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Has Advocacy Influenced the Children's Rights Discourse in Ireland?

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This paper outlines research that will be conducted by the author for the next four years as part of a PhD. The thesis proposes that advocacy, as a set of practices, a policy and/or a concept, has influenced children's rights discourses in Ireland. Further, it will be argued in this chapter that the concept of advocacy has been influential in the development of service provisions (Harwin & Barron, 2007). This thesis will argue that advocacy has also influenced society and how it views children, vis a vis the social construction of the child. The tangible impact of the changing view of the child and childhood is evident in child related policy. This will be illustrated through a literature review. The aim of this review is to explore how the social construction of childhood has changed during this and the previous century. The role advocacy played in this evolution and the question of its continuous evolution will be examined. Questions will be posed such as, is this evolutionary process, corresponding with the view which holds that the concept of human rights is still unfolding? Or was this a revolution of thought aided through the work of advocacy?

The chapter will discuss the research undertaken this far that includes a literature review of relevant child social policy and the development of a theoretical framework. Within the theoretical framework, theories of Michel Foucault (1926-1984) and Alain Touraine (1925 – Present) will be utilized. Foucault's theory of power in discourse

will be used as a means of illustrating how opposing forces can act as a means to societal change. Touraine's theory of Social Will be used to illuminate the impact of the United Nations Convention on the Rights of the Child (UNCRC) on child care discourses and policies.

The publication of the UNCRC in 1989, and the subsequent signing in 1992 by the Irish government, will be examined as potentially a significant marker from which much change has occurred towards the realization of children's rights Ireland. Possibly one of the most significant developments since its publication, has been the role its has played in relation to supporting and promoting advocacy in Ireland

Historical Review of Child Related Policies

The following section will offer an overview of an historical examination of a sample of child related policy in Ireland. The aim of this overview is to place the concept of the child and child related policy in a context from where all development can be recognised. However, in the undertaking of an historical overview, it is achieved with the express concepts of history as theorized by Michel Foucault. Kendall and Wickham (1999) argue that to use Foucaultian methods of history in an 'ahistorical' way means not to see it as a beginning or an end but rather neverending.

> To use history in the Foucaultian manner is to use it to help us see the present is just as strange as the past, not to help us see that a sensible or desirable present has emerged (Kendall & Wickham, 1999:4).

While this exercise is an important tool for understanding where Ireland has moved from in terms of how the state views the child and its place in society, it is undertaken not just as a means of answering this complex question, but merely offering a snapshot. In short, this isn't a means to understanding the end vis a vis children now realise their full rights, but undertaken with the knowledge that there exists a continuing ahistorical trajectory within the sphere of children's rights. In other words, it is still unfolding. Kendall and Wickham further argue that to use Foucault's use of history does not involve assumptions of 'progress' or 'regress': 'Foucault uses history as a way of diagnosing the present. History should be used, not to make ourselves comfortable, but rather to disturb the taken for granted' (Kendall & Wickham,

1999:4). In short, it offers no solutions and makes no assumptions, but merely helps us to understand how society operates in a particular way.

Past to Present: Juvenile justice and the child care system

This section will examine a sample of child related policy. Polices which relate to juvenile justice and the state's care system have been chosen for their particular relevance to children's rights. The aim of this is to offer some insight into how children were viewed in policy, but perhaps more relevant for this research, will be to examine these polices through the lens of human rights. The role of advocacy in the development of child related policy will be examined.

The first Act passed in Ireland which explicitly related to the welfare of children was passed through the British Parliamentary system in the early part of the 20th century. The Children's Act of 1908, or the 'Children's Charter', expressly put forward the doctrine of 'parens patrine', which put the State ahead of the parent as having the ultimate responsibility to the child (Powell, 1992). The Act focused on criminal proceedings and court appearances in relation to children and put forward explicit ideas of what was expected of 'responsible parents'. One of the most pertinent areas the Act covered was that of 'care and protection' of children. This Act named for the first time 'deprived' and 'depraved' children. All of whom were seen to be ultimately the responsibility of the State, should the parents fail in their role as care givers. One of the greatest obstacles for this Act in Ireland centered around its emergence from another jurisdiction, England, which didn't adhere to the same traditionalist views on family as Ireland had at that time. In his book entitled, *The Politics of Social Policy 1600-1900,* Fred Powell highlights how the implementation of this Act in Ireland was 'painfully' slow, hindered by traditional values and observes that 'Children's rights have always been regarded with skepticism in a society with an abidingly traditionalist conception of the family' (Powell, 1992:136).

This notion of the 'traditionalist conception of the family' as being an obstacle towards the realization of children's rights which Powell highlights, is further compounded by the States use and abuse of the Industrial Schools as a means of controlling children in State care. The Industrial School system was first established in Ireland following the Industrial Schools Act of 1868. As outlined by Powell, their

regime was 'punitive in orientation'; coming from a philosophy that there was a correlation between 'destitution and vagrancy' (Powell, 1992:185).

While the Children's Act, 1908 was the first Act of its kind in Ireland which explicitly addressed issues of abuse, neglected and abandoned children were not new to the State. The tradition and underlying philosophy of how Ireland dealt with such issues dates back to the foundling hospitals. These hospitals took in mostly newborn babies that were placed in a type of revolving letterbox and left there to be cared for by the State (Powell, 1992). By the mid 1930s there was wide acknowledgement that the system of child protection was not working. Children who were 'boarded out', or fostered by today's definition, to families were subjected to terrible abuse. In an inspection report of 1931-1932, which examined children boarded out, the abuse of children was condemned and attributed to the lack of enforcement of the 1908 Children's Act, The Report claimed that children taken from families for their own protection were then abused by their new 'carers';

> For those foster children who survived the vicissitudes of infancy further
> abuse arose when they reached adolescence as a result of the 'hiring out'
> policy practiced by the authorities.(Powell, 1992:183)

In his book entitled, *'The Irish Gulag'* (2009), Bruce Arnold further adds to this theory of a 'punitive' regime. He argued that compared to the British industrial schools, the number of children in the Irish system were 'disproportionately high'. He also suggested children were imprisoned in these institutions for moral and religious reasons rather than social or legal;

> It was a system designed, it seems, to let the religious, who controlled and
> ran the institutions for the State, beat faith into children while at the same
> time they were starved, treated cruelly and physically and sexual abused.
> The State however was responsible and it all began with committal by the
> courts. (Arnold, 2009: 3)

Once a child was 'sentenced' to an industrial school the sentence was 'set in stone' and they didn't leave until they reached 18 years of age. Following the emergence of the Irish Free State in 1922 the Irish State continued with an industrialized schools system. Meanwhile, UK policy changed making it possible for a less institutionalized

approach to State care. This was a critical juncture for Irish social policy; the UK moved in a different direction while Ireland struggled with its past. The effects of this are still evident today. The UK has a comprehensive aftercare policy, Leaving Care Act 2000, while the Irish State has yet to commit to a statutory provision in this area of policy.

There is substantial literature available which highlights the litany of abuse which took place in Industrial Schools. While the book entitled '*Suffer the little children'* (1999) by Mary Raftery and Eoin O'Sullivan, was the first published piece of literature which exposed in great detail the abuse of children at the hands of the State, it was by no means the first time such abuse had come to light. Allegations of physical abuse of the children detained in Irish Industrial schools were addressed publicly for the first time as a result of the Kennedy Committee, which was set up to investigate such matters. The Kennedy Report, published in 1970, outlined in detail the level of physical abuse of the children which were resident in the schools. It also identified the punitive philosophy which underpinned the institution's ethos. During the work of the committee two doctors; Dr. John Ryan and Dr. J.G. O'Hagan, questioned Fr. McGonagle, Manager of Daingean Industrial School, as to why he allowed the beatings of young boys to occur while they were naked. The Report stated that 'Fr. McGonagle replied, in a matter of a fact manner, that he considered punishment to be more humiliating when it was administered in that way' (Kennedy Report, 1970).

Research indicates that many children who came from the Industrial School system found themselves in another form of institutional life such as the army, prison or homeless. These young people had effectively become institutionalized. Present day research has found little evidence which indicates that children coming out of the State care system today fare much better. Focus Ireland's (2000) research shows that two years on after leaving care, young people face a future that is 'bleak' and full of 'despair' (Kelleher et al, 2000). The research highlights the effects of the current aftercare policies on young people, and reveals that those leaving care are faced with 'chronic social instability' with one of the root causes being that they are left alone to try and navigate the challenging period between the ages of eighteen and twenty five without support. The Focus Ireland research observes: 'Urgent action is required if

children are to be protected as outlined in the UN Convention on the Rights of the Child (Kelleher et al, 2000:33).

Following continuous pressure from advocacy groups, for example, the Commission to Inquire into Child Sex Abuse was set up by the Irish government under the leadership of then Taoiseach, Bertie Ahern, in 2000. The aim of the Commission was to investigate allegations of abuse by the religious orders caring for children in State institutions. The Ryan Report, which followed, documented the personal stories of many of those people abused while in State care. Its publication confirmed the State's failure in its duty of care and also confirmed the wall of silence which met young people who tried to speak out (Ryan Report, 2009).

Research indicates that the greatest obstacle faced by those advocating for children and children's rights is the underlying conservative Catholic culture which dominated social policy since the formation of an Irish independent State. This conservative cultural philosophy continues to be evident in many policy areas today. Kilkelly undertook a study of The Children's Court between 2003 and 2005. The purpose of the study was to conduct a children's rights audit. One of the primary aims of the research was to establish whether or not the court adhered to children's rights (Kilkelly, 2005: vii). The findings of the research illustrated the punitive philosophy which governed the Children's Act 1908, still existed. Kilkelly argued that there are two approaches which could be taken in juvenile justice; punitive or welfare. While countries such as Sweden adopt the approach of welfare, Ireland's approach is one of punishment, which could place a child as young as seven in the criminal justice system (Kilkelly, 2005). Kilkelly argues that while the Children Act 2001, raised the age of criminal responsibility to 12 years, despite 14 being the recommend international best practice, Ireland still had yet to implement this aspect of the Act, thereby leaving children as young as seven vulnerable to criminal prosecution. This criticism of Ireland's treatment of children within the Irish juvenile system has been echoed internationally. In 1998 The UN Committee responsible for the implementation of the Convention on the Rights of the Child, criticized Ireland's use of adult prisons to house children. The report argued that this was an infringement of the Convention and called for the Irish State to remove children from such facilities (Irish Times 1998/2009. Report UN 1998).

This review of a sample of child related policy offers a snapshot of how children have been seen and treated in policy terms in Ireland. The next section will examine more recent trends in children's rights developments. The brief outline of the role advocacy can and has played in Irish life will be illustrated.

Current Trends in Children's Rights

Having traced the development of child rights within child care policies in Ireland, in the previous section, this next section will examine current trends and developments in children's rights. Prior to this however there will be a brief description of human rights.

Edmondson, in his book entitled, *'An Introduction to Rights'*, teases out the very notion of rights. He also examines whether human rights are in fact possessed by us all with the only qualification to attain these rights as, 'being human'. Edmundson explains that it was during the period of Enlightenment that we were first introduced to the concept of rights. During that period, between the seventeenth century and the end of the eighteenth century, intellectuals and scholars began to question their rulers, as well as the Church. It was a period in which science, as opposed to the Church, was looked to for answers and through which the beginnings of human rights would unfold; 'What began as a new, and dogmatic and inquisitive approach to the study of nature was applied to human affairs, and with consequences that are still unfolding' (Edmundson, 2004:15).

Hannah Arendt (1906-1975), as a political scientist and having experienced life as a Jewish refugee, questions the universal aspects of human rights. She takes what philosophers such as Locke argued we are entitled to based on human kind, and questions, is this really how rights translate in the modern world? She uses examples of refugees to illustrate that human beings need to belong to a strong political community in order for their rights to be enforced. During liminal periods, such as war, displaced people have no rights; 'Those refugees and displaced persons necessarily found themselves outside the framework of human rights simply because they were not considered the citizens of any nation-State' (O'Byrne, 2003:36).

Paradoxically, one of the most contested and celebrated aspects of human rights today is the underlying principle of universality (i.e. open to all without exception). Arendt's theory argues that universal human rights can only be relevant to a person if that person is recognized by the state to begin with. This raises a very interesting question about children and young people in Ireland. They are not recognized as individuals within the Irish Constitution, but, merely as members of the larger unit of the family, so how can their individual rights be recognized. Therefore, if Ardent's theory is correct, the State cannot acknowledge their rights until they are explicitly recognized as individuals (O'Byrne, 2003: 72). This lack of individual recognition of children is illustrated in Article 41 of the Irish Constitution which states that

> The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptibly rights, antecedent and superior to all positive law. (Irish Constitution, 1937: Article 41(1)

Arguably, the past decade has witnessed two of the most significant shifts in child related policy in Ireland: the publication of the proposed change of wording for the Irish Constitution and the establishment of an Ombudsman for Children. In 2002, the Irish government paved the way for the establishment of the Ombudsman for Children's Office (OCO) with the remit of this office as being 'to make sure that the government and other people who make decisions about young people really think about what is best for young people' (OCO, 2010).

One of the first major acts undertaken by OCO came on foot of the 2006 publication of the UN Committee on Children's Rights Report. The Committee criticized Ireland's lack of implementation of the CRC. Following this, the Ombudsman for Children's Office commissioned research which aimed to identify the barriers that children and young people face in the realization of their rights (Kilkelly, 2007). This research identified many obstacles, but highlighted that there were sub-groups of children which were further marginalized. These included those children in or coming out of the care system as well as those in marginalized groups such as members of the travelling community. The trend in the research was the lack of voice either by or on behalf of the child contributed significantly to their lack of rights. This would corroborate Arendt theory as outlined earlier (O'Byrne, 2003). The research echoed

the criticism of the UN Committee which highlighted the lack of implementation of the 'best interest' principle of Article 3 of the Convention:

> Best Interests of the Child: In 2006, the Committee on the Rights of the Child recommended that Ireland integrate fully into all legislation relevant to children the general principle that the best interests of the child are a primary consideration. It also recommended that this principle be applied in all political, judicial and administrative bodies. (Kilkelly, 2000: 40)

Kilkelly also touched on the lack of a holistic approach to children and young people's rights, which the State continues to operate from.

> Nor is there any acknowledgement in legislation that under Article 3 of the CRC, the best interests principle places a duty on all public bodies, including the judiciary, local authorities and service providers, to act in the best interests of children. (Kilkelly, 2007: 40)

In 2010, the government published its proposed change of wording to the Irish Constitution. The proposed change to Article 42, if accepted by the Irish people, will afford children recognized individual rights protected by the Irish Constitution and separate to that of the family. While there is contention amongst children's rights advocates about the inclusion of the word 'welfare' as opposed to 'best interest', it has been widely acknowledged that the proposed wording could have positive effects on all state related institutions' which make decisions for children. Dr. Kilkelly argues in favor of this development describing it as 'significant' (Kilkelly, 2010).

Over the coming four years my research aims to identify how significant, if at all, was the role of advocacy groups in these and other areas of children's rights. The influence of advocacy groups on policy has been well documented in the United States (McDonald, 1995). In her journal article, 'The Citizens' Committee for Children of New York and the Evolution of Child Advocacy (1945-1972)', Mary Jean McDonald highlighted the research of Payton (1991) in the area of philanthropy and advocacy. McDonald quotes Payton who describes advocacy as 'philanthropy with a social conscience' (McDonald, 1995: 285). While McDonald (1995) examines the historical development of advocacy, this research will aim to examine the impact of

advocacy on children's rights discourse and the knock on effect this has on related policy in Ireland.

Having undertaken this research it will then be possible to add it to the growing body of work which already exists in the area of children's rights discourse. It will be possible to identify what works for the promotion of children's rights and where, if any, there may be challenges. This element of the research would examine the autonomy of such organizations. Examining previous research and other literature it will be possible to identify where there was, for example, a link between the ISPCC and the State.

In his book, *'Against the Tide'*, Noel Browne referred to the 'cruelty man' who worked for the ISPCC and took children into the care system and operated, it seems, as an arm of the state (Browne, 2007). More relevant for this piece of research would be to identify when, how and why did this relationship end which allowed for the ISPCC to become an independent organization from the State. Questions do also need to be asked as to how independent such organizations are? Where do they get their funding from? Under what premise do the organizations receive state funding and what are the guidelines under which they operate.

In her book, *'The International Law on the Rights of the Child'*, Van Burren argues that inclusion of children's rights in international law is dependent upon political will;'Political will can be increased if the successes of child rights are highlighted' (Van Bueren, 1995: 413).

The 'political will' of advocacy groups can be seen in a tangible way through the work of such groups in Ireland, by Frank Martin in his book, *'The Politics of Children's Rights'*. Martin argues that while there is much debate centered on the role and value of NGO's in Ireland, they do play an important role in the informal reporting to the United Nations. Historically the UN has relied heavily upon the oral and written submission from NGO's which highlighted the progress the Irish State has made towards its compliance of the UNCRC. It is through this mechanism of reporting that recommendations have been made, by both the United Nations and the

European Council, to the Irish State regarding its position on children rights (UNHCR, 2010).

Theoretical framework

The theoretical framework adopted for this research will be drawn from the theories of Michel Foucault (force relations) and Alain Touraine (social movements). Touraine's theory of Social Movements will be applied to the development of groups that advocate for children's rights and questions will be asked as to how this has happened. It is possible to identify the plethora of new child related policy since the publication of the UNCRC. In an effort to examine in closer detail why or how this happened, the theory of Touraine will be applied. Touraine argues that in order for a movement to be classed as a social movement, it needs to lead to societal change and is based on all members of that group working for one common goal. My research will explore whether the groups that advocate children's right can be defined as a social movement, as defined by Touraine?

Marx believed power existed in the subservience of the proletariat through the class system, Michel Foucault argues that knowledge was at the seat of power. While Marx believed the only way to shift the balance of power was to overthrow the class system of the post industrial era, Foucault believed that power could be lost or won through 'the impartment of knowledge or discourse' (Holland et al, 2003)).

In their book, *Culture, Society and Sexuality,* Aggleton and Parker outline what Foucault says power means to him: 'It seems to me that power must be understood in the first instance as the multiplicity of force relations, immanent in the sphere in which they operate and which constitute their own organization' (Aggleton & Parker, 1999:139). 'Force relations' is the tension created between two opposing discourses which can ultimately lead to a shift in power or attitude. In an Irish context applying this theory of force relations, it is possible to examine the relationship between the child care discourses of groups that advocate children's rights and of the State.

For Foucault, The shift in child care discourses and ultimately power, was inevitable. In the 'History of Sexuality' he examined specifically homosexuality and its 'reverse' discourse. Foucault argues that the means by which homosexuals were socially

controlled through psychiatry, literature and legislation, has been used to 'reverse' the discourse:

> Homosexuality began to speak on its own behalf to demand that its legitimacy or 'naturality' be acknowledged, often in the same vocabulary, using the same a category by which it was radically disqualified. (Foucault, 1979: 101).

Using this 'reverse discourse' theory and measuring it against progress achieved in children's rights, it is possible to see how this theory can apply here also. Foucault's theory on subjectivication argues that anti-homosexual discourse leads to the homosexual internalizing his or her own homophobia. If this theory is applied to children's rights it may be possible to identify how current children's rights discourses have opened up opportunities for children. This could be credited to the work of advocacy groups such as Barnardos and Ombudsman for Children's Rights, have helped to reframe children's rights within child care discourses.

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Conclusion

The primary aim of this research is to examine the impact of advocacy on the children's rights discourse in Ireland. Previous research undertaken in the area of advocacy has identified the impact this sector has had on policy implementation. However, this research aims to identify how advocacy has deconstructed and re-represented the child and childhood in such a way that it is possible to measure the tangible impact in policy terms.

A key area of research will be the examination of the State's influence on advocacy, both historically and up to the present day. Key questions will be addressed in relation to the funding and the autonomy of such groups. Finally, the notion of evolution of rights versus revolution will be discussed. Has the changing representation of the child and childhood come from a natural evolution of rights, as mentioned by Edmondson, or has it occurred through means of revolution, aided through advocacy?

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