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Right by Children: Children's Rights and Rights Based Approaches to Policy Making in Early Childhood Education and Care: the Case of Ireland

Noirin Hayes

Technological University Dublin, noirin.hayes@tudublin.ie

Siobhan Bradley

Technological University Dublin, siobhan.bradley@tudublin.ie

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RIGHT BY CHILDREN

CHILDREN'S RIGHTS

AND

***RIGHTS BASED APPROACHES TO POLICY MAKING
IN EARLY CHILDHOOD EDUCATION AND CARE***

The Case of Ireland

Noirin Hayes & Siobhan Bradley

**Centre for Social & Educational Research
Dublin Institute of Technology**

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¹ Principal Investigator, Professor Noirin Hayes, Associate Investigator, Siobhan Bradley (and PhD Candidate), Bernie O'Donoghue-Hynes (PhD Candidate), Rachel Kiersey (PhD Candidate) and Dr Ann Marie Halpenny.

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Abbreviations

CECDE	Centre for Early Childhood Development and Education
CPA	Combat Poverty Agency
DES	Department of Education and Science
ECEC	Early Childhood Education and Care
ECS	Early Childcare Supplement
EOCP	Equal Opportunities Childcare Programmes
IRCHSS	Irish Research Council for Humanities and Social Sciences
NCVOs	National Childcare Voluntary Organisations
NESF	National Economic and Social Forum
NESC	National Economic and Social Council
NWCI	National Women's Council of Ireland
OECD	Organisation for Economic and Co-operative Development
OMCYA	Office of the Minister for Children and Youth Affairs
UNCRC	United Nations Convention of the Rights of the Child

SECTION ONE

INTRODUCTION

1.1 Introduction

The language of children's rights has infiltrated political discourse and policy documentation in recent decades, particularly since near world wide ratification² of the United Nations Convention on the Rights of the Child (UNCRC) from 1989. Ireland ratified the Convention in 1992. However, despite increased referencing to children's rights, there is much evidence to suggest that 'we are still, very far from an ideal situation in terms of respect for these rights' (Tomas, 2008: 1). Rights are entitlements, which are interpreted and promoted or resisted differently, depending on the meaning they hold for particular people, particularly those who have most contact with and power over children and young people (Smith, 2007). Hayes (2002) suggests persistent underpinning values, conceptualising children as passive and dependent have remained largely unchanged, resulting in challenges to achieving children's rights in policy and practice. McGillivray (1993, 243 - 244) contends that 'sentimentalizing childhood, constructing from these norms images of sweetness, purity and benevolence cloaks a multitude of wrongs' and 'drive opposition to rights thinking and to changes in the way we treat children'.

In Ireland, as in many other countries, much of the debate has centred on the concept of children as individual rights holders and associated concerns regarding family autonomy and statutory responsibility. *Bunreacht na hEireann* (Irish Constitution) recognises the family 'as the natural primary and fundamental unit group of Society' (Article 41.1.1), thus except 'in exceptional circumstances, where 'parents for physical or moral reasons fail in their duty towards children' (Article 42.5), the primary responsibility for children is viewed as the private realm of families (Hayes, 2002). Article 42.5³ is the only Constitutional reference to the rights of the born child and even in this instance that right is confined to children, whose family has, somehow, failed in their childrearing responsibilities. In 1993, *The Report of the Kilkenny Incest Investigation*⁴ concluded that the 'high emphasis on the rights of the family ...

² The UNCRC is the most widely ratified Convention in world history, with all but two countries, the US and Somalia as signatories.

³ In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child (Article 42.5).

⁴ 'The Report of the Kilkenny Incest Investigation, published in 1993, was the first major child abuse inquiry in Ireland. It examined the circumstances surrounding the continued physical and sexual abuse by a father of his daughter over a thirteen year period during which the family was

may consciously or unconsciously be interpreted as giving higher value to the rights of parents than to the rights of children', a point returned to in a number of high profile court cases⁵.

Mounting pressure to explicitly acknowledge children's individual rights in the Constitution came from the recommendations of the United Nations Committee on the Rights of the Child⁶ reflecting the view of a large number of organisations who urged the Committee to recommend a constitutional amendment expressly granting rights to children. In its *Tenth Progress Report, The Family* (2006: A88), the *All-Party Oireachtas Committee on the Constitution* concluded that 'the silence of Article 41 in relation to children means that the rights of the family are effectively exercised by the parents and that the rights of children may not be given due weight within the family'. The Constitution Review Group (2006: A94) recommended an amendment be inserted in Article 41 stating that 'All children, irrespective of birth, gender, race or religion, are equal before the law. In all cases where the welfare of the child so requires, regard shall be had to the best interests of that child'.

The first public statement by government announcing its intention to hold a Constitutional Referendum to 'put the rights of children in a central place in [the] Constitution' was issued by the then Taoiseach, Bertie Ahern on 3 November 2006; '[w]e will change the Constitution to protect [the children of the future]. We will value and defend childhood to an extent never before attempted, and we will do it in a way that enhances the position of families and defends the rights of parents' (An Taoiseach, 2007⁷). Ahern emphasised that all elements of the draft constitutional provision (the 28th Amendment Bill) would protect the rights of children and yet significantly, none of them would undermine the role of parents or the constitutional safeguards for the family (Nolan, 2007), once again highlighting this sensitivity to the relationship between family and child. Dissolution of that government in May 2007 saw the Bill fall. The incoming Dáil established a *Joint Committee on the Constitutional Referendum on Children* to examine and make recommendations on the 28th Amendment Bill, however recent statements from the Minister of State for Children, Barry Andrews indicate a referendum in the short-term, at any rate is increasingly unlikely⁸. Interpretations of children's rights and

known to a number of child protection professionals' (Buckley, 1999: 21).

⁵ Example cases include the Baby 'Ann' Case 2006, the Kilkenny Incest Investigation (1993), Monageer Report (2008) and recent uncovering of rampant institutional child abuse in the Ryan Report (2009).

⁶ The UN Committee on the Rights of the Child 2006 Report critiqued Ireland's slow progress in implementing parts of the UNCRC, in particular those 'related to the status of the child as a rights-holder and the adoption of a child rights-based approach in policies and practices' (UN Committee on the Rights of the Child, 2006: 2)

⁷ Speech by an Taoiseach on publication of 28th Amendment of the Constitution Bill 2007, 19th February 2007

⁸ "The best interests of children is what we're talking about. In some cases, that's already in legislation, such as guardianship, childcare and adoption acts. Also, children's rights are already in the Constitution, albeit they are unenumerated ... People are entitled to their views. Referendums are a very legitimate way of changing the Constitution; no one is saying we should never change the Constitution again. The advice the committee received is that changes should only be proposed where there are compelling reasons to do so" (Minister for Children, quoted in *Irish Times*, August 12th 2008).

mechanisms to ensure their implementation in policy and practice, in an Irish context at any rate, therefore remain ambivalent and reflect the lack of strategic coherency regarding rights-based policies approaches for children.

Much of the prevalent deliberations and contestations in the Irish debate, are replicated internationally and are premised on diverse perspectives and interpretations of ‘childhood’ and equally (and associated) diverse perspectives and interpretations of children’s rights. Objections to the notion of children as moral right-holders usually focus on customary characterisations of childhood as a period of dependency, irrationality, a reduced capacity for autonomy and a resultant diminished ability to ‘claim’ or ‘exercise’ rights (Nolan, 2007; Hayes, 2002). Yet, as McGillivray (1993: 244) highlights ‘our history of exploiting children suggests that stressing responsibility over rights is unjustifiable’ and argues that while ‘we fear rights will strip children of the protections of childhood... perhaps what we fear above all is the loss of our own unquestionable authority’. The debate becomes even more contentious, when early childhood is considered⁹. Indeed, the UN Committee’s General Comment 7 *Implementing Child Rights in Early Childhood* emerged expressly because country reports had devoted so little attention to implications of the UNCRC for the youngest children (Woodhead, 2006). It is the combination of these factors – the contentious debate around children’s rights generally, and the even more animated debate around rights in early childhood, which has led to our interest and research in the field of children’s rights and early childhood education and care (ECEC).

ECEC and Rights

Developing indicators for monitoring the implementation of the right to education is not an easy task. It is furthermore impossible if one does not start from a *clearly defined conceptual framework* (Beeckman, 2004). Longstanding difficulties in clearly defining what exactly is meant by the term early childhood care and education in Ireland highlights a limited understanding of this pre-primary stage of education. Policy and planning persists in drawing a distinction between childcare and education despite comprehensive and nuanced arguments encouraging government towards the development of a coordinated and integrated policy approach (Hayes, 2006; Hayes & Bradley, 2006; OECD, 2004; NESF, 2005). A critical difficulty in Irish policy making is the fact that in the main childcare refers to two different service types: (i) for younger children childcare has come to mean early childhood care and education and refers to the wide variety of settings, public and private in which the raising of children is shared with the family including childminding and various forms of

Despite some perceptions, the Government has made no decision on the question of whether or not to have a referendum. I have consistently stated that the Government will await the final report of the Oireachtas Committee before making any decision in relation to legislation on constitutional amendment (Speech by the Minister for Children Barry Andrews, Children’s Rights Alliance Conference, 2nd April 2009).

⁹ For the purposes of this paper – and in connection with the wider ‘ECEC in Ireland: Towards a Rights-Based Policy Approach’, under which this paper is presented, early childhood refers to the period from birth to six years. ECEC refers to all care and education services for children from birth to six provided outside the family home.

centre-based provision and (ii) for older children, generally up to about the age of 12 years, childcare refers to the variety of afterschool arrangements that exist to meet differing needs at different times. And so, while the early childhood dimension of childcare covers the same age range and services as addressed by early education policy it comes under a different departmental auspices - within the recently established OMCYA, there is a separate Childcare Section and Early Years Education Policy Unit. So complex and entangled is the situation that the OMCYA was actually unable to report on the indicator 'early childhood care and education' in their first *State of the Nations Children* report (OMCYA, 2007, p.4) and in its 2008 report, the enrolment measure used for children in early childhood care and education was based on the 'percentage of children under 13 in various early childhood care and education arrangements'(OMCYA, 2008).

The term 'childcare' is a particularly 'empty' concept focusing primarily on the provision of 'spaces' for children whilst their parents work. The concept of childcare fails to encapsulate the potential of resource-rich early childhood settings in supporting the learning and development of children in their early years rather than holding slots for children while their parents work¹⁰. This focus on childcare is often led by political and economic interests focused on questions of employment. Typically, 'the protagonists of 'childcare' take a highly instrumental and narrow approach. They see childcare as a technical question, a means to their particular ends: they look to experts on quality to provide technical fixes on content (laying down what works) to avoid having to engage with profound issues about practice and the complexities of multiple perspectives on issues such as childhood, care and learning' (Moss, 2005: 1).

1.2 ECEC in Ireland: Towards a Rights-Based Policy Approach

As a historically neglected policy area, ECEC is somewhat unique in that the majority of investment and policies pertaining to the area have emerged over the last decade thereby coinciding with the increasing focus on children's rights globally. While not rights-based documents, it was the *National Childcare Strategy* (1999) and the *National Children's Strategy* (2000), guided by the principles of the UNCRC which confirmed a shift in referencing children's rights in policy discourse. The Children's Strategy (2000: 4) outlined its vision of an '*Ireland where children are respected as young citizens with a valued contribution to make and a voice of their own; where all children are cherished and supported by family and the wider society; where they enjoy a fulfilling childhood and realise their potential*' and identified three national goals towards the attainment of this. Goal One is that children will have a voice in matters affecting them; Goal Two, that children's lives will be better understood and Goal Three, that children will receive quality supports and services to promote all aspects of their development (Ireland, 2000). Referencing children's rights also found its way into the language of Social Partnership agreements and the most recent agreement - Towards 2016 - makes direct

¹⁰ Unless ECEC is specifically referred to in government discourse, policy or practice provisions, the term 'childcare' is deliberately used within this paper to highlight the lack of differentiation between ECEC and the broader area of childcare in Irish policy.

reference to the UNCRC in its section on children (Department of the Taoiseach, 2006).

Childcare in particular – rather than ECEC - received increased government attention throughout the so-called Celtic Tiger years particularly as female labour market participation became increasingly vital to economic buoyancy. Fine-Davis notes (2004: 38) that ‘until 1999 what had been most notable about the government’s response to childcare had been its focus on *examining* the issue rather than directly dealing with it’. However, the threat the lack of childcare posed to economic growth from the latter part of the 1990s fuelled a shift from policy rhetoric to action. Unprecedented investment came through the EU funded Equal Opportunities Childcare Programme (EOCP) managed by the Department of Justice, Equality & Law Reform (2000 - 2006) which aimed to ‘facilitate parents to participate in employment, training and education’ by ‘increasing the number of childcare spaces, improving quality and introducing a co-ordinated approach to the delivery of childcare services’. Up until this time, the majority of the existent provision was small scale, part-time, not-for-profit, with a small commercial presence and a number of community based services. In the absence of policy and support, a fragmented and unregulated childcare market of variable quality developed where ability to pay, largely determined right of access and quality of experience within settings. Approximately half of the total €535m EOCP funding (53%) was used to provide capital grants to build and refurbish childcare facilities and the remaining funds were used to subsidise staffing costs in the community/not-for-profit sector and to fund the National Childcare Voluntary Organisations (NCVOs) and the newly established City and County Childcare Committees to support childcare delivery at local level. It was hoped that government investment through the EOCP and NCIP Programmes would ameliorate many of the ills of the childcare market which had developed to this time. However, despite record investment under the Programmes, Ireland’s childcare sector remained immersed in ongoing problems at the end of the EOCP time frame (OECD, 2004; OECD, 2006; Bennett, 2006; Hayes and Bradley, 2006; NWCI, 2005). The Programme – in meeting its funding requirements – focused on the provision of capital grants to commercial and community providers to increase the number of spaces available to parents for their children while they engaged in labour market activity. The needs and rights of children did not feature as a policy objective of the Programme which failed to address issues of quality and equality of access. Admitting that the EOCP had been primarily ‘tied to the demands of the labour market’¹¹, management of the Programme’s successor, the National Childcare Investment Programme (NCIP) was delegated to the OMCYA and target increases (17,000) in the number of trained early years personnel added as a Programme objective in an effort to improve quality within settings.

While additional aims under the NCIP represented at least, a notional movement to rebalance the ECEC agenda towards children, the ultimate objective of government policy and primary aim of the Programme remained the same as that of the EOCP – accelerated market based capacity increases. Despite increased referencing to children’s rights and the inter-twined political promise

¹¹ <http://www.nco.ie/viewdoc.asp?DocID=152>

to prioritise children in all related policy matters, the steadfast pursuit of market based approaches is a sharp contradiction to this. Research on Irish ECEC policy has consistently highlighted the failure of current policy to adequately support children's early development and education (Hayes and Bradley, 2006, Bradley and Hayes, 2009, NWCI, 2005, Bennett, 2006). Despite the inherent need for a direct focus on children's rights when designing *child-related* policies and services, economic factors continued to dominate in policy decisions.

By 2007, after much observation and critical analysis regarding government's approach to ECEC policy in Ireland (Hayes, 2006; Hayes and Bradley, 2006; NWCI, 2005), the authors applied and were awarded a three year Irish Council for Humanities and Social Sciences (IRCHSS) research grant to undertake thematic research on *ECEC in Ireland: Towards a Rights Based Policy Approach*. Through four distinct, but inter-related research strands, the research aims to:

- R1. Consolidate knowledge and re-evaluate factors driving ECCE policy through desk based research which will consider ECCE policy formation, implementation and evaluation and critique Irish policy in terms of international understandings;
- R2. Comprehensively review policy documents using critical discourse analysis (CDA) since UNCRC ratification to identify and assess evidence of competing and conflicting ideologies;
- R3. Survey ECCE stakeholders to identify barriers and constraints to developing a rights based child-centred policy;
- R4. Identify and design a comprehensive over-arching policy model which will contribute to knowledge base of a rights-based approach to ECCE policy making.

1.3 Paper Structure

This Position Paper *Right by Children*¹², *Children's Rights and Rights Based Approaches to Policy Making in ECEC*, conducted under research strand one aims to set the context and provide a foundation to inform and support the collaborative development of research pillars, R2 – R4. The paper presents the authors' views on many of the key challenges in defining and interpreting children's rights (in policy and practice) in the Irish context, focusing in particular on children's rights in early childhood. It will consider the myriad challenges in designing rights based approaches to policy making in ECEC.

The paper is divided into four core sections, the first of which has provided the contextual setting in which the research project emerged. Section Two provides a brief history of the emergence and development of children's rights in

¹² The convention and our interpretation of it refers to *all* children and this paper is written in this frame. We recognise the fact that there are certain populations of children (such as children with disabilities, ethnic minority children) who will need additional supports

political and policy discourse in an international context, including a synopsis of international declarations and conventions and their strengths and weaknesses as instruments in the design of rights-based policies. Section Three then considers children's rights in a national context, tracing ECEC policy development from *Bunreacht na hEireann* (the Irish Constitution, 1937) through to present day considering key events and influences on policy design and the extent to which these have focused on children's rights and prevailing policy challenges. Section 4, the final section, will define what the authors consider essential aspects in the design of a rights-based framework and possible mechanisms through which already highlighted challenges may be addressed. This section articulates the authors' position on rights-based approaches to policy making in ECEC and identifies what we believe to be the starting steps towards the attainment of such an approach.

The position paper is one in a series of papers which will emerge from the project. Other papers build on, and respond to many of the issues/challenges identified in this first paper. This paper's key objective is to lay the foundation and set the context based on existent documentary research in which the central issue of rights-based approached to ECEC policy making must be considered. Analysis and arguments contained within are therefore not immutable, but aim to contribute to project research, generate ideas and provide a platform for future research and debate within and outside the project. Research is ongoing on research strands two to four, and it is anticipated that new primary research conducted under each of these strands will support the advancement and refinement of many of the arguments contained within. The paper introduces and provides the context for the overall project, as well as exploring and presenting a more in-depth view of key challenges in moving *Towards a Rights Based Policy Approach* in Irish ECEC.

SECTION TWO

THE INTERNATIONAL PICTURE:

CHILDREN'S RIGHTS AND THE UNCRC

2.1 Introduction

This section of the paper considers key global developments in the children's rights movement. It tracks key international Conventions and Declarations from the *League of Nations Declaration on the Rights of the Child* in 1924 through to the *United Nations Convention on the Rights of the Child* (UNCRC) in 1989, and considers how interpretations of children's rights have developed over this time frame. It highlights the many advantages which have emerged through the global articulation of children's rights *via* international frameworks, as well as key issues/concerns arising from global frameworks for children's rights.

An often used classification of the division of rights in international declarations and conventions, is that of the 'Three Ps'¹³; provision, protection and participation rights (Hammerberg, 1990). Provision rights (the right to basic needs such as food, welfare, health care and education) are categorised as 'positive' rights, in that they are provided *for* the good and welfare of children (Woodhouse, 2004). Conversely, protection rights¹⁴ (the rights to be shielded from harmful acts or practices) are regarded as negative rights in that they do not provide *for* children, but guard *against* their harm. Participation rights (the right to be heard on decisions affecting one's life) are regarded as a further species of negative rights – active negative rights - in that that do not provide aid or protect from harm, but enable public agency' (Wall, 2008: 535). Participation rights involve civil and political status – the right to be consulted and taken account of, to physical integrity, to access to information, to freedom of speech and opinion, and to participate in and challenge decisions made on behalf of children (Lansdown, 1994). The UNCRC was the first international

¹³ Levesque presents a different form of categorization (Levesque, 1994, pp. 269–270).

Levesque divides the CRC articles into six separate categories of specific and substantive rights: economic rights, social and cultural rights, political and civil rights, legal process rights, humanitarian rights, and family rights (*ibid.*) cited in (Shulamitalmog, 2004).

¹⁴ Van Bueren suggests a fourth P – *Prevention* – which is actually a subcategory of the Protection category (Van Bueren, 1991 cited in Shulamitalmog, 2004 #208)

agreement in history to contain such rights for children. In western philosophy, it is almost always participation rights which have proved paradoxically the most attractive, as evidenced by extensive references to children's parliaments and policy reference groups and the most contentious, regarded by some as 'having gone too far', usually on the grounds of children's perceived lack of competence and rationality. Wall (2008) suggests that it is these rights, successfully opposed by certain groups in the United States, which led to it being one of only two nations in the world not to ratify the CRC^{15 16}. A common contention amongst those recommending American ratification is that 'it is necessary to protect children from paternal and governmental oppression', whereas opponents contend that 'its ratification will lead towards a breach of US sovereignty while harming both family values and interests of children' (Shulamitalmog, 2004: 273). These arguments have considerable resonance with anti-constitutional change lobbyists in the Irish context (see Section 3).

2.2 International Conventions & Declarations¹⁷

At the beginning of the twentieth century, Swedish feminist, Ellen Key (1900) called for the new century to be recognised as the 'century of the child'. Key attributed the ills of the 'modern world' to failures in childrearing and envisaged a more moral society if the state invested in supporting childhood. Although many aspects of Key's vision did not materialise¹⁸, such as her preference for children to be 'reared full time within the home by trained mothers', the 20th century has nonetheless been characterised by increased attention to the value and role of children and childhood in society (May, 1999)

The *League of Nations Declaration on the Rights of the Child* in 1924, the first human rights declaration adopted by an international body, represented the earliest expression of an international consensus on the rights of children in international law. A short and simple document, the 1924 Declaration contained five principles and five associated 'provision rights' premised on what it called the "duty mankind owes to the Child". Two of the five provision rights also contained a subtheme of two protection rights, calling for children's shelter and non-exploitation. Rights, as described in the Declaration were essentially paternalistic and welfare-oriented premised in the context that society owes children the necessary means to become healthy and productive members of the world (Wall, 2008). The developmental nature of childhood was emphasised and the specific rights articulated in the Declaration derived principally from children's dependency.

¹⁵ Somalia is the only other country in the world which has not ratified the UNCRC.

¹⁶ Although Dekker (2000) contends Article 37 – which prohibits the death penalty for minors – to be another reason. The fact that persons are sent to death because of criminal acts committed during minority, in the US is against Article 37.

¹⁷ Declarations have no legal mechanisms for enforcement meaning adherence and implementation is guided by moral force.

¹⁸ Stafseng (1993: 77) suggests that 'instead of the century of the child, we got the century of the child professionals' (quoted in Mayall, 2000).

The United Nation's subsequent *Declaration on the Rights of the Child* in 1959 contained ten principles and conceptualised children's rights through the language of entitlement. It added more wide-ranging provision rights, such as the right to a name and nationality and the benefits of social security as well as incorporating a significantly greater emphasis on explicit rights to protection. The first right in the 1959 Declaration is to protection against racial, sexual, religious, political, national, birth, and other kinds of discrimination. Other protection rights in the Declaration aim to protect the child from all forms of neglect, cruelty, and exploitation, separation from parents, trafficking, and employment. This Declaration also introduced the now ubiquitous phrase 'the best interests of the child' as a paramount consideration (Hill and Tisdal, 1997).

The next and most current international agreement on children's rights, the *United Nations Convention on the Rights of the Child* (UNCRC) was to come thirty years after the 1959 Declaration. A number of milestones can be identified in the passage to the UNCRC. The seeds were sown for greater recognition and expansion of children's rights from the 1960s and 1970s when voices of marginalised groups such as women and ethnic minorities surfaced and challenged the political landscape in the Western world. An interest in children as marginalised people could be seen as part of this larger movement (Greene and Hill, 2004). In the 1970s, the children's liberation movement gathered momentum promoting equal rights for children to those of adults. The movement criticised the image of the child, as 'not yet a human being', not yet rational, not yet accountable, and not yet competent' (Verhellen, 2000) and while criticised by some for its failure to recognise the child's *right to be a child* (Veerman, 1992: 397), the liberationist school of thought nonetheless 'dramatically widened the conception of children's rights beyond protectionism' (Hill and Tisdall, 1997).

The work of Piaget from the 1920s, while critiqued for its focus on structured age/stage development, nonetheless represented a new era in our understanding of the child's active contribution to development and added substantially to the growth of the early childhood discipline, generating much research and debate around children's development and abilities. The combination of his contributions and those of other developmental psychologists (Vygotsky, Bruner, Bronfenbrenner) led to significant advancements in interpretations and understanding of childhood eventually resulting in the generation of the discipline of childhood studies in general (James and James, 2004; Moss, 2007, Dahlberg, 1999, Dahlberg and Moss, 2005) and early childhood studies in particular.

The nomination, by the UN, of 1979 as the *International Year of the Child* led to an intensified global focus on the impact of domestic and global policies on the quality of children everywhere (Hayes, 2002). During the international year of the child (1979), the Polish government proposed a convention on children's rights. The UN General Assembly agreed, authorising the Commission on Human Rights to draft a Convention (Smith, 2007). The decade between the *International Year of the Child* and the publication, in 1989, of the Convention was one of much international debate regarding children and their rights. To an unprecedented extent Non Governmental Organisations (NGOs) made written

and oral contributions, and the numbers of participating groups increased every year of the drafting process, leading Shulamitalong (2004) to describe its end-result as ‘a rhetorical compromise’. In 1989, the UN General Assembly gave approval to the final version (Hill and Tisdall, 2007) and the *United Nations Convention on the Rights of the Child* (UNCRC) thus came into being in 1989.

The UNCRC contains a total of 54 Articles. The Convention states in its preamble that children have equal value to adults, but children also need special safeguards and care. It contains all the previous provision and protection rights outlined in the two former Declarations in addition to a multitude of new ones. Article 44 contains a monitoring mechanism representing a key structural advance on previous declarations as it requires States Parties to submit national reports to the UN Committee detailing implementation progress. In addition to the national reports received, the UN Committee also considers submissions from relevant NGOs in its assessment of a country’s performance (Hayes, 2002). New rights in the Convention, but of the same provision and protection kind, include for example the right to an official government “identity” (article 8), an “adequate standard of living” when parents cannot provide it (article 27), protection against sexual abuse (article 34), “torture or other cruel, inhuman, or degrading treatment or punishment” (article 37), and drafting into armed conflict (article 38). The UNCRC also introduced a new category of rights, ‘participation rights’, marking the coming into force, for the first time in history, of such rights for children. Participation rights included the right to be heard (article 12), to freedom of expression (13), to freedom of thought, conscience, and religion (14), to freedom of association and assembly (15), to privacy (16), and to access to appropriate information and mass media (17).

2.3 Analysing the Convention – Strengths and Weaknesses

As the most widely ratified Convention in world history, the UNCRC remains to this day one of the worlds most debated, contested, and conversely applauded policy tools in world history. It has been hailed as an ‘important and easily understood advocacy tool’ which provides a framework for international agencies and impetus for international alliances (Veerman, 1992, cited in Hill and Tisdall, 1997: 29). Woodhead (2006) describes it as ‘the most significant starting point for policy development on behalf of the world’s young children’ (Woodhead, 2006). Reid (1994) describes it as ‘radical’ because ‘it enfranchises a whole new cohort of population ... a cohort which, in its preadolescent childhood, is regarded at best with fond patronisation by the general public; in its adolescence and teenage ranks, it is regarded with widespread uneasiness and even fear’ (cited in Hill and Tisdall, 1997). Smith (2007) suggests it helps make children visible, challenges governments and others to question their assumptions, and values children as people in their own right today, rather than what they become tomorrow. Melton (2005) praises not only its near universal adoption as an expression of respect for children as persons, but also its unparalleled conceptual breadth - no other human-rights treaty directly touches on so many domains of life. Hayes (2002) suggests the Convention presents policy makers with a valuable organisational framework to foreground children’s issues within a rights-based context.

The UNCRC has proved a useful advocacy tool across myriad child policy domains, of which ECEC is no exception. It provides a unifying framework that government policies for children can be measured against and enables participatory countries to take an active role in the Committee on the Rights of the Child and in ongoing international dialogue on child related issues (Kilbourne, 2000 cited in Shulamitalmog, 2004). Smith (1998: 243) suggests it to be ‘implicit within the Convention that it aims to have a constructive influence on child policy making ... by influencing the process of review and analysis’. Smith (2007) believes its usage as a policy instrument to promote ECEC reform in New Zealand, (Article 29¹⁹) was more ‘persuasive in bringing about policy change than using’ theory under the new paradigm of childhood ‘on its own’.

However, the Convention is ‘non-prescriptive’ and does not define how the principles it enshrines should be implemented in individual countries (Smith, 1998) leading to wide variation in interpretation and implementation. Such variations can be attributed to the political nature of childhood: *‘theories about what children need, about how they develop and what input from adults is therefore appropriate, are indeed theories or stories (rather than facts) and practices that derive exclusively from adult perspectives’* (Mayall, 2000: 244). Interpretations vary according to differing needs, resources, political systems, cultures and ideologies thus leading to variations in the prioritisation and relegation of its principles across nations. Smith (1998: 408) suggests a piecemeal usage by governments (of the Convention) ‘to justify existing strengths while avoiding weak areas of non-compliance’.

¹⁹ States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

While the UNCRC's strong monitoring principles²⁰ have galvanised certain levels of action, its lack of enforceability in most countries²¹ unless incorporated into national law fundamentally limit its power. Committee Reports undertaken as part of the monitoring process incorporate several 'potentially beneficial recommendations that only an examination from the outside is likely to produce' (Schulamitalog, 2004), yet their effectiveness in ensuring Member State compliance is often over-rated. The fact that concerns have emerged around organisational aspects of the monitoring process – such as long delays in the delivery of UN Committee Country Reports - further undermines the potential impact of monitoring structures²². The Commission of Human Rights (Working Group on Human Rights of Children) expressed concern during its 60th session regarding insufficient progress 'due to the lack of interest demonstrated by States in the discussion of human rights in countries where their economic, political and strategic interests are at stake' (cited in Tomas, 2008: 9). Further, NGOs have questioned the legitimacy of the UN Committee on the Rights of the Child suggesting 'its composition and ratification by certain countries including Sudan, Nepal, the Russian Federation, China, Sri Lanka, Zimbabwe) accused of serious human rights violations makes it difficult to believe that the real intention of members is the promotion of international human rights in the world (Tomas, 2008).

The Convention is often labelled as 'soft law' meaning no international court deals with violations of the code - most often sanctions merely take the form of negative publicity and multilateral policy pressure to conform (Sund, 2006). This, coupled with the limited supervision and lack of effective enforcement (other than monitoring of periodic country reports) leads Tomas (2008: 6) to conclude 'that in a decade's time, we will still be able to say ... the rights to protection, to provision and to participation are universally recognised for children but the problem resides in the way they are, or are not, put into practice'. The reduced attention to the area of children's rights in early childhood is illustrative of the political 'fudging' of its more contentious tenets and illuminates the manner in which Articles can shift on/off the political agenda, when moral rather than legal frameworks dominate. To encourage greater action, the UN Committee developed *General Comment 7 Implementing Child Rights in Early Childhood* to intensify policy focus on what the Committee considers a neglected aspect. However, the impact of this action continues to vary according to political commitment across nations.

Other critiques have centred on the mechanisms employed in devising the UNCRC itself. The fact that children were not directly engaged in constructing

²⁰ Monitoring is designed to give a detailed overview of the existing situation, i.e. of the extent to which human rights are, or are not, being enjoyed by all individuals within a State's territory or under its jurisdiction. The principal value of such an overview is to provide the basis for the elaboration of clearly stated and carefully targeted policies which establish priorities reflecting human rights provisions {Beeckman, 2004 #205}.

²¹ In Belgium for example, ratification of international conventions automatically incorporates them into law (Smith, 2007).

²² According to the UNICEF report (*Progress of Nations*, 1995), at the end of February 1995, 35 countries were more than two years late in delivering their reports and a further 21 were more than a year late. Ten years later, the situation was the same (GDDC, 2006).

the first international declaration in world history to contain participatory rights for children²³ led Hill and Tisdall (1997) to suggest that it subsequently remains very much '*what adults think children's rights should be, not which children think*' (Hill and Tisdall, 1997: 32). Shulamitalong (2004: 277) suggests a 'certain inevitability' around such contradictions as the three goals – provision, protection and participation – which 'epitomise various rights, interests and abstract aspirations rarely coincide in harmony, and are in fact inherently conflicting'. Focusing on participation and protection rights – he argues that it is not possible to fully protect children and simultaneously grant them full participation in decisions that affect them highlighting an 'unsettled conflict between values' resulting in 'vagueness, ambivalence and inconsistency' in the UNCRC (Ibid., 2004: 276)²⁴.

The universal generalisations within the Convention have also been critiqued. While Woodhead (2005) acknowledges identification of universal features as an attractive starting point, such generalisations often overlook diversities in childhoods and children's experiences, including differences in the ways children learn, play and communicate, develop personal identity and social understanding. A study conducted by Fleer (2003) on the educational experiences of indigenous Australian early childhood children found that taken-for-granted practices for those who are not part of the culture with power actively work against indigenous learning. Indigenous people often felt 'many practices are culturally exclusive' and position some children without a voice or a familiar context in which to learn. For example, indigenous families felt the highly valued Western trait of personal autonomy was forced upon them in settings, despite their culture's value of interdependence between children. Woodhead (2005: 9- 10) argues that 'implementing young children's rights to development in context appropriate ways requires looking beyond dominant, universalised perceptions of normality' towards 'bottom up action which engages with the reality of children's lives in context and accommodates the roles of multiple stakeholders with responsibilities for young children'. Differences in cultures, contexts, developmental environment, aspirations and beliefs must be acknowledged and form a central component of any rights-based agenda or framework.

2.4 Constructions of Childhood and Children's Rights

Much of the political, legal and social debate regarding children's rights is affected by two key concepts - the first, already under discussion centres on constructions of childhood and associated interpretations of children's rights within these constructs. The second concept – which inter-links with the first - rests on the relationship between rights-holders and corresponding duty bearers.

²³ Article 12 relates to due regard to the child's views.

²⁴ He cites Article 14 as one such example - Section 1 holds that "States Parties shall respect the right of the child to freedom of thought, conscience and religion" while Section 2 of the same Article states that "States Parties shall respect the rights and duties of the parents . . . to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child" {Shulamitalmog, 2004 #208}.

To demonstrate the link between constructions of childhood and its influence on how one thinks about rights, Wall (2008: 528) considers ‘the three most prominent Enlightenment architects of human rights ethics’, Locke, Rousseau and Kant. Locke believed children demonstrate humanity’s universal *potential* for holding social rights, but are not yet rational enough to hold social rights themselves and should thus be the ‘temporary property of their parents’, who are best able to ensure their well being. Rousseau interpreted human rights from a bottom-up perspective and believed children must ‘*be nurtured for as long as possible in ... the home, where their God-given natural goodness may be strengthened ... to eventually stand up to the world*’ (Rousseau, 1947, quoted in Wall, 2008: 529). Finally, Kant, in his very last published work, provides a third, top-down perspective for human rights, where the purpose of education is to overcome children’s natural, irrational, animality and awaken within each child a higher capability for intellectual and moral autonomy. Kant (1974) insisted on ‘*the right of the parents to the management and training of the child, so long as it is itself incapable of making proper use of its body as an organism, and of its mind as an understanding*’ (quoted in Wall, 2008: 530). In all three interpretations, children end up lacking what Hannah Arendt calls “the right to have rights” (cited in Wall, 2008). All three share the perspective, a perspective which is often articulated in contemporary children’s rights debates - that human rights belong only to rational and competent adults (the Convention uses the term ‘subject to the child’s age and maturity’ – which again is determined by adults).

There is a tendency to prioritise provision and protection rights over participation rights, possibly because the latter are a relatively recent and highly contentious concept, where ongoing uncertainty and a lack of unanimity regarding the interpretation of ‘participation’ rights hinders agreement on appropriate implementation. However, issues emerge too, in relation to provision and protection rights which are often considered interchangeably with welfare entitlements, despite their altogether distinct nature (Smith, 2007). Tobin (2005) distinguishes between welfare and rights oriented approaches through three categorisations. In the first, ‘invisible child’ approach, children are neither seen nor heard and are accorded no special treatment or recognition. The second, the ‘special protection’ approach accords children special recognition because of their vulnerability and need for care and special protection. The link between paternalism and welfare-oriented approaches is powerful in this approach. Finally, Tobin describes a ‘children’s rights’ constitution in which the special recognition of children is addressed in terms of children’s rights rather than welfare approaches that characterises their treatment under ‘special protection’ constitutions (Tobin, 2005: 94, 109). In industrialised nations of the West, the added value of the UNCRC compared with former ‘paternalistic’ international children’s rights instruments is mainly viewed from a libertarian perspective, emphasising the importance of participation rights for children (Howe, 2001). The debate centres on questions of how children’s rights should be recognised and ultimately whether children are fellow-citizens or citizens in becoming (Jans, 2004). Perspectives on children and childhood, and indeed wider conceptions of the meaning of citizenship itself are all central components of this debate. The fact that both the utilitarian and normative concepts of citizenship start from autonomy as a

characteristic of and a condition for citizenship (Pols, 2004) infers citizens, including children, are expected to possess or acquire certain competences, including the competence to stand up for their rights and, if necessary, claim them. This is in direct contrast to the ‘set of labels we are thought to associate with the idea of childhood. To take a few terms applied to them children are termed incompetent, unstable, credulous, unreliable, emotional’ (Mayall, 2000: 246), very opposite virtues to those associated with rights. Mayall (2000: 243) argues for a need ‘to extricate children, conceptually, from parents, the family and professionals’ and suggests that it ‘is through working towards better understanding of the social condition of childhood that we can provide a firm basis for working towards implementation of their rights’.

Opponents to children’s rights, such as O’Neill (1988: 25) believe that ‘taking rights as fundamental in ethical deliberation about children has neither theoretical nor political advantage’ and contends that if we care about children’s lives, we should identify what obligations parents, teachers and indeed the wider community have towards children’ (cited in Freeman, 2007: 10). Such views are typical of the conventional deficit model of childhood and according to Freeman (2007) underestimate the capacities and maturity of many children. It directly contravenes the new paradigm of childhood (e.g. James, Jenks and Prout, 1998; James and James, 2004; Moss, 2002; Mayall, 2002; Moss and Dahlberg, 2005; Dahlberg, Moss & Pence, 2007) under which children are no longer regarded as passive outputs of universal biological and social processes (James and James, 2004), but rather as social agents with their own personal part to play in shaping their childhood experiences, beliefs which are also mirrored in the bioecological model of development by Bronfenbrenner and Morris (1998).

However, despite increasing emphasis on the new paradigm of childhood amongst academics and researchers, ‘theories about what children need’ still continue to ‘derive from adults’ study of children, contextualised and structured by adults’ social and economic goals in specific societies’ (Mayall, 2000: 233). Early care and education provides a key example in this regard. It is the opportunity which ECEC provides to mould the ‘not-yet-citizen’ to become the ideal the ideal citizen worker of the future has garnered most political acceptance as the rationale for investment in early education, leading certain authors to express concern about the associated ‘schoolification²⁵’ of childhood to the detriment of children’s development. Little attention has been paid, particularly at a political level to the implications of defining and structuring ECEC institutions towards the ‘schoolification’ of childhood and prioritisation of ‘human capital investment’. Young children acquire a construction, as *a labour market supply factor* through which the efficient use of human resources can be promoted (Lister, 2003; Lister, 2006), emphasis added). Such an approach fails to recognise and value children as *democratic*-citizens of the present or attach any value to the contribution and role of children in the ‘here and now’. Furthermore, this future focused perspective trivialises education

²⁵ Globally, there is a tendency to treat early childhood services as junior partners, preparing children for the demands of formal schooling; this threatens what the Swedes call ‘schoolification’, the school imposing its demands and practices on other services, making them school-like (Moss & Bennett, 2006: 2).

that has no market value. Lynch, Lyons and Cantillon (2007) argues that the strategy evident in Ireland, the *Rational Economic Actor Model* of Education, on which ECEC programmes are increasingly based privileges autonomy as the mark of citizenship and as a founding principle of education and denies the reality of human interdependency and of the work involved in relations of interdependency and dependency. Education is increasingly defined as just another service to be delivered on the market to those who can afford to buy it for their personal utility rather than a capacity-building public good that is a right of all of humanity (Lynch, 2006). Fleer's study on indigenous children in Australian ECEC programmes (Fleer, 2003) provides one such example of the consequences of Rational Economic Actor Models of Education on children's development.

2.5 Rights-Bearers and Duty Holders

"A right is a legal capacity in one person to control or limit or require an act of another. The right resides with the first person, the duty with the second." Rights are about obligation, an obligation fixed by law or fought for on moral and legal grounds, a duty placed on someone other than the rights-holder."

(McGillivray, 1993: 254)

One of the greatest tensions, and one which has caused most deliberation regarding children's rights debates hinges on the relations between claims, duties and rights, in particular the role of the state and parents and children's location within this sphere. Whether someone can have a right without someone else having a corresponding duty has been the subject of much debate (see Archard, 1993; Olsen, 1992). Whether the emphasis is on the protection or the liberation of children, the legal-status view holds parents to be primarily responsible for guarding children's rights (Detrick, 1996). The UNCRC includes rights of parents through Article 18 which states that 'both parents have joint primary responsibilities for the upbringing and development of their child', and that 'States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities'. Although the state must ensure respect for the rights of children, the responsibility of the state for the care of the child is of a secondary nature, but the right to development suggests a statutory responsibility for the quality of state support services provided for parents. The child-rearing responsibility of parents can be interpreted in different ways, depending on perspectives regarding the relationship between parents, children and the state.

Fundamental questions in determining how rights, duties and responsibilities are defined rests on assumptions regarding the relationship between parents, children and the state. Harding (1991, cited in Roose, Bouverne-de-Bie, 2007: 440) distinguishes four approaches to the parent/state relationship regarding children:

- a *laissez faire* and patriarchal approach emphasising the autonomy of the family and the minimal role of the state;

- a state paternalism and child protection approach, in which extensive state intervention to protect and care for children is legitimated and, when the care of the parents is found to be inadequate, substitute care is favoured;
- an approach focusing on the defence of the family and parent's rights, which takes the view that state intervention is legitimate but where such intervention is understood ideally to be of a supportive kind, helping to preserve and defend families; and
- a child liberation approach stressing the autonomy of children vis-à-vis the family but also vis-à-vis the state.

Each of these approaches implies a different status of support for children and parents. Hence, depending on the preference for one or other approach, support can always be seen as 'too early, too late, too much, or too little' (Goldstein, Freud and Solnit, 1980 cited in Roose and Bouverne de-Bie, 2007: 440). The tradition of supporting Irish mothers to remain within the home and care for their children is the ideological foundation upon which Irish child and family policy has developed. However, the growing need for public intervention in the once highly guarded private family domain of childcare during the Celtic Tiger years where the role of women as labour market participants was incentivised fuelled political tension as new policy responses – which challenged these traditional ideologies - became increasingly urgent in sustaining economic buoyancy. The pragmatic and piecemeal policy responses from this time are symptomatic of a political resistance to debate and challenge traditional ideologies and commit to a clear, strategic and context relevant role for the state in the lives of families with children (Hayes and Bradley, 2006; Bradley and Hayes, 2009). This fundamental challenge is one which requires interrogation when presenting a 'position' on children's rights in Irish ECEC policy.

Indeed, political hesitance to address and debate the many ambiguities in parental and statutory roles and responsibilities for ensuring children's rights in early childhood is not unique to Ireland, but represents a global uncertainty regarding the most appropriate 'solution'. Shulamitalmog (2004: 279) suggests the lack of firm standings regarding these conceptual questions manifests in 'an unwillingness that stems from political limitations, to reach clear-cut determinations in moral and social dilemmas which are still the subject of profound differences of opinion'. Roose and Bouverne-de Bie (2007) argue that the tensions between different views of the relationship between the state, parents and children cannot be resolved but represent a tension within which action must nonetheless take place. Section Three of this paper considers key factors influencing Ireland's approach to children's rights and ECEC policy and interrogates the implications of the political hesitance in strategically addressing early education and care systems for Ireland's youngest children and children's rights within this context.

2.6 Conclusion

This Section provided an overview of the global development of the children's rights debate in a global context and foregrounded many of the issues and challenges which have influenced the structural design (or lack thereof) of early

childhood policies in the Irish context. It reflected on key challenges in need of debate if rights-based approaches and children's rights are to seep through and embed related policy and practice. There has undoubtedly been much global advancement in terms of children's rights, evidenced through the global resonance of such rights in political and policy discourse – however, it is also clear, that much uncertainty and political ambiguity regarding children's rights – and how best to achieve these in policy and practice - remains.

Given the project focus, the next section considers children's rights in the Irish context particular attention to policy approaches since UNCRC ratification. It then moves to consider Ireland's ECEC policy development, and intertwines analysis of how effective ECEC policy has been in ensuring children's rights as advocated under the UNCRC and *National Children's Strategy*. It aims to highlight key advancements and ongoing challenges in moving *Towards a Rights Based Policy Approach for ECEC in Ireland*.

SECTION THREE

THE NATIONAL PICTURE:

CHILDREN'S RIGHTS & ECEC

3.1 Introduction

The authoritative allocation of values draws our attention to the centrality of power and control in the concept of policy, and requires us to consider not only whose values are represented in policy, but also how these values have become institutionalised

(Prunty, 1985: 36)

In considering perspectives on children's rights in an Irish context and associated questions regarding the design of rights-based policy approaches, it is essential to consider the context within which policy is developed and implemented. Policy design does not happen in a vacuum - rather, it is ideologically and culturally specific and reflective of the social, political, cultural, economic and historical traditions²⁶ in which it is derived (Kiely, 1999; O'Donnell, 1999). How childhood is conceived in this context has significant implications on how ECEC policy develops. This section explores key contextual factors which have influenced ECEC policy design and the children's rights debate in Ireland to date

3.2 Planting the Ideological Seeds: 'Bunreacht na hEireann'

A country's constitution, at the time it is written is likely to reflect political beliefs, values, and standards of the inhabitants, or at least those of the dominant group and represents an effective starting

²⁶ A tradition is a set of beliefs someone inherits largely through the process of socialisation. A governmental tradition is a set of inherited beliefs about the institutions and history of government. Because individuals can modify their heritage through their own agency, traditions are contingent, constantly evolving and necessarily embedded in a historical context {Bevir, 2003 #160}.

point in considering cultural beliefs, values, and standards of its makers and those for whom they spoke

(Chubb, 1992)

In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved

(Bunreacht na hEireann, 1937, Article 41.2.1 – 2)

The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious, moral, intellectual, physical and social education of their children

(Bunreacht na h'Eireann, 1937, Article 42.1)

A country's constitution is often used as a starting point in analysing ideologies, political systems and policy approaches. It represents the fundamental and deeply held views of the state itself, the rules of the political game and core principles that usually underlie political decision making (Coakley, 2005). Two aspects of the Irish Constitution are particularly important when considering policy design. The first is that all legislation must be consistent with the Constitution meaning government may be supported or constrained in the policies they introduce by the tenets of the constitution (Early, 1999). The second is that any citizen can challenge the constitutionality of any existing legislation, even where this has been in existence prior to the passage of the Constitution in 1937 (Early 1999). These constitutional challenges either seek to reinforce or dismantle existing constitutional values, the latter leading to changes in legislation and policy. The McGee case of 1973, which eventually led to legislation in 1979 to overturn the ban on contraceptives, in place since 1935 (Constitution Review Group, 2006) is one example of the impact such constitutional challenges can have on social policy of the State.

Described 'almost literally as De Valera's Constitution', *Bunreacht na hEireann* (1937) which replaced the negotiated Irish Free State Constitution of 1922 was drafted, or had its drafting supervised by Ireland's first Taoiseach, clearing its principles with his government and taking advice from officials and others, including a number of catholic clergy along the way (Fanning, 1988). Resting on the 'assumption that the nature and identity of Irish was Catholic' (Foster, 1988: 544), *Bunreacht na hEireann* (the Irish Constitution) confirmed the acceptance of Catholic principles as guidelines for the country's political life and institutions and for its social policies (Powell, 1992). The so called 'Directive Principles of Social Policy' (Articles 40 – 44) which were concerned with family, education, private property and religion all testify to the Catholic flavour of newly consolidated democracy (Powell, 1992; Adshead, 2008).

Specifically, Article 41²⁷, grounded on the catholic principle of subsidiarity supports a highly privatised autonomous model of family life in which the woman cares for home and children while husband acts as breadwinner with state intervention confined to circumstances where parents are deemed to fail in their duty to their children (Article 42.5). Women's position as primary carer within the home was reinforced through mechanisms such as a marriage bar which prohibited married women's employment in the public sector until 1973²⁸ when accession to the European Economic Community (EEC) required its removal.

Article 42²⁹ is consistent with the approach of 'special protection constitutions', where the rearing and education of children is primarily a parental obligation. While the Article commits the state to provide 'free primary education', it asserts parental rights, as 'the primary and natural educator' and ensures 'parents shall be free to provide this education in their home or in private schools....' if they so desire, once again emphasising the subsidiary role of the state. Nolan (2007: 501) contends that '*while the child is not expressly relegated to the private sphere by the text of the Constitution in the way that women are (Article 42.1), children are effectively located there by the dominant position accorded to the family and the clear subjugation of children within that institution*', representing a strong '*separation of the public power of the state from the private relationships within the family in nearly all circumstances*'.

In the early years of the Free State, the Church had extraordinary political and cultural influence, and could, in many policy areas, effectively veto government policy initiatives although these vetoes were commonly covert and did not impinge on public awareness (Garvin, 2004). Described as '*one of the most social defining debates of the 1950s*' (Conroy, 1999), it was objections to the implementation of the *Mother and Child Scheme*³⁰ under the then Minister for Health, Noel Browne which exposed the covert, liberal and powerful role the Catholic Church in policy making. Reflecting on his experiences 35 years later, Dr Browne illuminates the real extent of Church power in past policy making processes:

In spite of their best efforts to conceal this fraudulent reality of mock power, the Cabinet's influence and submission to Rome was proven without doubt by Cabinet Ministers themselves in their own correspondence, behaviour and speeches. It was my decision to publish such confidential state correspondence to end the fiction of representative democracy in Ireland. ... I was pilloried for my failure to respect Cabinet and Church confidentiality. But the pretence of a Cabinet to be the supreme instrument and authority

²⁷ Article 41.1 recognises the family as the 'natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law'

²⁸ With effect from 1 July 1958, female teachers were no longer required to resign on marriage (<http://historical-debates.oireachtas.ie/D/0506/D.0506.199906170071.html>).

²⁹ Article 42.1 acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the *inalienable rights and duty* of parents' [emphasis added]

³⁰ The Mother and Child Scheme proposed to provide free maternity care for all mothers and free health care for all children up to age sixteen.

in the State, when in fact it was subject to an outside non-elected pressure group, was to me the supreme deception.

(Browne, 1986)

In these decades of church authority, day care and similar family services were conspicuously underdeveloped and the principle of ‘subsidiarity’ ensured that the state only interfered when the family’s capacity to provide for its members was exhausted (Adshead, 2008). Chubb (1992: 14) attributes the authoritarian leadership and lack of change in the early decades of the Free State to the ‘wholehearted acceptance by the vast majority of the people to a seemingly immutable set of Catholic ideological social values’. However, the gradual erosion of national protectionist policies from the late 1950s, initiated through the *Programme for Economic Expansion* in 1958, coupled with increasing access to education and increasing urbanisation from the 1960s contributed to a gradual shift in traditional attitudes and values, although the extent of this is often over-estimated. The crossing of the floor of the then Taoiseach, Liam Cosgrave in 1974 to vote against his own government’s legislation for contraception, the defeat of the 1986 divorce referendum, and its narrow acceptance (by a margin of 0.6%) a decade later and silences, until very recently regarding clerical abuse cases are reminders of how gradual the erosion of church power in state policy and amongst the electorate has been. While Kiely (1999) argues that economic resources were simply not available to support any radical social policy measures in the early decades of the Irish state, traditional values systems made it unlikely that even had such resources been available, ECEC would have been a policy priority.

3.3 The 1970s – A Decade of Change

Joining the EEC in 1973 introduced the influence of European social policy into Ireland and resulted in government being less free than previously to determine its own social policy agenda. Accession incurred a series of legal obligations, relating to non-discrimination and equality of pay which led to the abolition of many outdated gender based policies, such as the marriage bar, the Employment Equality Act (1977), the Unfair Dismissals Act (1977) and the Maternity (Protection of Employees) Act (1981). However, the state’s role in facilitating women’s labour market activation was essentially a reluctant one, driven by external pressure to implement legislative changes rather than domestic initiatives to support equality between the sexes. Throughout this time, as women’s rights were gradually forcing their way onto the agenda, a debate on the changing needs of children and appropriate mechanisms to support these was altogether lacking. Commenting on government accession to the EEC and its implications for social policy, Conroy (1999: 40) notes that

‘The ink was hardly dry on Ireland’s membership’ ... when ‘a process of opting-out of social provision commenced.... In 1974, the government ... requested and was refused permission from the European commission to derogate from the introduction of equal pay between women and men for equal work....’

Domestically too, women were increasingly challenging the state through the Constitutional Courts regarding equality and treatment of women in Irish law and social policy. Sweeny (2006) refers to the 1970s as the ‘period of most active articulation and development of women’s rights’. Between 1971 and 1987 alone, there were 45 major challenges by a group of individual women to the constitutionality of laws relating to sex discrimination and equal rights illustrating a definite move on behalf of the judiciary from this time to let the courts play a key role in outlining the scope of constitutional rights (Adshead and Neylon, 2008). The establishment of the first Commission on the Status of Women in 1972 represented a landmark in institutional change but also possibly heralded the beginning of a strategy of what we term government ‘distancing’ from unsettling policy topics by establishing working groups, commissions and such like, creating opportunities for reports which might or might not influence policy rather than government directly debating, proposing and implementing policy responses. A range of category based benefits, which Conroy Jackson (1993) suggests were ‘part of a broader restructuring of gender and motherhood granted new individual entitlements to women but simultaneously reasserted their status as wives, mothers, daughters and unpaid carers’ (Conroy, 1999). These included the prescribed relatives allowance (1968); deserted wives benefit (1973); unmarried mothers benefit (1973); prisoners wives benefit (1973); single women’s allowance (1974). Children’s allowances were also made payable to mothers rather than fathers from 1974 (Fahy, 2000).

The fiscal crisis of the 1980s confined much policy development to economic policy matters as consecutive governments struggled to resolve Ireland’s economic woes. While the fiscal crisis in Britain gave political expression to the new paradigm of neo-liberal economics and neo-conservative politics, Ireland, in a last-ditch effort to solve the fiscal crisis - experienced a policy making paradigm shift, away from the traditional, centralised decision making, towards a form of ‘negotiated governance’, termed ‘social partnership’³¹, (Larragy, 2006). Under the new policy paradigm and thereby in agreement with the employers, unions and farmers associations – Ireland witnessed its biggest public spending cuts in more than three decades including a 6% reduction in health expenditure, 7% reduction in education and 18% reduction in agricultural expenditure (Powell, 1992) leading the then Taoiseach to emphasise that:

“The policies which we have adopted are dictated entirely by the fiscal and economic realities. I wish to state categorically that they are not being undertaken for any ideological reason or political motives” but because they are “dictated by the sheer necessity of economic survival”

(Charles Haughey, Taoiseach quoted in Jacobsen 1994: 177).

Although Powell (2003: 435) believes such cut-backs were made ‘to solve the fiscal crisis and not as an attempt to achieve a more economically liberal state,

³¹ Social Partnership refers to a governance process where representatives of employer organisations, trade unions, farmers and - since 1997 - community and voluntary sector (i.e. the ‘Social Partners’) work in common institutions³¹ with government to deliberate about economic and social policy (Adshead 2008).

over the course of a few years' (which had already been set in motion through catholic ideals enshrined in the Constitution), he nonetheless contends to their impact in 'further reducing government's role in the economy'³² (Powell, 2002; 2003) thus copper fastening the way for the market-led state of Ireland today. The 'rolling back' of the state with its associated emphasis on personal autonomy coupled with the state's clear preference for market-based responses meant that even as increasing numbers of women joined the work force, the care and education of young children remained a private responsibility and one in which the state was unwilling to engage. In considering these myriad policy shifts and changes - Conroy (1999: 45) concludes that by the end of the 1980s, 'social policy in Ireland missed a so-called phase: the development of a comprehensive set of social policies, of resources, rights, entitlements, and systems of redistribution'.

3.4 The Celtic Tiger

Negotiated bargaining and fiscal cutbacks had the desired economic effect. Ireland's economy, described by *The Economist* as the European Union's "basket case" in the late 1980s, was just a decade later, described by the same magazine as 'Europe's shining light' and the so-called 'Celtic Tiger' was born. Unemployment declined from 15.9 percent in 1993 to 5.7 percent in 1999 and 3.6% in 2001 (CSO, various). In this once patriarchal society, women came under increasing pressure to centre stage the adult worker identity in their lives (Coakley, 2005). Almost six out of every ten additional people who took employment during the economic boom were women (Sweeny, 2006). Starting from a low base, female labour force participation had remained largely unchanged at around 30% over the period 1926 – 1981 (CSO, 2007), however during the Celtic Tiger, women's employment rate rose faster than anywhere else in the OECD world—from 40 per cent in 1994 to 58 per cent in 2005 (Sweeny, 2006). Yet, despite their important role in sustaining a buoyant economy, women's participation was not encouraged by generous maternity leave, developed childcare facilities, family-friendly workplaces, or similar initiatives deemed to be supportive of working parents, nor was any debate taking place regarding the impact of such changing structures - and the lack of public infrastructure to support children's new lived experience – taking place. In fact, in all these developments – from the gender equality movement of the 1970s onwards – children remained largely invisible as a policy consideration. Where mothers entered the labour market, it became the private responsibility of parents to make alternative care arrangements for their children while they worked (usually with no, or very little statutory supports), often relying on other women as unpaid or possibly paid, albeit low paid carers. It was not until much later that the experiences of children and their needs (rather than rights) within these settings gradually garnered some political attention.

Similar to other neo-liberal states, Celtic Tiger Ireland prioritised personal autonomy and independence as desirable traits for all 'citizens'. It emphasised the utmost importance of the market place, and government focus prioritised the steadfast facilitation of market growth – often above all else. In writing about

³² Other concessions included the abolition of the National Social Services Borad, the Health Education Bureau and the Regional Development Organisations (Powell, 2003; *The Economist* 1988: 9).

Irish welfare reform, Taylor suggests the ‘principal motivation has rested firmly upon enhancing the flexibility of the labour market’ rather than upon extending social rights (Taylor, 2005: 94 quoted in Kirby, Murphy, 2007). JJ Lee (1998) writes of a Celtic Tiger, where ‘people exist only as producers and consumers ... it is an economy, not a society’. The growing prominence of partnership was accompanied by a number of other key developments which altered Ireland’s policy landscape. The growing preference for non-governmental agencies³³, another ‘distancing’ strategy, was a particular feature of this era as too was the increasing prominence of public/private partnerships to perform functions that were once subsumed under governmental department responsibilities. As market forces grew, the ‘roll-back’ of the state, which had commenced through the cut-backs of the 1980s accelerated and the community and voluntary sector were increasingly relied upon, to respond to the ‘social aspect’ of the state. These features represent a classic ‘hollowing out of the state’ and are synonymous with approaches pursued in neo-liberal states, where the aim is to keep the state contained, needs-based and selective. Combined, these measures had a fundamental impact on the direction and approach of the state to childcare policy. While, theoretically there was an increased statutory commitment to childcare³⁴ through exchequer funded policy initiatives (see Section 3.6), these largely targeted private sector growth and community sector development (which is privately managed). Government’s role was largely confined to the management of capital funding towards this growth and statutory inspection of ‘notified’ services to ensure adherence to basic minimum standards. Government aspirations that increases in supply would lead to a rebalancing of market forces (through greater competition), thus improving quality and costs, as ‘businesses’ (i.e. childcare settings) competed to win ‘customers’ (i.e. children) clearly failed as tiered market growth of a private good accelerated (see Section 3.6 for rising childcare costs and equality of access issues).

In contrast to those who argue that the precedence of economic matters and prioritisation of markets above all else during the Celtic Tiger years led to an erosion of citizenship rights, Fanning (2003) argues that one of the more positive societal developments of this time was the increasing policy focus on children, and in particular children’s rights. He speaks of the growing emphasis on rights and rights-based approaches to social policy from the 1990s, including the National Children’s Strategy ‘*designed to meet Ireland’s obligations under the UNCRC*’. However, he concedes that ‘*these rights-based approaches have emerged in the context of profound ongoing inequalities*’ one example being ‘*the unwillingness of the state to secure adequate rights to education for people with intellectual disabilities* (the Sinnott case)’ (Fanning, 2003: 17 – 18). Indeed, the establishment of the Office of the Minister for Children and Youth Affairs (formerly the National Children’s Office) in 2006 and the appointment of an Ombudsman for Children in 2004 are illustrative examples of the increasing visibility of children in public life and some would argue the increasing statutory attention to children’s rights. The establishment and support of initiatives such as *Dail na nOg* and the Centre for Early Childhood

³³ Such agencies are often categorised *via* the term QUANGOs (quasi-autonomous non-governmental organisations). In its 2008 public management review, the OECD estimated there are now in excess of 500 agencies operating in the RoI (OECD 2008).

³⁴ See *National Childcare Strategy* (1999)

Development and Education (CECDE) are further examples of the increasing policy focus on children (Hayes & Bradley, 2006; Bennett, 2006; Bradley & Hayes, 2009).

Yet, despite these measures, more detailed analysis reveals a piecemeal and fragmented commitment to children in ECEC policy and practice exemplified by the closure of the CECDE as almost the first act of the DES in response to the economic downturn. The fact that children continue to have a highly vulnerable status as rights holders within our current Constitutional Framework (and the wavering cyclical political support to address this) is illustrative of the lack of national coherency (at political and public level) on what we as a nation want for are children. Furthermore, legal analysis of constitutional challenges indicate ‘a shift in recent years’ and a ‘growing reluctance’ by the courts ‘to recognise and give effect to children’s rights, even in the face of governmental failure (and sometimes unwillingness) to give effect to previously identified constitutional obligations’ (Nolan, 2007: 503). Nolan (2007: 503) attributes this to ‘judicial reluctance to become involved in alleged issues of ‘distributive justice’ and animosity to children’s socio-economic rights in particular’ as the Courts become ‘progressively more restrictive in defining the obligation imposed on the state by parents of children with special needs seeking the provision of education rights-related services and facilities (Article 42.4). For example, in March 2001, the State began a Supreme Court appeal against a High Court decision in the Sinnott case regarding the State’s obligation to provide primary education for the intellectually disabled beyond the age of eighteen. Similarly, in 2007, the parents of Caoimh O’Cuanachain failed in their challenge regarding the state’s failure to provide Applied Behavioural Analysis (ABA) for their autistic son, despite the substantial evidence regarding its effectiveness in supporting autistic children progress to mainstream schooling³⁵.

3.5 Ireland’s Social Policy Approach in a Comparative Context

It is useful at this point, to consider Ireland’s social policy approaches in a comparative context, to gain further insight into the intricacies of Irish policy design when compared to its EU and international counterparts. By grouping nations in certain broad categories we can see qualitative differences between groups in the origins of social policies and their outcomes (Misra, Mollar, 2004). Higgins (1981: 167) suggests such analysis enables us distinguish between ‘the general and the particular’ and to assess ‘whether problems of policy are peculiar to certain types of political and economic system or whether problems are inherent in the policies themselves’ (Higgins, 1981; O’Donnell, 1999). The relative importance of the state, the market, the family or voluntary sector in such groupings illustrates core ideological differences in welfare regimes and provides a useful microscope through which national differences in family and child policy approaches and objectives can be understood. Thus, comparing Ireland’s social policy approach in an international context facilitates a deeper understanding of the impact of ideological and political constructs on

³⁵ <http://www.irishtimes.com/newspaper/ireland/2008/0130/1201501725260.html>

policy design and facilitates a deeper understanding of the implications of such factors in ECEC policy making.

Ever since its appearance in 1990, Esping-Anderson's *Three Worlds of Welfare Capitalism* has been the subject of both extensive praise and extensive criticism (Fenger, 2007). Esping- Andersen (1990, p. 22) originally grouped countries into clusters based on state-market relations, stratification, and social citizenship rights, including levels of de-commodification (i.e. how state policies allow citizens to "maintain a livelihood without reliance on the market). De-commodification was measured by generosity and availability of old age pensions, sickness benefits, and unemployment insurance payments (Misra, Mollar, 2004). His analysis identified three distinct welfare state regime classifications;

- The *Liberal Regime*, characterised by reliance on the market typically incorporates the Anglo-Saxon countries, such as the UK, US, Australia – and Ireland to some extent. The social aspect of the state is contained, needs-based and selective. The state encourages the market solution by guaranteeing only a minimum and by tax systems which make the market the key institution (Arcanjo, 2006).
- The *Conservative Regime* places the family at the centre of welfare provision and is characterised by a large number of different social insurance schemes for different occupational groups (with special schemes for civil servants). Collective schemes are financed through compulsory contributions while private provision plays a marginal role (Arcanjo, 2006). Included in this classification are Italy, Japan, France, Germany, Finland and Switzerland.
- The *Social-democratic Regime* offers a high level of collective provision and the state plays a central role in welfare provision. The collective provision is financed through taxation and the universalistic nature of this regime makes private provision unnecessary (Arcanjo, 2006). Included in this grouping are Austria, Belgium, Netherlands, Denmark, Norway and Sweden.

Whether or not Ireland 'fits' well into Esping-Anderson's typology, that is whether it has explanatory power for Ireland, may seem irrelevant in light of more fundamental criticisms of his approach (O'Donnell, 1999). Firstly, any classifications are limited by time – a point acknowledged by Esping-Anderson himself in later work in defence of the continued relevance of this *Three Worlds* - 'Any typology of welfare regimes ... remains valid only as long as history stands still' (Esping Anderson, 1999). Countries can adopt alternative policies or approaches which may lead to a shift in their positioning in terms of regime classification (Arcanjo, 2006). Fundamentally and particularly pertinent when considering ECEC policy, the classifications have also been challenged on the count of gender blindness (Lewis, 1993; Taylor-Gooby, 1991; Orloff, 1993; Millar, 1996). In response to his critics, Esping-Andersen (1999) included the concept of de-familialization in his later work, measured by examining 'public spending on family services, the percentage of children under three in childcare, and the percentage of older people receiving public home help' and found it 'did not drastically change the original regime concept' (Misra, Mollar, 2004: 6).

Leibfried (1993), whose analysis of welfare state classifications has also been critiqued for its failure to fully explore gender as a central issue, distinguishes four different social policy regimes: the Scandinavian welfare states, the 'Bismarck' countries, the Anglo-Saxon and the Latin Rim countries (Misra, Mollar, 2004). Latin Rim countries emphasise the role of the church, women and agricultural economy (O'Donnell, 1999). With the exception of the countries classified in the Latin Rim type, the classification of the other countries converges with Esping-Anderson's typology (Arts and Gelissen, cited in Fenger, 2007). While Leibfried (1993) does not explicitly locate Ireland within his modelling classifications, Olsson Hort (1993) grouped it alongside the UK, as an Anglo-Saxon country, whereas Cook and McCashin (1992) suggest Ireland to be in a state of 'transition' from Latin Rim to Anglo-Saxon (cited in O'Donnell, 1999). In their work on *Families of Nations*, Castles and Mitchell (1993) conclude that Ireland has characteristics which cross-cut the Radical and Liberal worlds. They observe Ireland to have a predominantly rightist government, because the party system was mobilised around 'revolutionary' issues irrelevant to class concerns' (O'Donnell, 1999).

Studies and analysis of Irish welfare policies tend to draw '*contradictory conclusions depending on which part of the welfare system they examine*' (Adshead, 2008: 17). Peillon (2001) notes that some policies promote class stratification, whilst others reduce it; some benefits are universal, whilst others are residual. There are certain areas where the state accepts full administrative responsibilities, others, where it accepts none, and some cases where social services are provided by a partial state or state sponsored body (Peillon, 2001 cited in Adshead and Neylon, 2008: 17). *The Developmental Welfare State*, the most recent analysis of Ireland's welfare state (NESC 2005) concluded that the 'mix of means-tested, insurance-based and universalist income support and service arrangements' have produced 'a mongrel welfare system of mixed parentage' (NESC, 2005: 35), and warned that even 'describing it as a 'system' risks implying the ensemble has more internal logic than is the case'. Adshead and Neylon (2008: 15) suggests the varied and sometimes contradictory policy tendencies are often sustained by equally variable and contradictory social and political attitudes - to the left and to the right - '*reflecting a political environment where there is no clear consensus about approaches to welfare and welfare reform and, perhaps more importantly, where there is no great political ambition for creating one*'.

Ireland's electoral system further reinforces this mixed and fragmented response to key policy issues. Its Single Transferable Vote (STV) system of Proportional Representation (PR), '*where voters can mark as many preferences as there are candidates in multiple seat constituencies, not only obliges candidates of the same party to compete against each other, but also offers the opportunity for voters to switch between parties, according to their preferences*', resulting in a '*highly personalised and localised electoral competition, where national policy issues often take second place to local ones*', fuels the pragmatic rather than principled nature of politics (Adshead, Neylon, 2008: 17 - 18). The system perpetuates a consensus-based political culture biased towards conservative and incremental policy development exacerbated further by trends towards coalition

government and social partnership where radical policy change to key – or sensitive - policy issues is risky and rarely occurs in such an environment, as very recent political u-turns on policy decisions would indicate³⁶. The consequence of such an environment is a ‘lack of decisive policy action and a situation where significant policy tensions are left untackled’ (Adshead, Neylon, 2008: 15). Of relevance to this paper is the ‘shelving’ of the more contentious aspects of the UNCRC and the ongoing postponement of the Constitutional referendum on Children’s Rights are just two examples of the implications of this political environment on policy development.

The resulting policy ‘system’, described by Powell (2003: 53) as ‘policy making on the hoof’ - which is primarily reactive in nature, rather than strategic in direction - is further compounded when one considers the paucity of social policy debate around welfare and policy reform. Murphy and Millar (2008: 78) attribute this lack of debate to a ‘political culture that prides itself on a pragmatic and practical discourse, a weak social policy community and a general under appreciation of the importance of social policy to both social and economic success’. This situation is not unique to the Irish context. Urban (2006: 53) suggests that in many countries, ‘the community of professionals, researchers and politicians who are committed to initiating and fostering change is too small and has too little impact compared to other interest groups competing for public attention and public resources’ and believes this to be one of the major weaknesses to bringing about policy change, a scenario he claims to be ‘particularly true for Ireland today’. He further argues that despite the ‘advanced ...discourses within the early childhood community ... they remain, too often, internal. *Change* seems to be more likely to happen and to become sustainable where it is actively communicated as a matter of public interest, as *res publica*’ (Urban, 2006: 53). The minimal public reaction to the scheduled abolition of the Early Childcare Supplement from January 2010 and its replacement with a free preschool year is illustrative of the lack of the lack of public focus on these policy shifts, despite their direct effect on the lives of young children. Kirby (2008) suggests the social sciences occupy a marginal position in public policy in Ireland where their contribution often seems little valued and much misunderstood. Kirby, Gibbons and Cronin (2002: 15) suggest the development of suitable economic, social and cultural policies is based primarily on self-knowledge, yet the level of funding for fundamental social research in Ireland is extremely low – ‘only research that has immediate quantifiable economic benefits is favoured and decisions are made with little regard for the long-term consequences for society’. Both the limited social policy research and possibly associated lack of debate mean social policy is relegated to the sidelines, as economic policy continues to dominate thereby exacerbating ‘erratic and capricious policy making where effectiveness is compromised by a lack of contextual sensitivity and a tendency to embrace the pragmatic fashion of the day’ (Ibid., 2002: 15).

This point is key when advocating a rights-based approach to policy making in ECEC, particularly in light of political hesitance to assume a more direct and

³⁶ In Budget 2009, there was a reversal on the decision to abolish universal medical cards for those aged 70 within a number of weeks of their announcement due to mass media coverage of public protests and political fear around associated electorate popularity.

strategic role in the lives of young children. While government is content to utilise rights-based discourses in policy related documents, it is equally content to ‘fudge’ the more contentious aspects of children’s rights in policy and practice particularly in terms of the state’s role and responsibility for children. The wavering political commitment to a referendum on children’s rights is just one example of political fudging of a sensitive and contentious ideological issue despite the huge consequences such ambiguity has on the policy development and outcomes for children. Were a ‘real’ and actual shift to occur in policy and impact on service provision and professional practice, a legal responsibility – achieved through constitutional change would be essential. Government resistance to drive this legislative change – as has been the case in the past in equally sensitive and traditionally ‘private’ areas (contraception/divorce/abortion) – is indicative of the lack of value placed on our youngest citizens. It is also indicative of the tendency for discussion and debate to focus on the legal dimension of rights – particularly the potential costs associated with court proceedings resulting from explicit constitutional acknowledgement of children’s rights. This preoccupation with the cost implications of legislative acknowledgment of children’s rights inhibits mature discussion on the deeper understanding of children’s rights. It reflects a narrow and confined political perspective on children’s rights and highlights a political failure to consider the Convention’s potential as broad statement of a rights-based approach that guides a moral understanding of how we as a society value children.

3.6 The Development of ECEC Policy in Ireland

The development of ECEC is a remarkably recent phenomenon in Ireland. Up until the mid 1990s, the majority of ECEC provision was small scale, part-time, not-for-profit, with a small commercial presence and a number of community based services (Hayes, 1995; Bradley & Hayes, 2009). In the absence of policy and support, a fragmented and unregulated childcare market of high costs and variable quality developed where the ability to pay, largely determined right of access and quality of experience within settings (OECD, 2002, 2004; Hayes and Bradley, 2006). The fact that ECEC remained unregulated until January 1997³⁷, when the relevant section of the 1991 Childcare Act was enabled is emblematic of the traditional non-interventionist approach in the sector. Ireland’s lack of direct action to this time is repeatedly noted in the policy literature, and is often attributed, in part at least, to Constitutional constraints and political tendency to ‘fudge’ controversial public issues. In the case of ‘childcare’, it has led to state resistance to employ a policy approach which unduly favours those who care for their children full time or those who – for varied reasons - share the care of their children (Coakley, 2005; NWCI, 2005; Hayes and Bradley, 2006). However, one could fairly argue that the lack of policy action in the area extends beyond constitutional bounds and is representative of the political prioritisation of economic and business matters above all else. Associated with this, is a parallel reluctance to engage and invest in the potentially ‘costly’ policy area of children³⁸. After all, women’s rights and the introduction of measures to ensure

³⁷ Except for general health and safety regulations

³⁸ For example, at the launch of the NESF plenary session on early childhood care and education (June, 2005), the Minister for Education stated ‘we do not own the schools’ and ‘they cannot be

these only emerged onto the political agenda as a direct consequence of EC membership. While legislative changes from the 1970s guaranteed women equal labour market rights and a number of working groups were established to consider policy issues and prepare reports on 'childcare' as a consequence³⁹, the concept of government 'distancing' from direct engagement with the policy issue was very evident. Throughout this time, direct government action in the area remained altogether absent, as too, did the real presence of a sector of any significant scale.

From the 1990s, an increasing number of government working groups were established and a flurry of government reports commissioned, all specifically dedicated to exploration of the childcare issue. The Commission on the Family, set up in 1995, published its report, *Strengthening Families for Life*, in 1998, which included a comprehensive set of recommendations relating to childcare and the family. An *Expert Working Group on Childcare* set up under Partnership 2000 considered the wide range of childcare services for children from birth to twelve bringing afterschool and preschool childcare into the policy arena for the first time (Hayes and Bradley, 2006). The fact that services across all age ranges were to be collectively considered as a single issue reduced attention to the need to consider early childhood education and care in its own right. Meeting under the direction of the Department of Justice, Equality and Law Reform, the group produced a *National Strategy for Childcare* in 1999. A critical feature of the Expert Working Group was the restrictive nature of its terms of reference, which limited the group to considering the childcare needs of working parents. While Hayes (2008) suggests expedient budgetary explanations may have contributed to this limited focus, she suggests that it nonetheless laid the foundation for a fragmented policy response to childcare and failed to recognise the wider issue of childcare as a resource for all children, their families and society. In 1999, the Department of Education and Science produced a *White Paper on Early Childhood Education, Ready to Learn* (1999) which focused on the early educational needs of children from birth to six and included a series of recommendations which covered the whole spectrum of early childcare services 'including curriculum, training [...] and the quality and quantity of inputs'. Among the many policy documents that address the need for change in Irish ECEC, the White Paper published by the Department of Education and Science in 1999 is of particular importance. The *White Paper*, led to the establishment of the Centre Early Childhood Development and Education (CECDE) in 2001, a partnership initiative managed by the Dublin Institute of Technology and Saint Patrick's College, Drumcondra on foot of a request from the Minister for Education. The primary tasks of the CECDE were to draft, in consultation, a quality framework for the early years sector; to develop initiatives for children with special needs and those at risk of educational disadvantage; to support research in the early education field and to

compelled into childcare. ... If a national policy were introduced, the boards would have to take individual decisions about making their premises available ... a lot of issues such as who would provide the care taking and maintenance for the schools after hours would have to be resolved' (John Walsh, *The Independent*, 16 June 2005).

³⁹ *The Report of the Working Party on Child Care Facilities for Working Parents (1983)* and the *Report of the Committee on Minimum Legal Requirements and Standards for Daycare Services (1985)*

prepare the groundwork for the establishment of the Early Childhood Education Agency as proposed in the White Paper.

The report of the *National Childcare Strategy* led to the establishment of the *Equal Opportunities Childcare Programme (EOCP)*, under the National Development Plan (2000-2006), and represents, combined with its successor, *The National Childcare Investment Programme (NCIP)* the largest investment in childcare in Ireland's history. Importantly, much of the early attention and funding towards the development of childcare in Ireland was generated from EU programmes – rather than domestically - and initiatives centred on the promotion of equality measures to support women, rather than the development of quality supports for young children. Although children, as a group, do not come within the legal competence of the EU, childcare was one of the sectors eligible for European funding under a number of different programmes including the equality initiatives such as the New Opportunities for Women [NOW] programme. Such funding led to the establishment of a number of pilot childcare projects at local and community level. These initiatives coincided with the work of the European Childcare Network, which highlighted, among other things, the very low level of state support for childcare in Ireland when compared to all other European countries (EC, 1990). Such comparisons led to increased calls on government for support and development of the sector, particularly among those who saw the potential value of childcare to disadvantaged children and their parents. By the early 1990's the impact of European reports, the recommendations from different working groups and the availability of funding began to yield a more concerted approach by interest groups in Ireland for policy action in relation to childcare. At this time, as a result of growing economic prosperity, there was an emerging drop in the unemployment rate that began to give rise to a shortage of workers. This led to employer organisations and unions adding their voice to demands for childcare, an identified barrier to the full participation of women in the labour force and a threat to sustainability of economic growth (Hayes, 2006).

It has long been suggested that labour market activation policies both shape and challenge existing structures of care (Williams, 2003), and the Irish experience provides a prime example of this. Growing public dissent amongst parents, employers and unions (undoubtedly triggered by associated retention and recruitment problems) contesting workplace cultures that developed around male breadwinners and single people (Sweeny, 2006) catalysed government action in the largely heretofore neglected policy area. Thus the factors which generated policy action, not only illustrate the pragmatic, rather than principled approach to Irish policy making, but fundamentally, demonstrate 'economic' objectives as the core driver behind the crisis policy response to 'childcare' rather than a focus on the potential role of ECEC in supporting children's rights

In addition to national demands for change, a series of external factors accentuated pressure for state reform - not least amongst them, Ireland's trailing position in terms of ECEC provision when compared to its EU counterparts (OECD, 2006; Hayes and Bradley, 2006; UNICEF, 2008). By the mid 1990s, the majority of European countries had been providing universal ECEC for

children of four for at least, one and most often, two years prior to public school commencement, in addition to subsidised childcare to assist parents in balancing work and caring responsibilities (OECD, 2001; 2006). Proposals under the Lisbon Strategy and Barcelona Summit⁴⁰ reinforced pressure for policy action, although Moss (2005) critiques the quantitative nature of such strategies and the EU's usage of the 'childcare discourse' with its focus on numerical rather than qualitative targets, particularly evident through the language of the Barcelona targets. This he attributes at least in part, to the limited legal competence of the EU for children and families, although he does note recent changes, which he believes may open up some 'interesting if uncertain future prospects', including *The Charter of the Fundamental Rights of the European Union* and the 2006 Communication from the Commission, *Towards an EU Strategy on the Rights of the Child*⁴¹.

While the direction and policy approach to childcare and ECEC may vary across countries, the central position of childcare and/or ECEC as public policy concern was very evident. Even the UK, who like Ireland, had long avoided direct intervention in ECEC (supporting the growth of mixed market provision) introduced free part-time universal pre-school under Blair's Labour government in 2002⁴², in addition to a comprehensive support programme for children under three living in disadvantaged areas via *Sure Start* as part of its ambitious reform of all children's services under *Every Child Matters*. While in Ireland, the Department of Education and Science supported a number of early childhood pilot initiatives such as the Early Start and support for Traveller preschools (Hayes, 1995) it took no policy position on ECEC outside the formal schooling system preferring instead to target 'childcare'. Thus national and international pressure to invest in childcare, both to sustain current and future economic buoyancy and global competitiveness became the core drivers behind policy design. The EOCP represented the first real attempt by government to move from a rhetorical policy commitment to childcare to real 'action' in the area. Implemented through the *National Development Plan (2000 – 2006)*, the Programme has had the most penetrative and significant impact on childcare policy and practice to date. A substantial proportion of ECEC is also delivered through these services (supplemented through more established privately-run home-based settings). As a co-funded 'equal opportunities measure for social inclusion', the EOCP operated under the Department of Justice, Equality & Law Reform and aimed to 'facilitate parents to participate in employment, training and education' by 'increasing the number of childcare spaces, improving quality and introducing a co-ordinated approach to the delivery of childcare services'⁴³. To manage the impact of the EOCP, City and County Childcare Committees were established to develop locally focused County Childcare Strategies and to support delivery of services at local level.

⁴⁰ Under the Lisbon Strategy, Ireland agreed to a target 60% employment rate amongst women aged 15 – 64 by 2010. Under the Barcelona Summit, Ireland agreed to target childcare provision for at least 90% of children aged between three and mandatory school age

⁴¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0367:FIN:EN:PDF>

⁴² Currently, universal pre-school is provided for 2.5 hours per week for 33 weeks of year, although it is planned to extend this to 20 hours per week for 38 weeks of the year by 2010 (OECD, 2006).

⁴³ <http://www.welfare.ie/press/pr06/pr290506.pdf>

Driving ECEC policy development through the competing agendas of employment and equality always carried an inherent risk, that a focus on children and their needs and rights would be relegated, as government endeavoured to rapidly develop ‘childcare’ spaces to meet funding requirements and labour market need. Of the overall €500m EOCP budget, more than half (53%) was specifically allocated to capital investment and is estimated to have contributed to the development of an additional 40,000 childcare places over its lifetime⁴⁴. The policy focus on creating places or ‘slots for tots’⁴⁵ to facilitate working parents, rather than a focus on the quality and potential of such institutions to support and enhance the early educational experiences of young children reflects a lack of focus on children’s rights and, in fact undermines children’s right to quality care and education. The provision of extensive funding for investment in childcare ‘spaces’ elicited a robust response from the construction industry and rapid development of centre based childcare without concomitant attention to the quality of provision and the development of smaller sessional services and family based childcare services (Hayes, 2008). What is most notable in the rapid development of the childcare sector is the muted political focus on the now increasingly central role of such services in the early years experiences of young children. ECEC remained a largely private good delivered through the private market where public responsibility was confined to disadvantaged families in most need.

Despite historic investment under the EOCP (and continued investment under the NCIP) and simultaneous, albeit less prominent initiatives to acknowledge the potentially important role of ECEC for children (such as Early Start), Ireland’s childcare market remained immersed in new and ongoing problems (OECD, 2004; OECD, 2006; Bennett, 2006; Hayes and Bradley, 2006; NWCI, 2005). Investment did little to tackle the variable quality characteristic of the market, although the DES requested the CECDE and NCCA work on the development of Frameworks which would consider quality and curriculum within settings. Nonetheless in practice and policy terms, the focus at this time was very much on capacity development with a more muted focus on the development of quality enhancing frameworks. Quality within settings, measured through for instance, staff qualifications and remuneration, setting resources – key factors which directly affect the experiences of young children within settings – received minimal attention throughout this period of rapid market growth.

The early years experiences of young children continue to be dictated by parental resources, including ability to pay and knowledge resources to select a quality service appropriate to their child’s needs and abilities. In its policy comparisons of Austria, Ireland and Japan, the OECD (2003) reported an average Austrian childcare fee of 5% of APE⁴⁶, an average Japanese fee of 8% of APE, and an average Irish fee of 20% of APE. Irish costs were estimated to

⁴⁴ <http://www.budget.gov.ie/2006/downloads/SummaryOfMeasures.pdf>

⁴⁵ Dr Noirin Hayes, quoted by Kathy Sheridan in ‘Who Cares?’, Irish Times, 19 January 2008

⁴⁶ The Average Production Employee refers to the average gross wages earnings of adult, full time workers in the manufacturing sector of each country. In 2002, these were €23,963 in Austria, €25,330 in Ireland and €33,926 (OECD 2003)

rise to 50% of APE for two children in daycare. In 2005, *The Irish Times* reported that estimates due to be given to the government showed that a parent returning to work would have to earn €16,000 just to cover the then average weekly cost of childcare in Dublin of €130 (Irish Times, June 15, 2005). Access to ECEC, which the majority of EU children take for granted as a citizenship right, and in turn, the quality of ECEC received, therefore remained (and remain) largely restricted to children whose parent's income allow it. Such a strategy is in direct contravention to Goal 3 of the *National Children's Strategy* and undermines the notional concept of quality supports for children.

In Ireland, as in many market-based economies, government considered financial assistance to parents *via* mechanisms such as the universal Child Benefit and the Early Childcare Supplement to be sufficient to fulfil its duty towards child-rearing costs. In defence of its resistance to directly invest/subsidise childcare, government substantially increased the universal childcare benefit payment throughout this timeframe arguing that this provision could be used by parents to subsidise childcare costs if they so desired. Between 2000 and 2005, child benefit payments more than doubled (from €53.96 to €141.60 for first and second child and from €71.11 to €171.30 for third and subsequent children) (CPA, 2005). The steadfast reliance on universal cash payments to parents as the preferred policy instrument – rather than direct provision of ECEC - for children during this time is indicative of the political differentiation between the state's responsibility in providing for the education of children from the age of four up to and including higher education (public) and the family's responsibility in rearing children (privately) prior to school commencement. By 2005, a discontented electorate again demanded government action to address costs. In an example of policy paralysis where government feared loss of electoral votes, through articulating a direction - which may prioritise supports for those women in employment over those caring for children within the home - the government introduced, yet another cash payment to parents, the Early Childcare Supplement (ECS). This annual payment of €1,000 for each child under the age of six (the compulsory age for primary school commencement) once again confirmed the state's commitment to the market place, as the primary mechanism through which ECEC would be delivered. The decision to commit a then estimated €350m of exchequer funds annually through the payment once again had little impact on the ECEC sector, or children's experiences within settings (Hayes, 2008). Crucially, there was no guarantee that such payments would even be used to enhance the experiences of young children – at whom the payment was intended.

Describing the barriers to a consensual policy response in the area, Sweeny (2006) notes:

Childcare is proving a particularly difficult issue for the social partners to resolve because the expectations people have of public policy in this area reflect fundamental values.... Some believe, for example, that Ireland is turning away too quickly from the traditional respect it had for women's roles in child rearing and home making ...Others believe that women who take employment ... should get a state subsidy specific to them An OECD review

team in 2004 found a significance difference of views in Ireland on just why it is the state's responsibility to invest in early childhood services, what formal childcares achieves for children that is better than parental care, etc (OECD, 2004).

(Sweeny, 2006)

In addition to critiquing issues of equity, access and quality, the OECD, in their *Thematic Review of Early Childhood Education and Care in Ireland (2004)* critiqued the fragmented and dispersed responsibility across the early childhood sector: 'No one Department or Agency had been given clear responsibility to lead integrated policy or to provide coherence across the various childhood bodies and services. Part of the reason for this lack of coherency is attributed to the fact that traditionally early childhood policy has been subsumed under larger issues, such as family policy, primary schooling and general health policy, rather than a defined age group with its own specific health, developmental and cognitive traits' (OECD, 2004; 23 – 24). A structural development of potential in this regard was the establishment – in 2006 - of the Office of Minister for Children and Youth Affairs [OMCYA] where there has been an effort to bring about cohesion and integration across a variety of policy issues impacting directly on children's lives through, in relation to ECEC, relocating the childcare section from the Department of Justice, Equality and Law Reform to the Department of Health and Children and the co-location of a number of units within the one office including the youth justice section from the Department of Justice, Equality and Law Reform and the newly established Early Years Education Policy Unit from the Department of Education (Hayes, 2008). However, the fact that separate childcare and early education sectors continue to exist within the OMCYA is evidence of the continued conceptual and structural separation of care and education in Irish ECEC policy.

Using measured capacity increases⁴⁷ and financial expenditure under the EOCP as proof of its success in the area of childcare (Hayes, 2007), government announced a new *National Childcare Strategy 2006 - 2010* which included a new National Childcare Investment Programme (NCIP) to replace and build on the existing 'success' of the EOCP Programme. Admitting that the EOCP had been primarily 'tied to the demands of the labour market'⁴⁸ (Brian Lenihan, then Minister for Children, November 8th 2006), management of the new Programme was delegated to the OMCYA and additional objectives added which represented, in discourse terms at any rate, a notional refocusing of policy to incorporate the child in Programme design and delivery. Specifically, the NCIP has the added aim of supporting 'a co-ordinated approach to the delivery of childcare, *which is centred, on the needs of the child*' (emphasis added). It would seem the target aim of 17,000 additional trained personnel by 2010 formed the core mechanism through which it was hoped this would be achieved, although at the time of writing – more than three quarters of the way through the Programme's lifeline – qualification requirements and a training strategy to support implementation had yet to be published. However, until minimum

⁴⁷ The EOCP is estimated to have created an additional 40,000 childcare places over its lifetime, and projected estimates for the NCIP is 50,000.

⁴⁸ <http://www.nco.ie/viewdoc.asp?DocID=152>

statutory requirements relating to qualifications exist – particularly in a model of mixed market provision - the likely impact of aspirational training targets on ECEC quality is questionable. Furthermore, even in countries which stipulate qualification criteria under market based approaches, evidence indicates a tendency amongst private providers to recruit graduates straight from college to maintain a competitive edge and keep cost down as they have the requisite qualifications but are financially more viable as they lack experience (Osgood, 2004; Sumsion, 2006).

In Ireland, government framed its success in ‘childcare policy’ in a financial context as if childcare can be unproblematically commodified into the private market in the same way as housing or health. This focus on the easily measurable quantitative aspects of ECEC (spaces, numbers attending etc) neglects crucially qualitative aspects of ECEC such as children’s perspectives on their experiences within settings and fails to take children’s rights (provision and participation) into account in policy development. In this context, values associated with family – such as caring, kinship, and altruism seem somehow at odds with the dominant – economic and output based - thrust of policy’ (DSCFA, 2004). In *Measuring the implementation of a right to education*, Beeckman (2004) emphasises the need to read quantitative indicators in conjunction with qualitative ones ‘if the realisation of *the right to education* is to be assessed’ and argues that such rights ‘cannot be implemented if one dimension is prioritised to the expense of the other’.

Targeting as a policy response

To counteract potential critique for its continued abstinence from a more direct role in ECEC, and very much in line with UK policy, under its ‘social investment’ state, government has employed targeted provisions to assist ‘families to break the cycle of poverty and disadvantage’ through early intervention programmes such as Early Start, DEIS and an ambitious target that more than half of the new childcare places (28,000) under the NCIP be within the community and voluntary sector. Targeting, a strategic approach typical of classic liberal economies – and one which centres around the scholarisation of early childhood - is justified through the argument that public monies can be more efficiently spent on quality services for those most in need (Bennett, 2006). More generally, and again of relevance to Ireland is that fact that there is an inherent and often unvoiced difficulty with the concept of targeting - research shows targeted programmes actually miss about half of the children they are supposed to serve and integrated universal services have a differentially positive impact on children who are considered to be disadvantaged (Bennett, 2006).

Targeted early intervention programmes have become increasingly common in recent decades (e.g. HeadStart in the US and SureStart in the UK) and are largely inspired by growing ‘scientific evidence’, mainly from the US of the valuable statutory returns from early investment. Studies such as the now emblematic Perry Preschool Project (Schweinhart, 2004) have demonstrated ECEC’s potential role in alleviating ‘social ills’ through equipping children with the necessary social and cognitive skills to enhance school and later labour market performance. Its findings of a \$7 return for every \$1 invested fuelled the

birth of a now globally prominent discourse in ECEC ‘where data, originally framed in the language of early human development, social reform and equal opportunities, was translated into the language of economics, human capital, and returns on investment’ (Woodhead, 2006). It is this scientific evidence and discourse which has provided the greatest rationale for public investment in ECEC, particularly amongst the traditional non-interventionist politicians in neoliberal countries. However, the future focused nature of early-investment means yet again the justification for investment in children is driven by the needs of the economy rather than any attention to the needs and rights of children and the potential for early years services to support the values of a democracy. Little attention has been paid, particularly at a political level to the implications of defining and structuring ECEC institutions towards the scholarisation of childhood and prioritisation of human capital investment.

The two core drivers behind Ireland’s investment programmes and policies have centred on the childcare component facilitating current female employment (through EOCP and NCIP) *and* the ECEC component of early-investment in children from disadvantaged backgrounds (under the DEIS Plan and through programmes such as *Early Start*). The focus has been on immediate economic return through facilitation of female employment and investment for future economic return through subsidisation of early education programmes in disadvantaged areas. Policy design has failed to focus on recognising and valuing children as *democratic-citizens* in the ‘here and now’. A focus on their rights *to* and *in* ECEC has featured rarely – if it all – in political debates which have been dominated by economic and equality agendas. Nor is recognition of the value of care work and associated concepts of affective equality including relations of love, care and solidarity given due attention or even acknowledged as important in ECEC policy and practice (Lynch et al, 2007). It is in sharp contrast, to approaches pursued under ‘social-democratic’ welfare regimes, such as Sweden, where ECEC is conceived of as a public good and responsibility where publicly financed high quality pedagogues are delivered by well trained pre-school staff whose training and salary levels are similar to that of teachers (OECD, 2001).

3.7 ECEC Policy Restructuring in Economic Crisis

In September 2008, Ireland became the first euro-area country to enter a recession. The collapse of what *The Economist* (May 19th, 2009) described as the ‘illusory Celtic Tiger’ saw unemployment rise from 4.8% in January 2008 12.2% in July 2009, a national banking crisis and steep increases in state borrowing to fund revenue shortfalls (Callan, 2009) result in radical cuts in public expenditure. This started with the 2009 Budget published in October 2008 and a further supplementary budget in April 2009. The economic context in which social policy is framed has now shifted significantly (Kirby *et al.*, 2007). Not since the 1980s, has the need to curb public expenditure been so amplified. All areas of revenue and public expenditure have been subject to critical examination and in many areas, substantial restructuring of both have occurred including - additional income levies of between 2 and 6% from April

2009, phasing out of ECS between by January 2010 - or is threatened⁴⁹. In addition to a freezing of capital grants from early 2009 under the NCIP, the phasing out of the ECS by January 2010, ongoing pressure to identify mechanisms to reduce child benefit expenditure is currently to the forefront of political deliberations. However, in announcing the withdrawal of the ECS in the Supplementary Budget of April 2009, came an unexpected announcement that early childhood policy analysts had advocated for years (OECD 2001; OECD 2004; NESF 2005) which government persistently rejected: a free pre-school year for all three and four year olds:

This scheme [the ECS] was introduced to help people with the cost of childcare at the height of the boom. While appropriate to the time, it cost the state €480m last year. The programme is now being replaced with the early childcare and education year for preschool children at an estimated cost of €170m.

(Financial Statement of the Minister for Finance, 7 April 2009)

While the move to introduce free preschool marks a shift in government thinking towards the value of universal ECEC (previous initiatives had focused on ‘childcare’ or targeted ECEC) and has been broadly welcomed for the opportunity it presents to develop and enhance the sector (Bradley & Hayes 2009), it is significant, that once again, political commitment to the sector was primarily driven by economic rationale. The Minister cited the ‘*significant enhancement of subsequent educational achievement of students and in turn increases the return for state investment generally*’ as the rationale rather than a shift in ideological perspectives around public responsibility in the care and education of young children. The Minister emphasised its strength as an example of *how a programme can be reshaped and made more effective at a lower cost to the tax payer* in a climate where the imperative must be to *achieve better results with fewer resources* (Minister for Finance, 7th April 2009). It is once again indicative of the expedient and pragmatic nature of Irish policy making. Announced in April 2009, full roll-out of the scheme (for 70,000 children⁵⁰) is scheduled for January 2010.

The proposed policy nonetheless has a number of key strengths. Firstly, it reflects political acceptance of the value of ECEC for young children. Secondly, its universal focus shifts the emphasis of ECEC – somewhat – from a private commodity to a public responsibility, although it will be delivered through the existent mixed model of market provision. Thirdly, it is likely to require – and lead to – greater statutory management of quality within settings, given the direct investment of public finances into settings where all children (of a certain age) are eligible to attend. The funding criteria that delivery be linked with Siolta, the *National Quality Framework* represents a welcome emphasis on the heretofore more muted area of quality within the sector.

⁴⁹ The government commissioned Colm Mc Carthy Report has made a series of recommendations around expenditure cuts in social welfare and child benefits (*Irish Times*, July 16th 2009).

⁵⁰ Minister for Children & Youth Affairs, Barry Andrews, Press Release, 7th April 2009

However, now that government has conceded to a right *to* access ECEC (although not in legislation), the need to consider children's rights *within* ECEC setting becomes all the more pressing. How children are cared for, the various pedagogies, staff qualifications, curriculum frameworks and children's perspectives on factors important to them within ECEC settings are critically important. Access to services (and feasibility issues relating to access may yet emerge) on its own is not enough – what happens within settings is equally important. The fact that the ECEC measure was introduced without a clear strategic debate on what we as a nation want for our children and the role ECEC can play in achieving this leaves many questions unaddressed. Now more than ever, when in January 2010, provision is expected to be made for 70,000 children to attend state-funded ECEC (delivered through mixed provision), it is imperative that the rights of children take centre-stage in ECEC policy development and implementation.

3.8 Conclusion

Ireland's ECEC policy has clearly favoured the use of subsidised market-based approaches to facilitate rapid infrastructural development of a historically neglected policy area. Government has, through its policy approaches – up until recently - clearly and persistently abstained from a direct role in the delivery of quality sustainable ECEC (outside the formal school system). This Section has highlighted many of the contributory factors and underlying conflicts which may contribute to long standing government reluctance to consider ECEC as a public responsibility.

Historic resistance to a direct statutory role in of ECEC reflects a reluctance to shift from traditional ideologies which position the child as the private responsibility of parents prior to primary schooling. Like so many other areas of social policy in Ireland, the tendency to pacify the electorate *via* additional cash payments at times of mounting conflict (e.g. introduction of ECS in 2006) – rather than challenging debate which may support a clearer ideology on the states role and vision for children – reinforces the expedient and pragmatic nature of Irish policy making.

Ireland's political and voting system and the long-established tendency for policy responses to be pragmatic rather than principled coupled with a lack of leadership amongst the related professional communities to challenge this has fuelled the 'fudging' of important policy issues limiting necessary debate around what we as a nation want for our children and the role of ECEC in this vision. This has contributed to an assortment of policy approaches which attempt to favour neither mothers who chose to engage in labour market activity or those who chose to remain at home and care for their children. The focus has mostly centred on the needs of parents, particularly women, rather than the rights of children. Even as a 'particularly large proportion of our population is turning 30 and moving into the age group when people are now most likely to start families' (Sweeny, 2006), debate and interrogation of how best to meet the needs of children is still lacking and clearly contributing to a 'net result' of what Sweeny (2006: 17) describes as 'making haste slowly'.

The design of rights-based policies for children requires a debate which is entangled in many of the most sensitive aspects of Irish society – and one which is mirrored in many countries globally – including family and state autonomy, children’s and parent’s rights, conceptions of childhood, and children’s location in *society* rather than in the future economy. It is essentially a debate of values – values which inform ideology and must be interrogated and challenged to identify a strategic way forward. The primacy accorded to economic matters over all else during the Celtic Tiger Years – and again in the current recession⁵¹ - and the pragmatic rather than principled nature of Irish policy making means pivotal debate and reflection on the value of children and society’s responsibility towards ensuring children are valued is at best *ad hoc* and more often overlooked altogether. In this context the design of rights-based policies in ECEC becomes exceedingly difficult – but not impossible. It means gradual rather than radical change, the opening up of necessary debate to where current apprehensions and resistance are overcome through research, learning and debate - where children’s rights are respected and ensured in practice as well as discourse, and where government realises its response to children cannot be pragmatic but must be based on doing all in its power to ensure promises outlined in the *National Children’s Strategy* are achieved.

⁵¹ The decision to cut special teacher support for children with mild general learning disabilities in 119 national schools to produce an annual saving understood to be in the region of €7 million on 12 February (<http://www.irishtimes.com/newspaper/ireland/2009/0212/1233867933162.html>) , the day after an €7 billion ‘bail-out’ of the country’s two biggest banks was due to proceed, without having agreed caps on executive salaries (<http://www.independent.ie/national-news/bank-bailout-to-go-ahead-without-deal-over-salaries-1634083.html>) is emblematic of the priority accorded to economic policy matters over social ones.

SECTION FOUR

ECEC IN IRELAND: TOWARDS A RIGHTS-BASED POLICY APPROACH

4.1 Introduction

So long as rights are grounded in free, equal, or autonomous individuality, children will be pressed to the outer edges of the social circle. ... For it is children who, on the one hand, are most likely to be marginalized and unheard, and it is children again who, on the other hand, need the greatest social response. A human rights regime based on responsibility to otherness would find in children its clearest reason for being, its greatest opportunity for humanity.

(Wall, 2008: 541)

This section presents key conclusions on the current position of children's rights in ECEC policy making. As stated at the outset, the position paper represents one of a series of papers associated with the IRCHSS funded 'ECEC in Ireland: Towards a Rights Based Policy Approach Project'⁵². Successive papers will build on, and respond to many of the issues/challenges identified in this paper. This paper's key objective is to lay the foundation and set the context, based on existent documentary research in which the central issue of rights-based approached to ECEC policy making must be considered. Research is ongoing on research strands two to four, and it is anticipated that new primary research conducted under each of these strands will support the advancement and refinement of many of the arguments contained within. Further, given the general absence of debate on children's rights and the design of rights-based policies, this new primary research will provide new and current material to support interrogation of many unchallenged ideologies in need of debate, if we are to move towards a rights-based policy approach in ECEC.

Section 2 considered key dimensions of the global debate on children's rights and foregrounded many of the challenges which have hindered rights-based policy design in early childhood policies in the Irish and international context. It reflected on key aspects and challenges in need of redress if children's rights

⁵² Other papers to date include, Hayes, N. and Bradley, S (eds) (2006), *A Decade of Reflection, Early Childhood Care and Education in Ireland 1996 -2006*, Proceedings of CSER ECEC Seminar, November 3rd, 2006, CSER, DIT, Hayes, N. and Bradley S. (eds), (2008), *Early Childhood Education and Care in Ireland: Getting it Right for Children*, Proceedings of CSER ECEC Seminar, January 24th 2008, CSER, DIT.

are to be incorporated into policy and practice. It considered positive developments supported through UNCRC-ratification but also highlighted limitations and challenges associated with a reliance on a moral (as opposed to legal) framework. The fact that the UNCRC has garnered so much political attention suggests a recognition of the importance of children's rights – however, it is clear that much uncertainty and political ambiguity remain around the implementation of such rights in policy and practice.

Section 3 focused on children's rights in an Irish context and considered the effectiveness of policy approaches to date in incorporating children's rights in ECEC policy and practice. The section considered the many contributory factors and underlying untackled conflicts and tensions including government resistance to assume a more public role in the ECEC sector, Political and social ambiguity about the role and purpose of ECEC – and the state's role in the rearing of young children more generally - has exacerbated the pragmatic policy approach. The near absence of policy debate on young children and the state's role in directly supporting young children (as opposed to families), a debate which interrogates the implications of deep-rooted socio-cultural and political traditions has been highlighted.

4.2 Project Research Objectives

It is from within these contexts that the current project was conceived. The overall aim of the project is to develop a rights-based framework within which ECEC policy design and implementation would occur. Through four distinct, but inter-related research strands, the research aims to:

- R1. Consolidate knowledge and re-evaluate factors driving ECCE policy through desk based research which will consider ECCE policy formation, implementation and evaluation and critique Irish policy in terms of international understandings;
- R2. Comprehensively review policy documents using critical discourse analysis (CDA) since UNCRC ratification to identify and assess evidence of competing and conflicting ideologies;
- R3. Survey ECCE stakeholders to identify barriers and constraints to developing a rights based child-centred policy;
- R4. Identify and design a comprehensive over-arching policy model which will contribute to knowledge base of a rights-based approach to ECCE policy making.

Through the consolidation of such evidence, this project aims to identify possibilities towards the achievement of children's rights in ECEC policy and practice.

4.3 Towards a Rights-Based Policy Approach in ECEC in Ireland

Through ratification of the UNCRC in 1992, the Irish state has made a commitment to children's rights in policy and practice. Ensuring children's

rights are incorporated into the design and delivery of ECEC forms a central component of this agreement. Under Article 6 (2) of the UNCRC, Ireland agreed to ensure ‘to the maximum extent possible the survival and development of the child’. Under Article 18 (2), Ireland agreed that ‘render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities’ and to ‘ensure institutions, facilities and services for the care of children’. Under Article 29 (1a) Ireland agreed that ‘education of the child shall be directed to the development of the child’s personality, talents, and mental and physical abilities to their fullest potential’. Goal Three of the *National Children’s Strategy*, guided by the principles of the UNCRC promised ‘quality supports and services to promote all aspects of children’s development’. It is now widely acknowledged that quality early childhood care and educational experiences are an essential response to children’s immediate needs and rights, as well as a precursor to subsequent development and lifelong learning (Bronfenbrenner and Morris, 1998; Siraj-Blatchford, 2006; Hayes, 2001).

Yet analysis reveals widespread policy failings in terms of respect for children, their rights and the prioritisation of such in the development of ECEC policy. All too often, children have been invisible in the design of ECEC policy, with their rights relegated over economic and equality agendas, despite the pivotal role such services have on the early years experiences. To contribute and realise an implementable rights based policy, a number of allied actions need to happen.

- *Clear Political Commitment to Children’s Rights*

The pragmatic and piecemeal nature of ECEC policy responses is symptomatic of a political resistance to debate and challenge traditional ideologies and commit to a clear, strategic and context relevant role for the state in the lives of families with children. Fluctuating commitment to a constitutional referendum on children’s rights, political ‘fudging’ of politically sensitive tenets of the UNCRC and the pragmatic and expedient approach to ECEC policy design all undermine political commitment to children’s rights. The lack of political will to clearly articulate a commitment to children’s rights highlights the need for public debate which challenges underlying conflicts and identifies a clear vision -of what we as a nation want for our children and a political strategy which supports this.

- *Public Debate to Identify a Vision of What we as a Nation Want for Our Children*

Visions outlined in the *National Children’s Strategy* are of little relevance if debate and political ideologies and manifestos do not include clearly articulated strategies and approaches to guarantee their implementation. The design of a rights-based strategy for children requires public debate – amongst politicians, policy makers and the *community* of professionals engaged in the sector - on the many entangled and sensitive aspects integral to the design of rights-based policies. This includes debate on the role of the family and the role of the state in rearing young children, children’s and parent’s rights, conceptions and

constructions of childhood (and their implications in policy design), as well as debate on children's location in *society* rather than future economy.

- *Policy attention to the child agenda in its own right*

The policy focus on creating places or 'slots for tots' to facilitate working parents, rather than a focus on the quality and potential of such institutions to support and enhance the early learning experiences of young children undermines children's right to quality care and education. The primacy accorded to economic matters and the pragmatic rather than principled nature of Irish policy making means attention to children in related policy matters is often overlooked. In this context the design of rights-based policies in ECEC becomes exceedingly difficult. Government commitment to 'child-centred' policies must be examined and consideration given to the effect of policies on the child (rather than the economy or parents) in related policy matters.

- *A Strong Legislative Framework.*

The UNCRC is not law – therefore its implementation relies on 'moral' rather than legal frameworks. Furthermore, the Convention is 'non-prescriptive' and does not define how the principles it enshrines should be implemented in individual countries (Smith, 1998) leading to wide variation in interpretation and implementation. The fact that children continue to have a highly vulnerable status as rights holders within our Constitutional Framework and the wavering political commitment to a referendum to address this undermines children's rights (and their value as citizens in their own right). Government resistance to drive this legislative change undermines children's value and independent rights. Furthermore, political preoccupation with the financial implications of legislative change (arising from increased statutory responsibility) reflects a narrow and confined political perspective on children's rights and highlights a political failure to consider the Convention's potential as broad statement of a rights-based approach that guides a moral understanding of how we as a society value children.

- *Advance from Provision Focus*

The 2009 announcement of a free 'pre-school' year for all children, prior to primary school commencement represents a landmark advancement in respect to recognising early years provision as part of the wider educational frame. It should also provide a rich basis within which to raise the level of discussion on children's rights in early childhood education and care from beyond the current tensions into a topic in its own right. However, the context in which this decision emerged adds an extra urgency to the need to debate and define rights *within* ECEC. Once a right is granted *to* ECEC (and it is important to note the provision of ECEC is again not legislated for), the design of a rights-based framework involves identifying the necessary components to ensure children's rights are met *in* ECEC. Quality within settings, measured through the daily experiences of children, staff qualifications and remuneration, setting resources and curriculum frameworks must also be appropriately provided for. Children's perspectives on factors they consider important to them within ECEC settings must also receive attention. Now that government has conceded to a right *to*

access ECEC for children of a given age, the need to consider children's rights *within* ECEC setting becomes all the more pressing.

- *Quantitative and Qualitative Measurements*

The tendency in policy evaluation to focus on quantitative aspects of provision – capacity increases under EOCP/NCIP regularly used as a measure of government success in ECEC - is flawed. In *Measuring the implementation of a right to education*, Beeckman (2004) argues that such rights cannot be implemented if the quantitative or qualitative aspects are prioritised over one another. Research and policy evaluation must therefore incorporate the less tangible aspects of policy particularly the quality of day to day provision in measuring progress in ECEC policy.

- *Realising Children's Rights*

In order to support Articles 6⁵³, 18⁵⁴ and 29⁵⁵ of the UNCRC and ensure quality supports and services that promote all aspects of children's development, it is essential that children's rights *to* and *in* ECEC are centremost in ECEC policy design. To achieve this provision right – all children should be legally entitled to high quality, stable ECEC irrespective of what setting they attend and which department funds it. While there is also evidence that the policy mindset is beginning to shift towards recognising the value of ECEC for children, as distinct from the wider area of childcare – considerable challenges remain. Tomasevski (1999 cited in Beekman, 2004) describes '4 A's' which she considers essential to achieve rights-based education; *Availability, Accessibility, Acceptable and Adaptable*. We define *availability* as the provision of appropriate capacity to meet the needs of young pre-school children, *accessibility* to mean services are accessible to all regardless of income or location, *acceptable* to mean services meet appropriate quality standards and

⁵³ 1. States Parties recognize that every child has the inherent right to life. 2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

⁵⁴ 1. State Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing of the child. Parents, or as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interest of the child will be their basic concern. (2) For the purposes of guaranteeing and promoting the rights set forth in the present Convention, State parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of young children, (3) State parties shall take appropriate measures to ensure that children of working parents have the right to benefit from childcare services and facilities for which they are eligible.

⁵⁵ 1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

provide good quality developmental supports towards the care and education of young children and *adaptable* to mean services are capable of understanding and supporting the needs of the children attending their services.

In contemporary Ireland young children are spending longer periods of their early years in settings other than their homes. The UNCRC offers a useful framework from which to examine the extent to which their rights are being addressed in ECEC policy and practice. Recent policy actions [EOCP/NCIP] and publications [CECDE, 2007; NCCA, 2009] also provide a valuable basis from which to consider this issue. It is intended that the research project of which this paper is a part will contribute a rich seam of data to inform debate and lead to a situation where the rights of young children in ECEC are foregrounded in both policy and practice.

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