out this practice.

55. Irish Prison Service, 'Annual Report 2020', 17.
56. The Whitaker Report had a developed rights' language with its final report where "the fundamental human rights of a person in prison must be respected and not interfered with or encroached upon except to the extent inevitably associated with the loss of liberty." See 'Report of the Committee of Inquiry into the Penal System', 12.
57. Women appear to be particularly at risk of receiving a custodial sentence for small property-based crimes. For more, see Noel Baker, 'Mother Facing Jail for Shoplifting €15 Worth of Goods Including Red Bull and Marshmallows', Irish Examiner, 8 April 2019; Andrew Phelan, 'Prison for Grandmother Caught Stealing Christmas Presents for Family', independent, 13 January 2021; Gabija Gatavectaite et al., 'Almost All Women in Irish Prisons Are There for Committing Petty Crime', TheJournal.ie, 23 April 2019.

While prison inspection reports, by the Council of Europe's Committee for the Prevention of Torture and the domestic Inspector of Prisons, have repeatedly highlighted Ireland's lack of compliance[58] with internal prison standards and human right frameworks, progress has undoubtedly been made, despite significant time lags.[59] Certain forms of imprisonment with particularly egregious aspects, such as the treatment of IRA prisoners in the 1940s, have been delegitimised. But, in their place, another model of imprisonment has been legitimised which may both endure and be protected from serious scrutiny. A model where people, many of whom have been failed by the welfare institutions of the State, are warehoused in prisons of 'best practice' which rather than restoring the prisoner, only serve to linguistically screen us from the harm we are inflicting on them.

Many penal policy stakeholders now believe that a 'humane' form of imprisonment is both possible and being realised in practice. But the fundamental questions that were posed but never wrestled with in the first Dáil – about the coercive over-reach of much that occurs in prison and its larger detrimental effect on society – can pass unnoticed as we aspire to incremental change of a system that must instead be subject to a fundamental overhaul.

This current understanding of imprisonment in Ireland is a clean break from the penal scepticism of the civil servants in the 1970s. Conscious of both the harms caused by imprisonment, and the grinding poverty experienced by those who found themselves within prison, there was a healthy scepticism of the utility of prisons. So much so, that the locus of rehabilitation and reintegration of the prisoner could only be found in the communal; within their family and local community. Every opportunity was sought to allow people in prison the opportunity to access

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temporary leave or early parole.[60] There was no doubt that even with better conditions, prison causes tremendous harm to prisoners and irreversible damage to their familial and social connections.

Unlike the anti-war movement discussed by Moyn, with the aim of ending wars, there is no developed or developing discourse on prison abolition in Ireland to end imprisonment. While abolitionist positions can take different forms and vary by degrees, the common thread through them all is the commitment to reduced prison numbers and widespread availability of community-based sanctions and restorative justice practices. The core essence of pastoral penality is the acknowledgement by governments that the prison, rather than the prisoner, is "fundamentally problematic and often harmful."[61] Only when this re-ordering of thinking occurs can there be penal retrenchment and a turn away from expansion. With the zeal of the newly converted, and the abandonment of any scepticism or unbelief, the Irish Government is continuing its love affair with the prison. As part of a current €175 million upgrade and expansion of penal infrastructure, plans for a large prison on the 67-hectare Thornton Hall site are again under consideration by the Department of Justice and the Irish Prison Service.[62]

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58. Since 1993, the European Committee for the Prevention of Torture has conducted periodic visits to Irish prisons and then reported findings to the Government on its compliance with the Council of Europe's Convention for the Prevention of Torture and Inhuman and Degrading Treatment. A 2006 visit found three prisons to be unsafe and that the prison system, as a whole, is beset by tension, violence, and overcrowding. The 2020 report, again, highlighted the continued over-crowding in Irish prisons and the deeply harmful practice where people with very serious mental illness are accommodated in a penal institution rather than an appropriate therapeutic setting.

59. The 1947 Prison Rules were only updated in 2007, despite being criticized by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT) on repeated visits to Ireland as outdated.

60. Brangan, 'Pastoral Penality in 1970s Ireland'.

61. Brangan, 61.

62. With echoes of the initial plans for Thornton Hall in the 2000s, the proposal is based on an unpublished Irish Prison Service report with prison population projections based on demographic changes. See Conor Gallagher, 'Plans for "Substantial" Prison on Thornton Hall Site Back on Agenda', The Irish Times, 8 February 2021, https://www.irishtimes.com/news/crime-and-law/plans-for-substantial-prison-on-thornton-hall-site-back-on-agenda-1.4478375.

Pastoral penality presses whether prisons are inherently problematic.
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CONCLUSION

Prisoners and former prisoners played a prominent role in establishing Ireland and the subsequent project of state-building. Yet, social proximity or empathy for prisoners by policymakers (and wider society) can seem undetectable in 21st century Ireland. However, the Centenary provides an opportunity to recover and reappraise the values and ethos which are central to our Republic.

This essay is a reminder of the penal reforms that are possible when we focus on the *problems of the prison* rather than *problems of the prisoner*. This lesson has contemporary resonance for Ireland today. Currently, the Irish government endeavours to envision a new future for imprisonment in a spirit of reform, seeking out ways to move the prison closer to strategic goals of consistency and reducing reoffending. But the government also aspires to have greater use of open prisons, community-based sanctions and new forms of 'decarceration'.[63]

In the current Irish climate of willingness for penal reform, and perhaps even an aspiration for more pastoral forms of punishment, we might pause and see the immediate history of Irish imprisonment and government as a source of its future improvement. What made Ireland's prisons impressive during the 1970s was not that they had sophisticated oversight models, or that it had consulted international

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experts. Instead, Irish prisons were "ruled through leniency."[64] They did not seek to reform the prison, but to reduce it.[65] A return to this humane outlook would be a return to something – not merely imagined but once in operation – that was not eradicated but marginalised and side-lined for a period. This can be a source for the revivifying of a more sceptical and compassionate kind of imprisonment and penal politics. It is possible to envision a future where our penal systems are governed by leniency. If we are willing to replicate what those in charge of our prisons knew intuitively in the 1970s, we must be willing to see the prison not merely as a site of punishment but as a social institution that can significantly impact not just the lives of people who have been imprisoned, but the fabric of Irish social life and our collective sense of national well-being.

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63. Department of Justice, Equality and Law Reform, 'Strategic Review of Penal Policy Final Report – July 2014' (Dublin: Houses of the Oireachtas, 2014); Houses of the Oireachtas, 'Joint Committee on Justice, Defence and Equality, Report on Penal Reform' (Dublin: Houses of the Oireachtas, 2013).

64. Dario Melossi, 'The "Economy" of Illegalities: Normal Crimes, Elites and Social Control in Comparative Analysis', in *The Futures of Criminology*, ed. David Nelken (London: Sage, 1994).

65. Armstrong makes a compelling and powerful case that penal reforms (especially rights-based ones) can actually result in expanding penal control by extending the bureaucracy of the prison, thereby giving the prison and the deployment of penal power new legitimising weight. See Sarah Armstrong, 'Securing Prison through Human Rights: Unanticipated Implications of Rights-Based Penal Governance', *The Howard Journal of Crime and Justice* 57, no. 3 (2018): 401–21.

The Catholic Church, the State and Society in Independent Ireland, 1922-2022

Daithí Ó Corráin

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INTRODUCTION

No institution was more significant in shaping the nature of Irish society after independence than the Catholic Church. This essay surveys the position and influence of the Church over a century and explains how its once dominant influence was gradually eroded. The term "church" in this survey refers to the institutional Church, especially its leadership by bishops and archbishops, rather than the broader community of believers. For the purpose of clarity, a broadly chronological approach is taken with specific themes addressed within this framework.[1] Throughout the 19th and 20th centuries, Catholicism was a defining element of Irish national identity. Following political independence, the Catholic Church played a central role in the subsequent State-building project. It enjoyed unprecedented power and influence until the 1960s when a combination of social and economic developments changed the direction of Irish life and the place of religion within it. Since the 1990s, as elsewhere in the world, the Catholic Church has been beset by scandal, failure of leadership, and loss of moral authority.

1. TRANSITION TO INDEPENDENCE, 1918-23

During the turbulent period between 1918 and 1923 the political stance of the Catholic hierarchy was characterised by a renunciation of violence, advocacy of majority rule, support for order, and condemnation of partition. The bishops' influence on public opinion during the Irish Revolution should not, however, be overstated. Forceful condemnations of violence, whether perpetrated by republicans or the British government, went unheeded during the War of Independence and did not halt killing, destruction of property, or dislocation of law and order. The Church's alignment with majority nationalist opinion was demonstrated during the massive protest campaign against conscription in 1918 which the hierarchy declared "an oppressive and inhuman law" which the Irish people had

a right "to resist by all the means that are consonant with the law of God."[2] During the War of Independence, clerical opposition focused on the violent methods employed but not on the goal of independence.

A majority of Catholic Ireland supported the Anglo-Irish Treaty of 1921 which granted a significant measure of self-government, but not a republic. As opposition to the settlement intensified during increasingly fractious parliamentary debates in December 1921, the hierarchy exerted moral pressure on TDs to uphold majority opinion by supporting the Treaty. For example, Archbishop Edward Byrne of Dublin tried, unsuccessfully, to persuade Éamon de Valera to accept the agreement. The Treaty was ratified by the Dáil on 7 January 1922. The Church was committed to the survival of the Treaty and to "sustaining" the authority of an Irish State following the beginning of the Civil War in June 1922.[3]

This extended to producing a partisan pastoral on 10 October, 1922 which rejected the legitimacy of the republican campaign because "no one is justified in rebelling against the legitimate Government … set up by the nation and acting within its rights."[4] The hierarchy threatened to deprive those engaged in unlawful rebellion of the sacraments of eucharist and confession, and to suspend priests who gave spiritual aid to the anti-Treaty IRA (in the event neither was stringently applied). It is difficult to discern how effective the pastoral letter was. As Patrick Murray suggests, it may have emboldened the government to take a sterner stance against republicans.[5] Two manifestations of this were the policy of executions and the toleration of often gruesome reprisals. This was matched by an anti-Treaty IRA campaign of arson, intimidation, and assassination. Private appeals by individual bishops against executions, such as that of Erskine Childers, went unheeded. However dismayed the bishops were at the excesses of the Irish State during the Civil War, no public condemnation was issued. In

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1. This essay draws heavily on Daithí Ó Corráin, 'Catholicism in Ireland, 1880-2016: rise, ascendancy and retreat' in Thomas Bartlett (ed.), *The Cambridge History of Ireland vol. 4* (Cambridge, 2018), pp 726-64.

2. *Irish Times*, 19 April 1918.
3. Patrick Murray, *Oracles of God: the Roman Catholic Church and Irish politics, 1922-37* (Dublin, 2000), p. 34.
4. *Freeman's Journal*, 11 October 1922.
5. Murray, *Oracles*, p. 77.

this there was an element of pragmatic self-interest. The creation of Northern Ireland under a unionist government inimical to Catholic interests filled the Catholic bishops with foreboding. That strengthened their determination to secure the Irish Free State and the opportunities that it promised.

2. STATE-BUILDING IN THE 1920s AND 1930s

2.1 Catholic Nationalism

All of the major Christian Churches in Ireland operate on an all-island basis but in two political jurisdictions. The partition of Ireland reinforced the association of political allegiance and religious affiliation on both sides of the border after 1920. The 1926 census revealed that Roman Catholics accounted for 92.6 per cent of the population in the Irish Free State. Such denominational homogeneity had a significant bearing on the political and public culture of the new State. As Tom Inglis has argued, a Catholic *habitus* – a way of thinking and acting in conformity with a systematic view of the world – permeated all social classes, and religious capital facilitated the acquisition of economic, political, or social capital.[6]

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And so, during the first fifty years of independence, both Church and State leaders, irrespective of political party, shared a desire to develop the country according to a philosophy of Catholic nationalism. As a result, the coming to power of Fianna Fáil under de Valera in 1932 was characterised by continuity in Church-State relations.

In the immediate aftermath of the Civil War, Catholicism provided a social bonding power which helped heal some of the fratricidal wounds. It also differentiated the new State culturally from its former colonial master. The centenary of Catholic emancipation in 1929 and the 31st Eucharistic Congress in 1932, an international showpiece of global Catholicism, were symbolic expressions of a triumphant Catholic nationalism. Gillian McIntosh concludes that they allowed the new State "to proclaim its permanence, its separate identity from England, and to give a high profile to its image as a Catholic nation."[7]

2.2 Institutional Continuity

Amid the uncertainties of the 1920s the Church offered the new State continuity, stability and an extensive infrastructure. In return, a financially bankrupt government was content to see the Church consolidate and extend its institutional presence in the realms of education, health and welfare with minimal interference – a pattern that continued until the 1960s. As various commissions of enquiry have dismally revealed, the status enjoyed by the Church contributed to inadequate State oversight. During the first four decades of independence, the Catholic Church was more secure and more confident than at any

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6. The term "habitus" was coined by the French anthropologist Pierre Bourdieu. Tom Inglis, *Moral Monopoly: the rise and fall of the Catholic Church in modern Ireland* (Dublin, 1998), pp 11-12.

7. Gillian McIntosh, 'Acts of "National Communion": the centenary celebrations for Catholic Emancipation, the forerunner of the Eucharistic Congress', in Joost Augusteijn (ed.), *Ireland in the 1930s: new perspectives* (Dublin, 1999), p. 87.

previous time and enjoyed close links with the State. While an informal consensus between political and religious leaders was often evident, ministers did not always submissively dispose as the bench of bishops proposed. For example, diplomatic relations were established with the Vatican in 1929 despite the known opposition of the hierarchy and the Dunbar-Harrison case in 1931 demonstrated the resolve of the W.T. Cosgrave government to reject the imposition of religious tests against non-Catholics.[8]

The situation was very different in Northern Ireland where the experience of Irish Catholicism before the 1960s was marked by a sense of being in, but not of, the State. Antagonism initially characterised relations between Church authorities, who had a political importance as spokesmen for the minority, and the Northern administration. After the Second World War the opportunities occasioned by the expanding welfare state saw the northern Catholic bishops adopt a more pragmatic approach, as they moved from highlighting the injustice of the State to injustices within it. There was never any question that the political border would compromise the religious unity of the Catholic Church, whose geographical self-understanding remained an all-Ireland one.[9]

2.3 A Catholic Moral Order

In the 1920s and 1930s, significant elements of the Catholic moral code were enshrined in law, particularly in the areas of sexual morality (other forms of morality were largely ignored) and family relations. Conservatism defined most aspects of Irish life between the 1920s and 1950s. For this reason, the censorship of films (1923) and publications (1929), the abolition of the right to divorce by Private Member's Bill in 1925 and a constitutional prohibition in 1937, and a ban on the importation and sale of contraceptives (1935) were broadly favoured by all the Christian Churches. A favourite theme of Irish conservatives and the ultra-Catholic

lobby at this time was to contrast Ireland's moral character with that of godless Britain. The disturbing findings of the Carrigan report in 1931 on the prevalence of sexual offences, including against children, shattered any illusions of Ireland's supposed moral superiority.

Scandalised, the government suppressed the Carrigan report and ignored its recommendations for raising the age of consent to eighteen and that such offences be made felonies.[10] The episode is significant for a number of reasons. First, it disclosed widespread awareness of sexual offences against children among lawmakers, jurists and the public. Second, it revealed an overriding desire to protect Ireland's reputation. As the Minister for Justice put it at the time:

> *the obvious conclusion to be drawn is that the ordinary feelings of decency and the influence of religion have failed in this country and that the only remedy is by way of police action. It is clearly undesirable that such a view of conditions in the Saorstát should be given wide circulation.[11]*

Finally, as Mark Finnane observes, the Criminal Law Amendment Act of 1935 confused serious crimes with much less harmful sexual practices and revealed an increasingly authoritarian political culture that placed significant emphasis on the appearance of things.[12]

Measures such as censorship were not unique to Ireland. What differed was the stringency and longevity of Irish moral protectionism. For instance, the censorship of publications was not relaxed until 1967. Between the 1920s and the 1950s, the institutional Church was at its most dominant and devotional practices by a devout and deferential laity, in addition to weekly attendance at Mass, were at their most visible and numerous. Nevertheless,

8. See Dermot Keogh, Ireland and the Vatican: the politics and diplomacy of church-state relations, 1922-1960 (Cork, 1995), pp 36-92; J. J. Lee, Ireland 1912-1985: Politics and Society (Cambridge, 1989), pp 161-7.
9. See Daithí Ó Corráin, Rendering to God and Caesar: the Irish churches and the two states in Ireland, 1949-73 (Manchester, 2006), pp 43-69.

10. See Finola Kennedy, 'The Suppression of the Carrigan Report: A Historical Perspective on Child Abuse', Studies 89:356 (Winter, 2000), pp 354-63.
11. Memorandum by Department of Justice, 27 October 1932 (National Archives of Ireland, D/Justice 90/4/3) cited in Moira J. Maguire, 'The Carrigan Committee and Child Sexual Abuse in Twentieth-century Ireland', New Hibernia Review, 11:2 (Samhradh/Summer 2007), p. 93.
12. Mark Finnane, 'The Carrigan Committee of 1930–31 and the "Moral Condition of the Saorstát"', Irish Historical Studies 32:128 (2001), pp 519-36.

> **In this period, sermons and pastorals warned relentlessly of the dangers to faith and morals posed by evil literature and films, immodest dress, excessive drinking, the craze for pleasure, "leakage of the faith" among emigrants (rather than the socio-economic causes of emigration), materialism, secularism, and atheistic communism**

after the Second World War, the hierarchy unsuccessfully lobbied the government on aspects of the moral law not deemed rigorous enough! In 1947 the bishops floated the suggestion that wartime travel permits be reintroduced to curtail female emigration and preserve them from grave moral danger abroad; in 1952 the bishops wanted all dancehalls closed at midnight; in 1958 the government was urged to have the police and Censorship of Publications Board clamp down on foreign evil literature; and in 1959 the bishops opposed a liberalisation of the licensing laws.

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2.4 Bunreacht na hÉireann

Many commentators have suggested that Catholic social teaching had a significant influence on de Valera's 1937 constitution. The 1922 constitution was secular and did not mention the Catholic Church at all. While Bunreacht na hÉireann guaranteed religious

pluralism, Article 44.1.2° conferred a special position on the Catholic Church "as the guardian of the faith professed by the great majority of citizens."[13] Recent legal-historical scholarship has downplayed the Catholic influences on the 1937 constitution and emphasised its secular values, the extent to which the conceptualisation of the State was greatly enlarged, and the degree to which it borrowed heavily from European constitutions, such as Weimar Germany, before later being supplemented by Catholic teaching on natural law.[14] The 1937 constitution did not establish the Catholic Church or describe it as the one true church and recognised other Churches in Article 44.1.3, to the chagrin of Cardinal Joseph MacRory, Catholic archbishop of Armagh and primate of all-Ireland from 1928 to 1945. Article 45, listing the "directive principles of social policy", drew heavily on Catholic teaching but was intended only for the "general guidance of the Oireachtas." The "special position" clause was deleted with minimum fuss in a constitutional referendum in 1972 under the shadow of the Northern Ireland Troubles.

2.5 Catholic Social Teaching Before the Second Vatican Council

In assessing the Church's influence on policy-making, a useful approach is to differentiate between its moral and social teaching. Liam Ryan uses this distinction to identify two fundamental domains: the relationship of the Catholic moral code and the law of the State and, secondly, Catholic social teaching and perceived Church rights in education, health, and welfare.[15] Outside of these domains, there were limits to the Church's political influence, just as there was a variety of political standpoints within the hierarchy and among the clergy. The Church's magisterium has the duty to prescribe the moral law and impose Catholic teaching. The Irish bishops were not diffident about propounding particular elements of the magisterium. As the

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13. The relevant subsection, along with 44.1.3°, were removed from the constitution under the Fifth Amendment which passed on December 7th, 1972 and was signed into law on January 5th, 1973. *Bunreacht na hÉireann* (Dublin: An Gúm, 2016).

14. Gerard Hogan, 'De Valera, the constitution and the historians', *Irish Jurist* 40 (2005), pp 293-320; Bill Kissane, 'Catholicism and the Concept of 'the State' in the Irish (1937) Constitution', *Oxford Journal of Law and Religion* (2020), pp 508-28; Donal Coffey, *Drafting the Irish Constitution, 1935-1937: transnational influences in interwar Europe* (Basingstoke, 2018).

15. Liam Ryan, 'Church and Politics. The Last Twenty-five Years', *The Furrow* 30:1 (1979), pp 3-18.

bishop of Limerick put it in April 1955: "The Church will not be muzzled where any matter relating to Divine Law is concerned."[16] By contrast, social teaching was less prescriptive and sought to offer general principles on socio-economic matters. This became increasingly important as the State became more involved in areas of traditional church concern such as education, health, and welfare.

Pope Pius XI's seminal *Quadragesimo Anno* (1931) developed the concept of subsidiarity. In the interests of distributive justice and the public good, the State should grant *subsidium* (assistance or support) to component parts of society within strictly delineated limits. Under the principle of subsidiarity, the State's duty was to supplement the individual or smaller societal units such as the family, not to supplant them. The most important manifestation of the new Catholic social teaching in this period was Muintir na Tíre, a community development organisation founded by Father John Hayes in 1931. Dr Alfred O'Rahilly was a prolific exponent of Catholic social teaching in the pages of the *Standard* which enjoyed a wide circulation.[17] The Legion of Mary, a lay Catholic organisation founded by Frank Duff in 1921, was somewhat different, in that it was a rare example of autonomous mobilisation by lay Catholics. It focused on spiritual and social problems such as homelessness and prostitution.[18]

The most notable effort to incorporate Catholic social teaching into the State's administrative system was the Commission on Vocational Organisation between 1939 and 1943, chaired by Bishop Michael Browne of Galway. Its 300,000-word report proposed a vocational board composed of employers and workers for each trade or craft. The Fianna Fáil government (and the opposition parties in the Dáil) simply ignored it, having no appetite for a non-party centre of power in Irish life. Furthermore, it was not costed and its attack on the civil service alienated that constituency.[19]

2.6 Church, State and Control of Education

Until the Second Vatican Council, *Quadragesimo Anno* was frequently cited by the Irish bishops, who remained suspicious of State activity, even though in an Irish context the State "stepped in not too much but too little."[20] The most significant areas of policy interaction between Church and State before the 1960s were the sensitive areas of education, and to a lesser extent health. Control of education (its ethos, school management and teaching appointments), wrested from the British government in the nineteenth and early twentieth centuries, was regarded as essential if Catholic faith and values were to be transmitted to future generations. After 1922, the Department of Education had limited power over the management of primary and secondary schools, which remained vested in the Catholic and Protestant clergy. The State paid the salaries of teachers, but its influence was largely restricted to control of the curriculum and an inspection system to ensure minimum teaching standards.[21] Catholic Church authorities flexed their muscles when the Vocational Education Act (1930), which provided continuation and technical education for 14 to 16-year-olds, was viewed as a threat to primary schools and to the curriculum of secondary schools. The hierarchy sought and secured the place of religious instruction in the vocational system, as well as clerical representation on local vocational education committees.[22] So modest was the State's role in education before the 1960s that General Richard Mulcahy, Minister for Education from 1954 to 1957, likened his function to a "plumber" who "will take the knock out of the pipes and will link up everything."[23] The Church's priority, which was facilitated by the State, was to maintain the status quo.

16. Irish Catholic Directory 1956, p. 632.
17. John Whyte, Church and state in modern Ireland, 1923-1970 (Dublin, 1971), pp 68-72.
18. See Finola Kennedy, *Frank Duff: a life story* (New York, 2011).
19. For a fuller account see J.J. Lee, 'Aspects of corporatist thought in Ireland: the Commission on Vocational Organisation 1939-43' in Art Cosgrave and Donal McCartney (eds), *Studies in Irish history* (Dublin, 1979), pp 324-46

20. Ryan, 'Church and Politics', p. 6.
21. Séamus Ó Buachalla, *Education policy in twentieth century Ireland* (Dublin, 1988), p. 60.
22. See Marie Clarke, 'The response of the Roman Catholic Church to the introduction of vocational education in Ireland, 1930-1942', *History of Education* 41:4 (2012), pp 477-93.
23. *Dáil Debates* clix, 1494 (19 July 1956).

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2.7 Health and Welfare; The Mother and Child Controversy and its Aftermath

In the domain of health and welfare there was also significant continuity with patterns established in the nineteenth century. Following Catholic emancipation in 1829, a number of Catholic voluntary hospitals were founded by religious orders, particularly in the cities. For example, in 1835 the Sisters of Charity opened St Vincent's Hospital on St Stephen's Green in Dublin. After the 1898 Local Government Act, religious orders also began to extend their influence into the poor law or workhouse system. When this was abolished in the mid-1920s many workhouses were closed, some became county hospitals and others became county homes to care for the infirm, the elderly, the intellectually disabled and unmarried mothers.[24] With plentiful vocations, religious orders increased their involvement in county homes and hospitals which were financed by local rates.

By the late 1920s, the voluntary hospitals, both Catholic and Protestant, faced grave financial challenges due to rising operational and treatment costs, a fall in the value of their endowment funds following the First World War, and a reduction in income from charitable donations. Increasingly, hospitals relied on income from patient fees as their debts mounted. To meet this, in 1930 the Public Charitable Hospitals (Temporary Provisions) Act permitted Sweepstakes on horse racing.[25] The proceeds of this remarkably popular venture went into a Hospitals Trust Fund which was increasingly controlled by the Minister for Local Government. To benefit from the fund voluntary hospitals had to reserve at least one-quarter of their beds for non-paying patients. As Ruth Barrington has observed, the Sweepstakes ensured the survival of a large number of voluntary hospitals which otherwise would have been forced to close or amalgamate.[26] From the late 1940s, the fund was used for capital investment in the State hospital sector.

After the Second World War, expanded medical services in western Europe and the establishment of the National Health Service in Britain prompted the Irish government to address the pressing issues of tuberculosis, wider access to medical care, and improved ante- and postnatal care. When a comprehensive Health Service was mooted in the mid-1940s, the medical profession feared socialised medicine and the end of private practice. The bishops were anxious about State control of voluntary hospitals and a dilution of Catholic medical ethics. Opposition to greater State involvement in healthcare by doctors and the hierarchy was at the root of the Mother and Child controversy in 1951, on which much has been written.[27] This cause célèbre has often been portrayed simplistically as a clash of Church and State, with the latter coming off second best. In fact, it was a tripartite tussle involving the State, the Church, and the powerful medical profession, which will be briefly sketched here.

Part III of the 1947 Health Act proposed a scheme of free, non-means-tested medical care for mothers and children up to the age of 16. In October 1947, the Catholic hierarchy informed the Fianna Fáil government of its concerns about the moral dimensions of health education and its belief that part III infringed the rights of the family and the Church. Before the Act could be implemented, Fianna

24. For an overview see Catherine Cox, 'Institutional space and the geography of confinement in Ireland, 1750-2000' in Bartlett (ed.), *Cambridge History of Ireland vol.4*, pp 673-707.

25. See Marie Coleman, The Irish Sweep: a history of the Irish Hospitals Sweepstake, 1930-87 (Dublin, 2009).

26. Ruth Barrington, 'Catholic Influence on the Health Services, 1830-2000' in James P. Mackey and Enda McDonagh (eds), *Religion and politics in Ireland at the turn of the millennium* (Dublin, 2003), p. 156.

27. These include, among others, Ruth Barrington, *Health, medicine and politics in Ireland, 1900-1970* (Dublin, 1987); John Horgan, *Noel Browne: passionate outsider* (Dublin, 2000); Eamonn McKee, 'Church-State Relations and the Development of Irish Health Policy: The Mother-and-Child Scheme, 1944-53', *Irish Historical Studies* 25: 98 (1986), pp 159-94; Whyte, *Church and state*.

Fáil lost power in February 1948, and was succeeded by a five-party coalition led by John A. Costello. Noël Browne of Clann na Poblachta became Minister for Health and in 1950 moved to introduce the contentious part of the Act.

During lengthy and complex negotiations, two aspects of the subsequent political crisis emerged: inept handling of vested interests (both medical and episcopal) by a callow minister and the fragmentation of Clann na Poblachta. An episcopal committee headed by Archbishop John Charles McQuaid of Dublin privately raised concerns with Browne and Costello about the primacy of parental rights in respect of the health of children, fears that gynaecological care might include information on birth limitation or abortion, and a defence of the confidential relationship between patient and doctor. The last point reflected effective lobbying by the doctors for whom a means test for access to public health services was a bulwark against State encroachment.[28] The Cabinet abandoned the scheme and sought Browne's resignation on 10 April 1951. Sensationally, Browne published the Church-State correspondence, but the decisive role of the Irish Medical Association was not revealed.

When Fianna Fáil returned to power with a mandate to implement the scheme, the bishops and doctors once again objected. The medical profession secured concessions on retention of a means test and private practice. The 1953 Health Act ended any prospect of a health service on British lines. Free medical care of mothers before and after birth, and of their infants until the age of six weeks was permitted along with free health clinics for schoolchildren to the age of six. The pattern of hospital consultants using voluntary hospitals for private medical practice in return for treating the poor for free became entrenched. The voluntary hospitals retained their independence, as they did after the 1970 Health Act established eight regional health boards, even though they were largely funded by the exchequer. The Sweepstakes went into decline from the early 1960s and were wound up in 1987.

3. A CHANGING IRELAND, 1960S-1990S

3.1 Aspects of Modernisation

From the 1960s, a variety of factors combined to transform Irish society. From the premiership of Seán Lemass onwards, the State prioritised economic growth over the simpler Catholic nationalist vision of Irish society which had prevailed since independence. The establishment of a national television service in December 1961 was the most significant instrument of modernisation.[29] Coupled with the relaxation of the laws on censorship, programmes such as the *Late Late Show* facilitated the questioning of traditional structures of authority. The expansion of the market and the media in subsequent decades "ushered in a new habitus that was based on liberal-individualism, materialism and consumerism, the very things against which the Church had preached so vehemently for generations."[30] The changing position of women was also crucial in modernising Ireland, particularly from the 1970s onward. Irish women challenged the patriarchal nature of Irish society and traditional Church teaching on birth control and on the natural role of woman as mother and home-maker. Inglis contends that the Irish mother played a vital role in the development and transmission of Irish Catholicism from generation to generation. Once women were able to access alternative sources of power through the workplace and public life, a key pillar of the Church's ideological control was removed.[31]

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Coupled with the relaxation of the laws on censorship, programmes such as the *Late Late Show* facilitated the questioning of traditional structures of authority.

28. McKee, 'The Mother-and-Child Scheme, 1944-53', p. 175.

29. On this see Robert Savage, Irish television: the political and social origins (Cork, 1996).
30. Tom Inglis, 'Individualism and secularisation in Catholic Ireland' in Sara O'Sullivan (ed.), *Contemporary Ireland: a sociological map* (University College Dublin Press, 2007), p. 68.
31. See Inglis, *Moral monopoly*, pp 178-200.

The Marian shrine at Ballinspittle, Co. Cork, the site of a popular enthusiasm for "moving statues" in the summer of 1985. Rights: CC BY-SA – Sheila1988

3.2 A Changing Balance of Power in Education

It was belatedly recognised in the 1960s that the extension of educational opportunity was a central aspect of national economic development. In 1965 *Investment in Education*, an OECD study of Ireland's long-term educational needs, revealed that just one-quarter of those leaving primary education continued to second level. This prompted the introduction of free post-primary education from the 1967 school year. John Walsh has revised the cordial characterisation of Church-State interaction in this period put forward by earlier studies. Although the denominational character of schools remained unaltered, a new balance of power in education had been achieved, in which the enhanced influence of the State in education was accepted with varying degrees of reluctance.[32]

During the 1990s and 2000s, there was a flurry of new policies in education by an increasingly interventionist and secular Irish State. For example, under the new primary school curriculum, introduced in 1999, there was a greater separation of secular and religious instruction than ever before. Under the 1998 Education Act, for the first time the State recognised a variety of nondenominational schools such as Gaelscoileanna (Irish-language schools) and multidenominational schools (which from 1984 came under the umbrella of Educate Together). The Catholic Church still exerts immense influence on the education system through its patronage, management and ownership of 90 per cent of primary schools; in addition, about half of post-primary schools are under denominational control. But there is a growing demand by parents and the State for a plurality of models of provision and a school system better aligned with the needs of a more culturally, ethnically, and religiously diverse population.

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3.3 The Second Vatican Council

The Catholic Church's self-understanding also changed with the Second Vatican Council (1962-5) which sought *aggiornamento*, the bringing of the Church up to date. Proceedings were extensively reported by the media and Catholic Ireland greeted the key deliberations – on the nature of the Church as the people of God, the collegiality of the bishops, and lay participation in the mission of the church – with optimism. By contrast, the Irish ambassador to the Vatican described the hierarchy's attitude as "the reverse of exuberant."[33] The bishops were wary of change lest it undermine their magisterium or endanger the faith and morals of the laity.

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32. John Walsh, 'Ministers, bishops and the changing balance of power in Irish education 1950-70', *Irish Historical Studies* 38:149 (2012), p. 125; the older studies are Whyte, *Church and state* and Ó Buachalla, *Education policy*.

33. Ó Corráin, Rendering to God and Caesar, p. 203.

Hence Archbishop McQuaid reassured a congregation that "no change will worry the tranquillity of your Christian lives."[34] Ireland did not witness the fractious division over alterations to liturgy, theology, Church governance and ecumenism that occurred in other European countries and in North America, but the local implementation was legalistic and narrow.

3.4 Advocacy of social justice

Arguably, the Church's conservatism on moral issues obscured a growing social justice agenda. From the 1970s, the Church developed a more critical view of the State's social policy shortcomings, particularly in relation to inequality and poverty.[35] This reflected the influence of John XXIII's *Mater et Magistra* (1961), which overturned Church suspicion of State involvement in social provision, and the continuing reception of the Second Vatican Council's *Gaudium et Spes* (1965). Many priests and religious became household names for their work in championing those on the margins. Brother Kevin Crowley founded the Capuchin Day Centre in 1969 to provide food, clothing, and care facilities for those in need. Donal O'Mahony, another Capuchin, founded Threshold in 1978 to address housing inequality, deprivation, and insufficient legislative protection for tenants.[36] It assisted almost 3,000 people in its first two years and celebrated its fortieth anniversary in 2018.[37] In 1983 Peter McVerry, a Jesuit, founded the Arrupe Society (later re-named 'The Peter McVerry Trust') to tackle homelessness, drugs, and social disadvantage. He is arguably the best known and most outspoken advocate of greater equality and social inclusion. In 1985 Sister Stanislaus Kennedy ('Sister Stan') of the Sisters of Charity was a co-founder of Focus Ireland, a housing charity. She later established the Immigrant Council of Ireland.

Voluntary organisations led by religious or under religious patronage such as the Society of St Vincent de Paul were in the vanguard of public commentary on socio-economic issues. Poverty may have been "rediscovered" by sociologists in the 1960s, but in an Irish context the St Vincent de Paul sodality had been working quietly to ameliorate the consequences of poverty since the 1840s. The best-known Irish Catholic lay organisation of social concern and action, in 2014 it had 10,500 members and 1,500 auxiliary members in 1,235 conferences active in every county in Ireland.[38] It should also be stated that Trócaire, the bishops' overseas development agency established in 1973, paralleled these efforts through aid to the developing world.

From the 1970s, the hierarchy was vocal about the interlinked problems of poverty, long-term unemployment, and emigration, as well as the inadequacy of Ireland's social infrastructure. The bishops of the west of Ireland were proactive in commissioning a major jobs and regional development study to stem unemployment and emigration; this was published in 1994 as *Crusade for Survival.*[39] It led to a public campaign and the establishment, three years later, of the Western Development Commission as a government agency. Aside from economic issues, members of the hierarchy addressed a broad range of social problems, including, among others, drug abuse and alcoholism, the commercialisation of Sunday, responsible advertising, suicide, and discrimination against the Travelling community.

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34. Ó Corráin, p 206. On McQuaid see John Cooney, *John Charles McQuaid: ruler of Catholic Ireland* (Dublin, 1999).
35. See Carole Holohan, 'The Second Vatican Council, poverty and Irish mentalities', *History of European Ideas* 46:7 (2020), pp 1009-26.
36. Turlough O'Riordan, 'O'Mahony, Donal' in *Dictionary of Irish Biography*, DOI: https://doi.org/10.3318/dib.009868.v1 (accessed 7 September 2021).
37. Threshold, "Threshold @ 40," Threshold, August 29, 2018, https://www.threshold.ie/at40/timeline/.
38. Bill Lawlor & Joe Dalton (eds.), The Society of St Vincent de Paul in Ireland: 170 years of fighting poverty (Dublin, 2014), p. xx.
39. Irish Catholic Directory 1995, pp. 8-9.

During the Celtic Tiger era, many Church figures, such as Fr Seán Healy and Sr Brigid Reynolds of the Justice office of CORI,[40] criticised the neoliberal approach to economic growth and the dominance of the market and the individual over society. In *Prosperity with a Purpose: Christian Faith and Values at a Time of Rapid Economic Growth*, a wide-ranging pastoral in November 1999, the bishops stressed that economics should serve society and the common good.[41] The document received little media attention because the Church struggled to communicate its message in the secular realm. The most significant impact of the Celtic Tiger was the transformation of Ireland to a multi-ethnic country. At a civil society level, numerous well regarded pro-migrant organisations such as the Immigrant Council of Ireland and the Migrant Rights Centre Ireland owed their foundation to Catholic clergy or religious, primarily returned missionaries and diaspora chaplains.[42]

3.5 A Shrinking Church

For the first time in the 20th century, a decline in the total number of priests, brothers and nuns was recorded in 1968.[43] Within a decade, for every ten who entered all forms of religious life, seven others died and eight departed.[44] The power of the Church has partly waned due to this drying up of vocations. Without the human resources to staff the myriad of hospitals, welfare homes and schools, the Church's institutional presence inevitably contracted. Depleted ranks, increased running costs, greater State involvement, professionalisation of services, new management structures, and a post-Vatican II reassessment of their mission prompted a withdrawal of religious from traditional areas of activity such as education and health.

A high-profile example was the decision of the Sisters of Charity to leave healthcare in 2017, one hastened by negative public reaction to reports that the Order would own the new national maternity hospital and the subsequent decision to transfer the site to a new charitable body. In September 2014, only ten religious, half of them women, served as principals of post primary schools compared to 104 in 1991.[45] Religious orders withdrew almost entirely from the care of orphaned or neglected children during the 1990s and this was accelerated by revelations about abuse of some children in their care. At a parish level, the number of diocesan clergy declined sharply. In 2015 there were 1,966 active priests assigned to parish ministry, a fall of 1,010 since 2000 and almost half the 1961 total of 3,702.[46] Alongside this crisis of vocations, census data revealed a steady decline in Catholic self-description amongst the laity. In 1981 the proportion of the population self-ascribing as Catholic was 93 per cent, falling to 78.3 per cent in 2016, the lowest on record. The most noticeable finding in 2016 was that 9.8 per cent identified as 'No Religion'.[47]

A survey by Mícheál Mac Gréil SJ in 1977 revealed a growing gulf between the orthodox beliefs of the Vatican and those of the faithful in respect of artificial contraception (63 per cent disagreed that it was always wrong), celibacy (46 per cent agreed that priests should be allowed to marry) and homosexuality (43 per cent agreed that it should be decriminalised).[48] The survey findings indicated that the higher the level of educational attainment, the lower the level of orthodox religious belief and acceptance of Church teaching. In this sense the papal visit in 1979, when an estimated 2.7 million people greeted John Paul II, was less a celebration of Catholic Ireland than an unsuccessful attempt to slow down the inroads made by materialism and secularism.[49]

40. In 2009 CORI Justice became a secular body called Social Justice Ireland.

41. *Irish Times*, 4 November 1999.

42. Breda Gray, 'The Politics of Migration, Church, and State: A Case Study of the Catholic Church in Ireland', *International Migration Review* 50:2 (Summer 2016), p. 335.

43. *A survey of vocations in Ireland, 1971* (confidential report submitted to the hierarchy in June 1971), p. 3.

44. Tom Inglis, 'Decline in Numbers of Priests and Religious in Ireland', *Doctrine and Life* 30:2 (Feb. 1979), pp 81, 84.

45. Eithne Woulfe, 'Religious life in Ireland today' in Niall Coll (ed.), *Ireland & Vatican II: essays theological, pastoral and educational* (Dublin, 2015), p. 219.

46. Irish Catholic Directory 1962, p. 653; Irish Catholic Directory 2001, p. 284; Irish Catholic Directory 2016, p. 329.

47. *Census of Ireland 2016: Profile 8 Religion: Religious Change,* https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8rrc/ (accessed 7 September 2021).

48. Mícheál Mac Gréil, Prejudice and tolerance in Ireland: based on a survey of intergroup attitudes of Dublin adults and other sources (Dublin, 1977), p. 411.

49. On the papal visit see Daithí Ó Corráin, 'Why did Pope John Paul II visit Ireland? The 1979 papal visit in context', *British Catholic History* 35:4 (Oct. 2021), pp 1-24 [Open Access].

3.6 The Northern Ireland Troubles

The most significant address during the 1979 papal visit was Pope John Paul II's speech at Drogheda. This concerned building peace in Northern Ireland, reconciliation based on justice, and an unequivocal renunciation of violence.[50] Throughout the Northern Ireland Troubles, the Catholic Church was indefatigable in condemning violence (whether paramilitary or State-sanctioned), disassociating the vast majority of the nationalist community from the IRA campaign, and calling for cross community dialogue.[51] At the New Ireland Forum in 1984, established by the Irish government as a means of finding a democratic solution to the Northern impasse, the oral submission of the Catholic hierarchy made clear that the Catholic Church ardently sought peace and justice in Northern Ireland, that it rejected the concept of the confessional State, and that it was "acutely conscious of the fears of the Northern Protestant community."[52] The Catholic and other Church leaders supported the peace process during the 1990s. The hierarchy welcomed the Belfast Agreement in 1998 as balanced and providing for a constructive and peaceful resolution of the conflict.

3.7 "Moral Issue" Politics

The papal visit took place just two months after the passage of the Family Planning Act. For much of the twentieth century, Ireland was unique among western countries in not permitting abortion, contraception, or divorce. The hierarchy held the traditional line on these issues but for the first time in November 1973 openly acknowledged that the State should not be the guardian of private morality: "There are many things which the Catholic Church holds to be morally wrong and no one has ever suggested, least of all the Church herself, that they should be prohibited by the State."[53] In Britain and America change in this sphere occurred over a century but in Ireland this was telescoped into a much shorter time span.

Seven bruising "moral issue" constitutional referenda on abortion and marriage were held between 1983 and 2002. They were preceded by the legalisation of contraception in 1979, as a result of a Supreme Court ruling in the McGee case, with further extensions in 1985 and 1992. The insertion of an ambiguously worded pro-life amendment in 1983 (the Eighth Amendment) was carried by a two to one majority in a poll of only 54 per cent turnout of the electorate.

In the wake of the 'X' case, which permitted the risk of suicide by the mother as grounds for abortion, three concurrent referenda in 1992 affirmed freedoms of travel and information about abortion services but not the risk of suicide as grounds to allow an abortion. The latter position was reaffirmed in a further referendum in 2002. Garret FitzGerald recalled that concerns about property rights more than pressure from the pulpit led 63 per cent to reject divorce in 1986.[54] But a significant minority dissented from Church teaching and nine years later divorce was narrowly approved. The so-called liberal agenda pursued during this tumultuous period was a reflection rather than a cause of change. As Máire Nic Ghiolla Phádraig has noted, accompanying these campaigns was "a growing coolness between the government and the hierarchy" and little prior Church-State consultation, something unimaginable in earlier decades.[55]

4. IRISH CATHOLICISM IN CRISIS, 1990S TO THE PRESENT

4.1 Detachment from the Institutional Church

Various reasons for an increasing detachment from the institutional Church can be advanced. First, atypically high participation rates which for decades made Ireland and outlier in Europe may simply be converging with other European and Western countries, many of which went through periods of declining church-based religion. Secondly, the Church in contemporary Ireland has

50. Ibid., pp 19-21.
51. See Maria Power, Catholic social teaching and theologies of peace in Northern Ireland: Cardinal Cahal Daly and the pursuit of the peaceable kingdom (London, 2021).
52. Irish Times, 10 February 1984.
53. Irish Times, 26 November 1973.
54. Garret FitzGerald, All in a life: an autobiography (Dublin, 1991), p. 631.
55. Máire Nic Ghiolla Phádraig, 'The power of the Catholic Church in the Republic of Ireland' in Patrick Clancy et al. (eds.), Irish society: sociological perspectives (Dublin, 1995), pp 611-12.

> **The Church in contemporary Ireland has little influence over public opinion, the State, or the media. The latter has become the chief supplier of alternative value systems and new forms of conformity.**

little influence over public opinion, the State, or the media. The latter has become the chief supplier of alternative value systems and new forms of conformity. The media has also provided an intense critique of religious institutions which were once above public scrutiny. Investigative journalism played a major role in uncovering clerical sexual scandals and televised documentaries such as *Suing the Pope* (BBC, 2002) and *Cardinal Secrets* (RTÉ, 2002) prompted the establishment of inquiries. Marie Keenan has noted that in Ireland the coverage of clerical sexual abuse led to the emergence of a new and powerful media template: Brendan Smyth (a Norbertine Order priest sentenced to twelve years imprisonment) and the paedophile priest.[56] Thirdly, adherence to Church teaching on social and moral matters, for decades the predominant concern of the hierarchy, such as abortion, pre-martial sexual relations and same-sex relations have sharply declined. The percentage of non-marital births grew from 4 per cent in 1977 to 31.4 in 2005; the divorce rate among Catholics in 2016 was 4.1 per cent, up from 3.6 per cent in 2011 (the rate for the general population was 4.7 per cent).[57] Most spectacularly, in May 2015 a referendum on same-sex marriage was approved by 62 per cent and in 2018 two-thirds of Irish voters favoured the repeal of the Eighth Amendment. Fourthly, for an increasing number, Catholicism is part of a socio-cultural identity expressed at key rites of passage such as baptism, marriage and last rites. Lastly, the clerical sex abuse scandals and the Church's inadequate response have been intensely corrosive.

56. Marie Keenan, "Them and Us": The clergy child sexual offender as "other"' in Tony Flannery (ed.), *Responding to the Ryan Report* (Dublin, 2009), pp 192-4.
57. *Census of Population 2016 – Profile 8 Irish Travellers, Ethnicity and Religion* https://www.cso.ie/en/releasesandpublications/ep/p-cp8iter/p8iter/p8rroc/ (accessed 7 September 2021).

4.2 Scandal

Since the early 1990s the Catholic Church in Ireland has been besieged by scandals too numerous to itemise. The first wave of sexual scandal involved paternity cases. In 1992, Catholic Ireland was shocked to discover that Éamonn Casey, Bishop of Galway, had secretly fathered a child with an American woman in the 1970s and used Church funds to support her. Shortly afterwards, it emerged that Fr Michael Cleary, a media figure well-known for his defence of traditional Catholic values, had fathered two children with his housekeeper. Both Casey and Cleary had introduced Pope John Paul II in Galway in 1979. For an institution so preoccupied with questions of sexual morality, the consequent loss of credibility and moral authority was swift.

Far more destructive and larger in scale due to the extensive involvement of the Church in welfare provision, was the emotional, physical and sexual abuse of vulnerable children by a minority of clergy and religious. This was revealed in a cascade of harrowing inquiry reports: *Ferns* (2005), *Ryan* (2009), *Murphy* (2009) and *Cloyne* (2011) among others. These revealed a failure of leadership, hypocrisy and a dysfunctional authoritarian institutional culture more concerned with secrecy and avoiding scandal than protecting the vulnerable. The *Cloyne* report prompted an unprecedented condemnation of the Vatican by Taoiseach Enda Kenny in the Dáil. In November 2011 the Irish government decided to close its Vatican embassy on economic grounds; it was subsequently reopened in 2014.

The institutional Church does not stand indicted alone. The Irish State and society were complicit by their failure to safeguard the marginalised in the industrial schools and Magdalene asylums. As in the US, the Irish Church responded by first developing child protection guidelines in 1996. This was followed five years later by the establishment of a child protection office (now the National Board for Safeguarding Children in the Catholic Church in Ireland) and a pastoral directive on clerical child abuse in 2011 called *Towards Healing and Renewal*. The commissioning of an independent study *Time to Listen: Confronting Child Sexual*

Abuse by Catholic Clergy in Ireland (2003) to understand the impacts of and responses to clerical child sex abuse was the first of its kind in the global Church.[58]

5.   CONCLUSION

In 2018 when Pope Francis visited Ireland, much ink was expended contrasting contemporary Ireland with that of the first papal visit in 1979. The transformation of Irish society and the place of Catholicism within it was so profound as to render comparison meaningless. Many commentators have engaged in a sweeping but simplistic and at times populist narrative of the Church's decline and fall. As this essay has demonstrated, what has failed or been rejected is a particular model of Church – the patriarchal, authoritarian model that enjoyed a lengthy heyday in Ireland from the 1920s to the 1960s or even 1980s. The narrative of decline and this essay's focus on the institutional Church should not obscure the fact that a critical mass of believers remains, that religion retains a public salience, that developments at a local grassroots level have prioritised greater lay involvement and a more evangelical church – the field hospital image advocated by Pope Francis, that adaptation

rather than demise is possible. An analysis of Europe-wide surveys of 22 countries in 2014 and 2016 found that 36 per cent of Irish adults attended a religious service at least once a week, whereas the average was 12.8 per cent.[59]

Since the turn of the present century there have been several consultative assemblies and listening exercises. The most ground-breaking was a diocesan synod in Limerick in 2016, the first for eighty years. This produced a ten-year diocesan pastoral plan which emphasises a more mission-shaped church and the co-responsibility of all the baptised.[60] In March 2021 the Irish bishops announced a new synodal pathway for the Catholic Church in Ireland which placed the Irish Church at the forefront of the universal Church in this regard. The first phase from 2021-3 involves a nationwide consultative process, the insights from which will inform the planning phase for a national synodal assembly. At the very least, this unprecedented development demonstrates a belated but welcome attempt to adapt the Church in a meaningful way to the challenges of contemporary Catholic Ireland.

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58.   Brian Conway, 'Religious institutions and sexual scandals: a comparative study of Catholicism in Ireland, South Africa and the United States', *International Journal of Comparative Sociology* 55:4 (2014), p. 331.

59.   Stephen Bullivant, *Europe's Young Adults and Religion* (2018), https://www.stmarys.ac.uk/research/centres/benedict-xvi/docs/2018-mar-europe-young-people-report-eng.pdf (accessed 14 September 2021).

60.   Diocese of Limerick, "Moving Forward Together in Hope" Limerick Diocesan Pastoral Plan 2016-2026 (2016), http://www.synod2016.com/sy/assets/File/2016/LimerickDiocesePastoralPlan2016.pdf (accessed 14 September 2021)

Greening Ireland's Second Century:

How Environmental Policy Has Emerged as Central to Irish Life

Kevin Hargaden and Ciara Murphy

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INTRODUCTION: THE ENVIRONMENTAL POLICY SHAPED HOLE IN IRISH HISTORY

This essay is quite unlike the other pieces in this issue of *Working Notes*. While vast tomes can be written about housing or penal policy in Ireland or the relationship between the Church and State, little explicit material presents itself as "environmental policy" in the first decades after independence.

While it would be an exaggeration to suggest that there was no environmental policy in Ireland for these years, it would be accurate to ponder whether we would have any significant legislation or programmes were it not for membership of the European Economic Community in 1973. The newly independent State did inherit some laws that can be classified, retrospectively, as environmental. The British Fisheries Act of 1891 specifically addressed the regulation of the North Sea fishing fields but applied in general to Irish waters and to all salmon farming. In the same year, the Turbary (Ireland) Act established access rights to cutting turf from peatlands, particularly when procured by the Land Commission.

These pieces of legislation are notable for how they are clearly concerned with property and trade. It is arguably an act of creative reimagining that would read them as proto-environmental. Green activists today often lay the charge that capitalism trains us to view creation through an instrumentalised lens, such that space and the creatures within it are objects to be utilised for our profit. Pope Francis refers to this in *Laudato Si'* as a "techno-economic mindset."[1] For Francis, authentic environmentalism is identified by its reliance on "bonds of affection" to perceive our world accurately.[2] Viewing our environment not as a profit opportunity awaiting exploitation but as a Creation inviting us to learn how to love other creatures, other humans, ourselves, and even God, is not some mystical mumbo-jumbo, but a sustainable stance from which to strive for real climate and biodiversity care.[3]

This is not a vision which we will easily find in early Irish interventions on environmental matters. While it may seem to be admirably progressive that as early as 1936, the young State passed a law outlawing whaling, the parliamentary debates do not dwell on the dignity of these magnificent mammals but on the risk whale oil may pose to the Irish butter industry.[4] The centrality of agriculture to the economic viability of the Irish State could not be overstated. The first Minister for Agriculture, Patrick Hogan, described the economic policy of the nascent State as one of "helping the farmer who helped himself and letting the rest go to the devil."[5] By 1926, agriculture accounted for 32 per cent of GDP and 54 per cent of workers were employed on farms or in the food processing industry.[6]

This, then, is the context in which we might consider environmental policy at the founding of the State and in subsequent decades. While prison had been a lived reality for those who made up the first Dáil and the task of improving housing was a priority for generations, an awareness of the environment apart from its economic value is hard to locate.

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> While it may seem to be admirably progressive that as early as 1936, the young State passed a law outlawing whaling, the parliamentary debates do not dwell on the dignity of these magnificent mammals but on the risk whale oil may pose to the Irish butter industry.

In this essay we will sketch the overdue emergence of environmental policy in Ireland. By environment, we mean engagements with biodiversity, environmental standards, and more recently, climate mitigation. While there is rich potential to consider the important distinctions between legislation and its

1. Pope Francis, *Laudato Si'* (Vatican City: Vatican, 2015), §188, §198.
2. Pope Francis, §11.
3. John Berkman, "Must We Love Non-Human Animals?," *New Blackfriars* 102, no. 1099 (2021): 335.
4. Daniel McMenamin, TD, "Public Business: Second Stage of the Whale Fisheries Bill, 1936" (8th Dáil, Dáil Éireann, February 3, 1937), https://www.oireachtas.ie/ga/debates/debate/dail/1937-02-03/36?highlight%5B0%5D=obliged&highlight%5B1%5D=law&highlight%5B2%5D=law.
5. Jonathan Haughton, "Historical Background," in *The Economy of Ireland*, ed. John O'Hagan and Carol Newman, 11th Edition (Dublin: Gill & Macmillan, 2011), 26.
6. Haughton, 26.

Ireland is famous for its verdant scenery. Rights: iStock 1169360307

implementation, for the sake of brevity they are largely conflated in this piece. We will conclude by arguing that while environmental policy – unlike housing policy, penal policy, or the relationship between church and State – does not feature a storied legacy from Ireland's first century, but it will surely be a decisive factor in Ireland's second century.

A GREEN DAWN: THE EMERGENCE OF IRISH ENVIRONMENTAL POLICY

Even when the State began to acknowledge the environment in explicit terms, it remained the case that this value was framed in economic terms, just like now broader than simply agriculture. Thus, An Foras Forbartha – established in the 1960s to encourage strategic development of infrastructure – wrote in 1969 of the "heritage" on hand across the country which was "being steadily whittled away." But the reason this is lamentable is not because of the damage to the landscape or the harm to biodiversity, but because of its potential "for purposes of education and recreation … in the development of tourism and the pursuit of historical and scientific research."[7]

Even if still rooted to an economistic understanding, the mid-century policy shift attributed to TK Whitaker and Seán Lemass did see the development of more concretely environmental legislation. The Maritime Jurisdiction Act passed in 1959 was intended to conserve the diversity and populations within the sea. The Common Agricultural Policy was established in 1962 and while it did not initially apply to Ireland, it was influential within national thinking. While still framed in terms of increasing raw yields[8] its existence was significant in broadening Irish discourse and social imagination beyond its borders and its traditional historical preoccupations.

And perhaps decisively, the role of local activist groups and the early forms of environmental NGOs must be considered.[9] Liam Leonard's survey of those early campaigns captures their geographic and topical diversity. Whether it was the Georgian Society fighting to preserve the built integrity of Dublin's environment, the opposition

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7. Quoted in Padraic Fogarty, *Whittled Away: Ireland's Vanishing Nature* (Cork: Collins Press, 2017), Kindle loc. 63.

8. Henrik Zobbe, "The Economic and Historical Foundation of the Common Agricultural Policy in Europe," Working Paper 2001/12: (Copenhagen: Royal Veterinary and Agricultural University, September 2001), 2.

9. Charles R. Shipan, "Independence and the Irish Environmental Protection Agency: A Comparative Assessment," Working Paper (The Policy Institute: Trinity College Dublin, 2006), 2, https://www.tcd.ie/policy-institute/assets/pdf/PIWP08_Shipan.pdf.

to nuclear power at Carnsore Point, the concerted campaigns against uranium mining in Donegal, or countless other local initiatives, theorised environmentalism almost seems to have arrived in Ireland as a by-product of a more visceral localism.[10] This grassroots-led arrangement can be all too easily overlooked by policy analysts as a variety of NIMBYism or as dislocated, disconnected singular, minor efforts.[11] But such participatory movements are socially vibrant, diverse, and effective.[12]
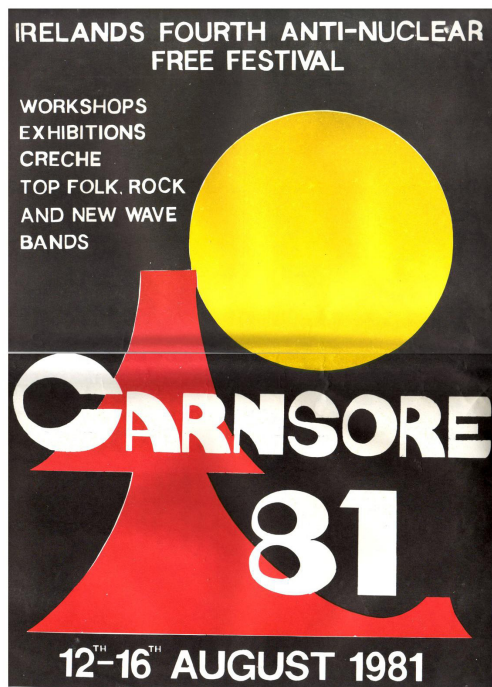
Poster for anti-nuclear protests at Carnsore Point. Rights: By permission, INNATE Ireland.

They are, according to some prominent thinkers, the most likely source for "reconstructing our democracies" under the twin pressures of wealth inequality and political populism.[13]

There are cultural perspectives at play here that do not directly relate to policy and yet surely shaped it. For example, acknowledging that Ireland's transition into Modernity was atypical, as the society urbanised, the urban areas were depopulated of non-human animals in a fashion that certainly informed growing understandings of "nature", which too often persist as an idea whose meaning is contrasted against modern (urban) civilization.[14] The intellectual ground for "environmentalism" was, in part, cleared by a trend towards urban and suburban settlement that could imagine "nature" as apart from us, a process that Hilary Tovey long ago described as a part of a broader "cultural modernisation".[15]

These factors – internal political shifts, activist movements, cultural changes, and wider global forces – together contribute to the emergence of an environmental policy consciousness in Irish politics, but the decisive shift surely came in 1973.

CONTINENTAL DRIFT: THE SIGNIFICANCE OF EUROPEAN ACCESSION

After a decisive referendum in favour of membership of what was then known as the European Economic Community,[16] Ireland became a member of both the Common Agricultural Policy (CAP) and the Common Fisheries Policy (CFP). The attraction of both schemes was obvious for an economy still largely dependent on food production since it offered an income floor below which those in agriculture and fishing could not fall.

10. Liam Leonard, *The Environmental Movement in Ireland* (Berlin: Springer, 2008), 213.

11. Mark Garavan, "Resisting the Costs of 'Development': Local Environmental Activism in Ireland," *Environmental Politics* 16, no. 5 (November 2007): 845.localism carries a negative connotation, suggesting that such activism does not reflect pure or genuine environmental commitment. Irish environmental activism is indeed predominantly local but these 'defences of place' may be far more socially and politically significant than is generally recognised. The concept of place constructed and advanced by local activists combines concerns about perceived threats and risks arising from specific projects with claims, both implicit and sometimes explicit, regarding human well-being and the quality of the natural environment. Thus, 'place' can act as a holistic concept encompassing notions of the good life. In this way, local-level activism can be linked to emerging political conflicts over the direction and character of modern society and gobalisation.","container-title":"Environmental Politics","DOI":"10.1080/09644010701634224","ISSN":"0964-4016, 1743-8934","issue":"5","journalAbbreviation":"Environmental Politics","language":"en","page":"844-863","source":"DOI.org (Crossref

12. See the forthcoming: Ciara Murphy, "Dialogue as Foundational? The Role Faith-Based Groups Play in The Environmental Movement in Ireland" in Paolo Conversi and Jacquineau Azetsop (eds.) *The Foundations of Integral Ecology* (Rome: GBPress, 2022).

13. Charles Taylor, Patrizia Nanz, and Madeleine Beaubien Taylor, *Reconstructing Democracy: How Citizens Are Building from the Ground Up* (Cambridge, MA: Harvard University Press, 2020), 9.

14. Juliana Adelman and Francis Ludlow, "The Past, Present and Future of Environmental History in Ireland," *Proceedings of the Royal Irish Academy: Archaeology, Culture, History, Literature* 114C (2014): 386–87. See also, though focusing on an earlier period: Juliana Adelman, *Civilised by Beasts: Animals and Urban Change in Nineteenth-Century Dublin* (Manchester: Manchester University Press, 2020).

15. Hilary Tovey, "Environmentalism in Ireland: Two Versions of Development and Modernity," *International Sociology* 8, no. 4 (December 1993): 414.

16. With a 70 per cent turnout, 83 per cent of people voted in favour in a referendum on May 10, 1972.

While earlier versions of CAP prioritised intensification over environmental sustainability, generating "adverse impacts on biodiversity" and on greenhouse gas emissions, the process of finding a compromise agricultural policy between the members of the European project was also a process of realising the central role that agriculture had in biodiversity protection and climate breakdown mitigation.[17] In line with the Rio Earth Summit, CAP has been repeatedly reformed in the hope of striking a balance between guaranteeing food availability within the Union while achieving sustainability.

The newest iteration of CAP, signed in December 2021, has continued in the progression away from subsidising production with increased concentration on eco-schemes. A new delivery model is a major point of difference, with each member State having increased flexibility in how they want to spend their money. Regional differences are anticipated and accepted, as long as nations can demonstrate that they are increasingly ambitious in terms of climate, biodiversity, and environmental pollution. This flexibility recognises that the one-size-fits-all model cannot work across the entire EU, where different issues call for targeted, localised action. If done well this new CAP could put agriculture on a much needed alternative ecological path.[18]

While the Treaty of Rome of 1957 (which established what became the EU) did not mention any environmental concerns, a growing realisation that such matters warranted integrated responses grew through the 1960s. The first European action programme was adopted in 1973, the same year Ireland became a member and six more have followed.[19] It is not an exaggeration to say that Irish environmental legislation and policy cannot be understood apart from these European initiatives.

> **If done well this new CAP could put agriculture on a much needed alternative ecological path.**

Ireland established a formal Environmental Protection Agency (1992) before the European Union (1993), but for the large part, the suite of environmental legislation that has now been developed and the accompanying implementation policies are extensively shaped by EU Directives and examples from other member States.[20] An example of the EU Habitats Directive of 1992 which mandated the preservation of rare, threatened, or endemic species or habitats. Special Areas of Conservation (SAC) are protected by this Direction, as well as a network of protected sites, referred to as the "Natura 2000" sites. In Ireland, this includes our bogs. When the Irish Government passed the Wildlife Amendment Acts in 2002, it designated particularly important habitats as "Natural Heritage Areas" (NHA) and under this legislation, 75 raised bogs and 73 blanket bogs have been given legal protection.

Expressions of this debt to the European context are often explicit. For example, in the Seanad debate on the Fisheries (Amendment) Acts of 2003 we find, John Browne, the Minister of State for the Department of Communications, Marine and Natural Resources explain:

> *The EU is anxious to secure complete ratification of the agreement by the EU and all 15 member states en bloc as early as possible so as to signal its commitment to sustainable fishing on the high seas and elsewhere. It has requested Ireland to make the necessary arrangements to progress the legislation and other measures required to enable it to ratify the agreement.[21]*

17. Jana Poláková et al., *Addressing Biodiversity and Habitat Preservation through Measures Applied under the Common Agricultural Policy* (London: Institute for European Environmental Policy, 2011), 30.

18. Harriet Bradley, "CAP – The Real Test Is about to Come," *Institute for European Environmental Policy* (blog), December 3, 2021, https://ieep.eu/news/cap-the-real-test-is-about-to-come?utm_campaign=coschedule&utm_source=twitter&utm_medium=IEEP_eu.

19. David Langlet and Said Mahmoudi, *EU Environmental Law and Policy* (Oxford: Oxford University Press, 2016), 27.

20. Alison Fanagan et al., "A Guide to Environment Law in Ireland" (Dublin: A&L Goodbody, 2013), 2.

21. John Browne, TD, "Fisheries (Amendment) Bill, 2002: Second Stage." (Parliamentary Debate, Seanad Éireann (22nd Seanad), Dublin, November 21, 2002), https://www.oireachtas.ie/en/debates/debate/seanad/2002-11-21/6.
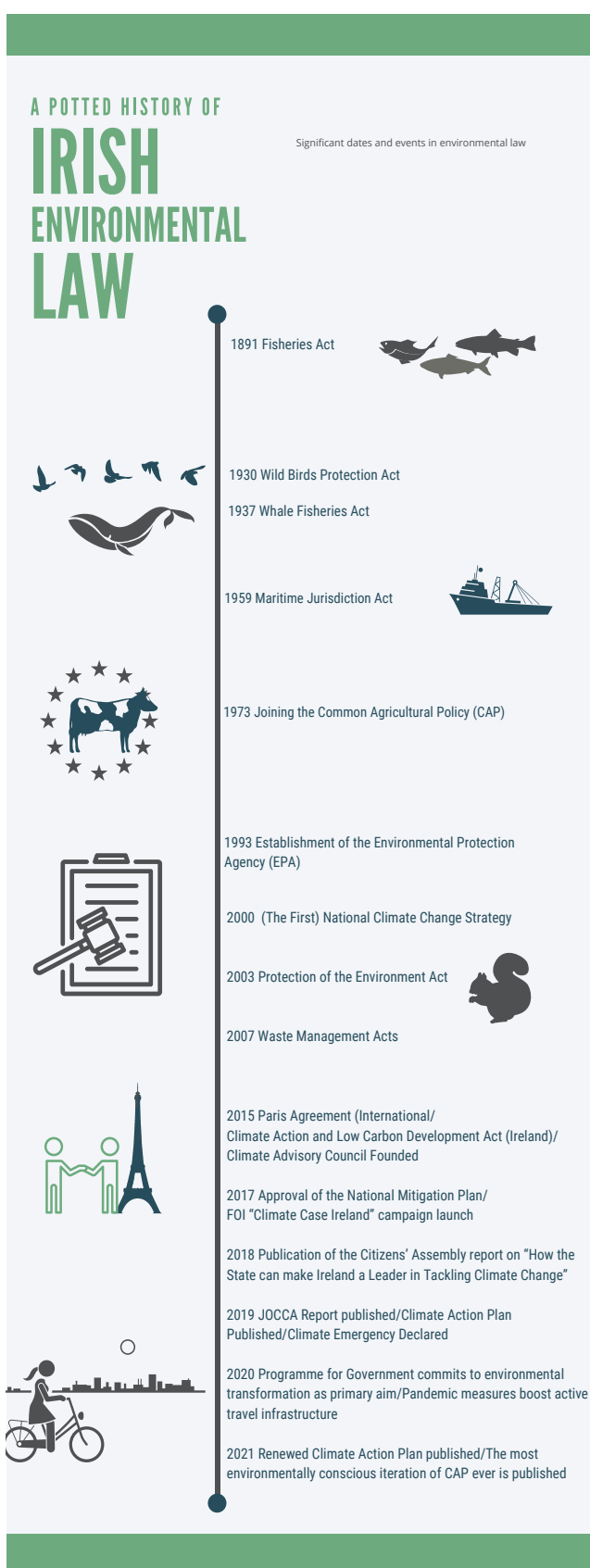
It is also important to recognise the role that the EU plays in regulation of environmental legislation and policy implementation. It is conceivable that a State could pass the most finely calibrated laws and then proceed to ignore them, but the day-to-day oversight of the EU, along with the activity of the EPA, removes that possibility.[22]

Ireland now has a mature array of environmental protections covering pollution (for example, the Waste Management Acts (which were in response to the EU's Waste Framework Directive), biodiversity protection (for example, Wildlife Amendment Act 2000), and mitigation of the climate breakdown (for example, Climate Action and Low Carbon Development (Amendment) Act 2021). As a rule, the State engages in public consultations which foster democratic dialogue on environmental matters. Even before the development of carbon budgets, State departments proceeded in their business with some environmental awareness.[23] While imperfect and contentious, the planning process is understood as an environmental concern, not purely an economic activity.[24]

22. Jack Horgan-Jones, "Ireland Faces Losing Thousands of Tonnes from Fish Quotas after EU Investigation," *Irish Times*, February 15, https://www.irishtimes.com/news/environment/ireland-faces-losing-thousands-of-tonnes-from-fish-quotas-after-eu-investigation-1.4485289.

23. So, for example, the body charged with attracting Foreign Direct Investment, the IDA, had an incentive scheme targeting environmentally aware commercial concerns and the Department of Education sought to embed the concept of "sustainability" into the core of their educational plan: Industrial Development Authority, "Go Green Offer" (IDA, Dublin); Department of Education and Skills, "Education for Sustainability: The National Strategy on Education for Sustainable Development in Ireland" (Dublin: Department of Education and Skills, 2018).

24. Yet it must not be forgotten that individual planning decisions all too often appear to treat environmental questions as mere box-ticking exercises: Pat McGrath, "Plans for Galway City Ring Road given Green Light," *RTE.ie*, December 7, 2021, sec. News, https://www.rte.ie/news/connacht/2021/1207/1265402-galway-road-project/.

A POTTED HISTORY OF

IRISH ENVIRONMENTAL LAW

Significant dates and events in environmental law

1891 Fisheries Act

1930 Wild Birds Protection Act

1937 Whale Fisheries Act

1959 Maritime Jurisdiction Act

1973 Joining the Common Agricultural Policy (CAP)

1993 Establishment of the Environmental Protection Agency (EPA)

2000 (The First) National Climate Change Strategy

2003 Protection of the Environment Act

2007 Waste Management Acts

2015 Paris Agreement (International/ Climate Action and Low Carbon Development Act (Ireland)/ Climate Advisory Council Founded

2017 Approval of the National Mitigation Plan/ FOI "Climate Case Ireland" campaign launch

2018 Publication of the Citizens' Assembly report on "How the State can make Ireland a Leader in Tackling Climate Change"

2019 JOCCA Report published/Climate Action Plan Published/Climate Emergency Declared

2020 Programme for Government commits to environmental transformation as primary aim/Pandemic measures boost active travel infrastructure

2021 Renewed Climate Action Plan published/The most environmentally conscious iteration of CAP ever is published

Fridays for Future Protestors outside Dáil Éireann.
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Care of our common home is a uniquely global concern, since emissions in Mumbai shape the climate reality for people in Mullingar. And through membership of the European Union, Ireland was a signatory of international agreements. After the Rio Summit formally established environmental concerns on the global stage, the Kyoto Protocol signed in 1997 and active from 2005 committed Ireland to complying with the United Nations Framework Convention on Climate Change. This brought binding obligations to measure and report on emissions and to seek to reduce them in the interests of human safety. Subsequent years brought incremental changes in global policies, but the Paris Agreement of 2015 enshrined a commitment to limit global warming to 2° Celsius.

It is important to note the dramatic shift in environmental consciousness that has occurred in the almost fifty years since Ireland joined the European project. But all the advances cannot obscure the reality that Ireland remains a "climate laggard."[25] The Emerald Isle has a long way to go before it can claim to be properly green.

THE CONTEMPORARY MOMENT OF HOPE, EVEN EXPECTATION

Evidence of a positive move to a more holistic, less economistic vision for the natural environment is starting to emerge. There is a slow, albeit incomplete, shift in vision of State bodies from a purely resource-utilising perspective towards a greater understanding of the intrinsic and non-economic value of nature.

State bodies, such as Bord na Móna and Coillte, which were initially established to maximise profit and create employment, are now responding to public as well as political and legislative pressure to pivot to more ecological functions. Coillte Nature[26] is a not-for-profit branch of Coillte which manages land for biodiversity and recreation not solely for timber production. Several projects, which started in 2020, are converting plantations in the Dublin mountains into biodiverse forests, restoring wetlands and bogs in the west of the country, and working to remove invasive species which will allow forests to naturally regenerate. Bord na Móna nn now a long way to go before it can claim to be properly green.y that Ireland remains a climate laggard"nce Irelaow functions as a "climate solutions company"[27] with operations in wind generation, recycling, and peatland rehabilitation. It is almost unrecognisable from the company which up until very recently focused almost entirely on mining peat for horticulture and power generation. This undeniable shift from extraction and peat-fuelled electricity generation was accelerated by legal action taken by Friends of the Irish Environment.[28] This necessary shift has not come without criticism. The sudden pivot has resulted in huge changes in the economic landscape of the midlands, where Just Transition approaches have been sporadic, leaving communities wondering if the well worded plans will ever have substance.[29]

The ambitions to shift from laggard to... well, not-last, is also in full view in the Climate Action Plan 2021, published in November

25. Niall Sargent, "Taoiseach Tells EU He Is Not Proud of Ireland Role as Europe's Climate 'Laggard,'" *Green News Ireland*, January 18, 2018, https://greennews.ie/taoiseach-tells-eu-not-proud-ireland-climate-laggard-role/.

26. Coillte Ireland, "About Coillte Nature," Coillte, May 2020, https://www.coillte.ie/coillte-nature/coilltenature/.

27. Bord na Móna, "Who Are We - Overview," Bord Na Mona, May 2021, https://www.bordnamona.ie/who-we-are/overview/.

28. Friends of the Irish Environment, "Peat," May 2021, https://www.friendsoftheirishenvironment.org/peat.

29. Sam Starkey, "Update on Just Transition in the Midlands Published," Green News Ireland, July 9, 2021, https://greennews.ie/update-to-just-transition-programme-published/.

2021, as well as the Climate Action and Low Carbon Development (Amendment) Act 2021. These policies and legislation collectively aim to bring down our emissions by 51% by 2030, with the deadline of being net-zero by 2050. While this ambition is far beyond anything we had before in Ireland it unfortunately does not match what our fair-share contribution would be.

Notable in its wide ranging vision, the Climate Action Plan reflects the fact that climate breakdown cannot be separated from any other aspect of our lives. How we live, travel, relax, eat, and how we share our economy are all covered to some extent in this document.[30] While not perfect, with lingering hints of the cost-benefit analysis which dominated the 2019 version, we see in this iteration the progression towards a more holistic understanding of the climate and biodiversity crisis.

In this pivotal document we also see social justice issues, which have emerged over the past few years, being somewhat addressed. The carbon tax, an important tool in the climate action kit, is still listed as a key policy commitment. However, measures are outlined to alleviate the potential impact on those suffering from fuel poverty. Throughout the document complementary measures which further reduce this pressure are identified, including free and low cost retrofitting in low-income homes, retrofitting social homes, and improvements in urban and rural public transport. These measures could have been further expanded to include more widely subsidised public transport, reducing the cost for those who need it as well as more supports for those living with fuel poverty whilst in rented accommodation.

A salutary aspect of this plan is the commitment to deepening engagement of the public in a climate dialogue. Some previous attempts at engagement were exemplary, such as the Citizens Assembly from 2016 to 2018, highlighted globally as a process that should be replicated. Others have been relatively limited, such as the public consultation process

> " Notable in its wide ranging vision, the Climate Action Plan reflects the fact that climate breakdown cannot be separated from any other aspect of our lives. How we live, travel, relax, eat, and how we share our economy are all covered to some extent in this document.

proceeding the publication of the Climate Action Plan, which garnered criticism from NGOs on the limited scope for meaningful engagement.[31] But the ambition to develop these conversations while encouraging communities and citizens to partake in action should be celebrated. Climate and biodiversity action will be politically contentious. Ensuring that everyone's voice is heard is essential to avoid technocratic creep or electoral disconnection.

The Republic of Ireland has a sophisticated environmental legislative and policy culture. It has a Green Party in government and other minority parties are striving to brand themselves as even more fundamentally committed to environmental care. It has ambitions to become a global leader in environmental care. But arguably the most significant factor in the dynamic change in this arena remains grassroots activism. Whether through "official environmentalism" represented by the broad coalition that makes up Stop Climate Chaos,[32] or citizenry science projects,[33] or countless local initiatives,[34] the energy for Irish environmentalism remains extra-legislative, more properly in the realm of active democracy. This is both a positive

30. Government of Ireland, "Climate Action Plan 2021 - Securing Our Future" (Dublin: Department of Environment, Climate, and Communications, 2021).

31. Deirdre Duff, "Have Your Say on Climate Action," *Friends of the Earth Ireland* (blog), May 13, 2021, https://www.foe.ie/blog/2021/05/13/have-your-say-on-climate-action-submit-to-the-governments-climate-consultation-using-our-handy-guide/.

32. Stop Climate Chaos, "About Stop Climate Chaos Coalition," Stop Climate Chaos, September 30, 2017, https://www.stopclimatechaos.ie/about/."container-title":"Stop Climate Chaos","language":"en","title":"About Stop Climate Chaos Coalition","URL":"https://www.stopclimatechaos.ie/about/","author":[{"literal":"Stop Climate Chaos"}],"accessed":{"date-parts":[["2021",12,7]]},"issued":{"date-parts":[["2017",9,30]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

33. National Biodiversity Data Centre, "Recording System - Ireland's Citizen Science Portal," 2021, https://records.biodiversityireland.ie/.

34. For example: the ACRE Project which works in a cross-community fashion in areas of socio-economic disadvantage in the Portadown area: Dialogue For Diversity, "The ACRE Project," 2020, https://www.dialoguefordiversity.org/content/22/The-ACRE-Project/.

for environmentalism, guarding it against the temptation to view the intersecting crises we are experiencing as technical problems to be solved by experts, and positive for Irish democracy. It also remains essential for seeing the fine ambitious words found in the State's legislation and policy programmes enacted in reality.

CONCLUSION: TOWARDS A GREENER SECOND CENTURY

It is not the case that the Irish State only awoke to environmental concerns in the 1970s. Legislation, policy, parliamentary debates, and most importantly, the ordinary practices of citizens testified to a commitment to the care of our common home. Detailed discussions can be found in the parliamentary records that testify to the awareness of representatives and their electorate of the need to responsibly care for creation.[35] Yet it is only relatively recently that this general concern for nature began to express itself with specificity as explicit environmental legislation and policy.

In this sense, environmental policy is different from other spheres such as housing and penal policy because it was hidden inside (or even entirely swamped by) economic concerns for decades. In this essay we have argued that the decisive pivot came with membership of the European Economic Community in 1973 and that in the decades sense it has been integration with our European neighbours that has been most influential in our own care for our common home.

The present moment is marked with striking expectations that the priorities of the State will increasingly focus on these questions, which barely blipped on the radar a century ago. Purported electoral "Green waves" may have not yet arrived, but as teenagers continue on their (at the time of writing) 156th week of consecutive protests outside of Dáil Éireann, it would be a foolish analyst who would doubt that climate and biodiversity concerns will be central in Ireland's second century. When we look back on environmental policy in the hundred years since the founding of the State, we almost have to imagine it, finding it so well camouflaged behind trade legislation or cultural commitments. But in the decades to come we will increasingly find those and other areas of our common life reorganised around the mitigation of the climate and biodiversity crisis.[36]

> " It is only relatively recently that this general concern for nature began to express itself with specificity as explicit environmental legislation and policy.

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35. For example, in a 1929 debate on a bill to protect wild birds, a Senator commented with touching moral clarity about one of the mechanisms that was to be regulated, concerned clearly and primarily for the good of fellow creatures without reference to their economic utility: "Anybody who has not seen the effects cannot know the cruelty caused by the use of birdlime in the taking of these birds. It is not to the bird that is caught that there is cruelty, as it is treated and the birdlime is carefully removed; it is to the bird that gets away with this stuff on its poor feet. It alights somewhere, gets away again and then gets stuck, so that the result is death from starvation." Samuel Lombard Brown, "Wild Birds Protection Bill, 1929—Second Stage." (text, 1928 Seanad Éireann, Dublin, November 27, 1929), Ireland, https://www.oireachtas.ie/en/debates/debate/seanad/1929-11-27/13.

36. An exploratory example of what that might look like has already been developed by the JCFJ: Keith Adams et al., "Do We Really Feel Fine?: Towards an Irish Green New Deal," *Working Notes* 34, no. 87 (October 2020): 24–48.

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