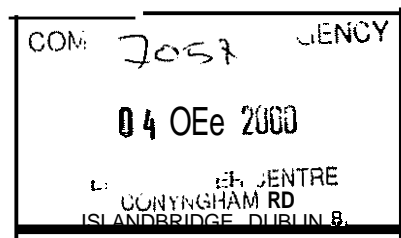


SOCIAL RIGHTS
A LITERATURE REVIEW

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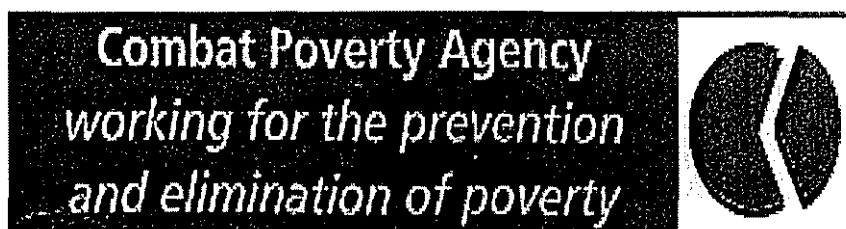


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Chapter 1

Introduction and Summary Overview

1.1 Introduction

The following chapter first of all introduces the notion of a social rights approach by focusing on definitions that seek to embrace social citizenship. I will then offer some comments as to why a social rights approach should be considered in terms of attacking poverty and social exclusion. Finally I will offer some introductory remarks regarding the themes of the forthcoming chapters.

!:2What does the term social rights mean

How we define social rights is important for developing our discussions surrounding the topic. If for example we confer social rights with mere aspirational status we perpetuate its positioning as secondary to civil and political rights. However, if we see social rights as being real rights in similar terms to that of civil and political rights then we can acknowledge that in essence we are discussing human rights. For according Hausermann, (1992) ¹ human rights include economic, social and cultural rights.

Therefore it will be most useful if we follow Esping-Anderson (1990) ² who argues that if social rights are given the legal and practical status of property rights, if they are inviolable, and if they are granted on the basis of citizenship rather than performance, they will entail a de-commodification of the status of individuals vis-à-vis the market

¹ Hausermann, J (1992) 'The realisation and implementation of economic, social and cultural rights in (eds) Beddard, R. and Hill, D.M. Economic, Social and Cultural Rights. London; Macmillan

² Esping-Anderson, G. (1990) The three worlds of welfare capitalism Cambridge; Polity Press.

For Esping-Anderson the focus is wrongly placed on the amount of money spent on welfare state policy rather than focusing on what is achieved such as to what extent is the citizen de-commodified. The argument here is that as long as individuals are tied to the market for the purpose of human survival, then they can be treated as commodities. According to Esping-Anderson (1990) the outstanding criterion of social rights must be the degree to which they permit people to make their living standards independent of pure market forces ...

If social rights are to prove effective in any social setting then it could be argued that they must not stand alone, their status will be protected and enhanced if they are placed in conjunction with civil and political rights as part of a citizenship model. For according to Twine (1994) ³ in continuation of the theme expressed by Esping-Anderson when social rights are added to civil and political rights we start to move from treating human beings as things to be bought and sold, to a consideration of their essential humanity and its sustenance and development.

Social rights have to be seen for what they can achieve and it can be argued that their presence in a citizenship model will enhance and invigorate the corresponding rights attending to civil and political matters. For as Barbalet (1993) ⁴ points out social rights are able to affect the pattern of inequality directly because they permit the provision of benefits in kind which may lead the real income of a citizen to be much greater than their money

³ Twine, F. (1994) *Citizenship and Social Rights: The interdependence of self and society*. London: Sage

⁴ Barbalet, J.M. (1993) 'Citizenship, class inequality and resentment' in (eds) Turner, B. *Citizenship and Social Theory*, London; Sage.

income, This can have direct influence on the way civil and political matters are carried out by citizens.

For example if social rights contributes to a change in the material conditions of people such as greater access to social housing and improved access to education then this may result in more people participating the the political process by voting. Also a greater respect for law and order may result with a reduction in offences relating to private property which may release some of the money already designated to maintaining the courts, prisons etc. In fact it can be argued that the exclusion of social rights from the model of citizenship reduces the capacity of civil and political rights to be truly effective in a democratic society.

Another important point to note in terms of what is social rights is to consider what they are not. And in this context it can be argued that social rights are not part of the discourse that supports a Capitalist system. As Van Der Veen (1993) § alludes to unlike civil and political rights, social rights have the potential to undermine the Capitalist system as they undermine the notion of work as a distributive mechanism. Social rights is not based on work as a distributive mechanism but on need. Social rights stress the duties of the community to the individual.

How the individual is seen terms of considering social rights is important to

§ Van Der Veen, R, (1993) 'Citizenship and the Modern Welfare State. Social integration, competence and reciprocity of rights and duties in social policy' in (eds) Coenan, H. and Leisink, P 'Work and Citizenship in the New Europe. England; Edward Elgar.

Meehan (1993) ⁶ for if we see the individual as a political being we can entertain the notion of social rights being part of citizenship. On the other hand if we see them as being an economic being then they must remain free to participate in the market and deal with things on an individually orientated rational basis. This contrast in perspectives on how the individual is defined has the potential for setting the parameters of the definition being utilised. For its only by going beyond the individual as the unit of analysis can we embrace the notion of social rights.

For this leads us into the collective responsibility for promoting the development of human development and according to Doyal and Gough (1991) ⁷ a social right of citizenship that is based on recognition of lifecourse social interdependence would require a sharing between those in work and those out of work, at any one time, to provide an optimal level of resources for the human development of all. The aspiration behind this approach could be underpinned by a right to a basic income.

According to Raymond Plant (1992) social rights are equal to civil and political rights. Plant goes on to outline what a fully developed theory of social rights has to provide:

- The agent to whom the rights are ascribed
- The features of the agent which justify the ascription of such rights
- The nature of the objects, resources, states of affairs, processes, or forebearances to which the rights are rights

⁶ Meehan, E. (1993) *Citizenship and the European Community*. London; Sage.

⁷ Doyal, L. and Gough, I. (1991) *A theory of human need*. London; Macmillan

- Who or what has the duty to respect, implement, or satisfy the rights which individuals have

The definition I have used to describe what social rights are (and are not) clearly supports the requirement to confer social rights with an equitable status to that of civil and political rights by attaching them to a model of citizenship. This if enacted has the potential to reinvigorate the existing components of citizenship while providing a strategic position for a real sustained attack on material inequality.

1.3. Who we should be considering a social rights approach to eradicating poverty and social exclusion

In later chapters I will be looking at why we should be considering certain social rights such as the right to housing, health and education in terms of their international recognition and inclusion in various international human rights instruments. This in itself is a justification for arguing that it is right and proper to discuss the merits of a social rights approach to eliminating poverty and social exclusion.

To bring this discussion into a contemporary Irish context I want to suggest that we heed the words of Dr. Christopher McCrudden, Professor of Human Rights Law at Oxford University who while speaking at the National Economic and Social Forum on Equality in Dublin Castle on the 18th May, 2000 stated that we in Ireland at present have the best opportunity to really attack poverty and social exclusion. He based his comments on the current and predicted future economic prosperity, the agreement by government and social partners that poverty and social exclusion was issues

of immediate importance, the spirit of the peace process and the proposed inclusion in Irish law of the European Convention of Human Rights.

His suggestions of how we might best attack the twin evils of poverty and social exclusion is summed up by linking these issues to a social rights based approach, I quote "...The attractions of linking citizenship with rights and equality is that, once inside the Pale, nothing more needs to be said as a justification for claims of equality other than the claim of citizenship. I suspect that the strategy that is being adopted by some groups in Ireland is to emphasise citizenship as almost a proxy for discussion of the rights...to the extent that citizenship is inserted as a conditional element it may create an important insider/outsider distinction. Non-citizens (either in law or in the popular imagination) will be deprived of access to that which citizens have...A good example of this is...the travellers..."

Furthermore according to McCrudden "In several of the United Nations human rights committees overseeing the main human rights treaties, there is a frequently made point that one of the ways in which discrimination and inequality is often made most manifest in society is by denial of social and economic rights...such rights should be established in Irish law and the place for them is in a revised Constitutional text and they should be enforceable"

McCrudden concluded by saying that we had a choice in Ireland between the drip-drip approach of social reform through policy to attack poverty and social exclusion. Or on the other hand we could effect constitutional change by introducing a bill of social rights specifically aimed at countering the twin problems as outlined.

These sentiments were echoed by another noted speaker at the same conference Mr. Niall Crowley from the Equality Authority who stated that

"Social rights have not received the same level of attention to date as that of Civil and Political rights. Rights have tended to focus on the elimination of discrimination as opposed to the promotion of material equality. Yet the objective of equality of outcome requires the latter focus.. ."

It was admitted by our current Taoiseach, Mr. Bertie Ahern speaking at a recent National Anti-Poverty Strategy conference that " we can eliminate poverty in Ireland " and speaking at the same conference the Minister for Social Welfare, Mr. Dermot Ahern concurred with the Taoiseach's aspirations.

In 1997 the NSSB⁸ held a conference on Civil and Social Rights in the European Union. Emanating from the report on this conference Dr. Pauline Conroy has noted that the "report of the Comité Des Sages of Europe⁹" "...is critical of any exaggeration of the historical division between formal political and civil rights on the one hand (such as the right to vote) and social rights received by citizens as social policy (such as the right to housing, the right to health care)".

Furthermore according to the Conroy "the[Comité Des Sages] take the view that the hierarchy of rights which defines social rights in Europe as primarily workers rights and places them in a second class hierarchy to other rights is no longer sustainable

⁸ NSSB stands for National Social Services Board

⁹ The Comité Des Sage played an influential role in drafting the discussion documents for the proposed charter of Fundamental Rights in Europe.

For instance Marshall implies that rights were equally distributed to all and thus is accused of failing to pay attention to the situation of women and ethnic minorities. As Pedersen (1993) ²⁴ points out Marshall developed a theory of social citizenship that claimed to be universal but was constructed in such a way as to be applicable only to men. This criticism can be leveled at Marshall on the basis that he sees the emergence of the welfare state in Britain post-1945 as being the touchstone for the revival of social rights. However, many feminist critics including Pedersen would argue that the Beveridge inspired welfare state was patriarchal in nature therefore any improvement in social rights accruing would disproportionately favour men.

Another criticism which has been leveled at Marshall is that of Giddens (1982) ²⁵ which points to the failure of Marshall to capture the essence of the historical struggle on the part of citizens which has been paramount to the attainment of citizenship rights. For example, the struggle to gain the franchise and to gain workers rights through the trade union movement. Furthermore, as Giddens (1981) ²⁶ has alluded to, the development of citizenship along with modern democracy was made possible largely by the extension of the states capacity for surveillance, that is, the collection and storing of information on members of society.

²⁴ Pedersen, S. (1993) *Family, Dependence and the Origins of the Welfare State: Britain and France 1914-1945* Cambridge University Press.

²⁵ Giddens, A. (1982) 'Class division, class conflict and citizenship rights' in *Profiles and Critiques in Social Theory*. Macmillan

²⁶ Giddens, A. (1981) *A contemporary critique of historical materialism*. Macmillan

Marshall has also been taken to task for treating citizenship as an homogenous grouping. For instance Brubaker (1989) ²⁷ has pointed out that the distinction can be drawn between formal citizenship which means membership of a nation state and substantive citizenship which means an array of civil, political and social rights in line with Marshall's thesis. In this context one can be a formal citizen but be excluded from the substantive criteria which adds to the power of citizenship. For instance, according to Janowski (1988) ²⁸ there are four categories of claimants not already citizens. and these need to be included in citizenship. They are stigmatised humans: who among them are class denigrated as being poor and are thought to be unable to perform the duties and accept the rights of citizenship because of short term interests which will not benefit the community and comes about through a lack of education in a moral and academic sense.

Categories of rights for consideration according to Janowski is Opportunity Rights such as education and training, distributive rights such as pensions, social assistance and unemployment compensation which can lead to enabling rights.

2.7 The perspective of Saunders on Social Citizenship

Perhaps one of the most critical voices against the notion of social rights is Peter Saunders. Saunders (1993) ²⁹ argues that citizenship in a Liberal society does not have to contain the element of social rights alongside that of political and civil rights. He argues that the growth of real purchasing power and the rising cost of financing the welfare state combined to support the

²⁷ Brubaker, W. Rogers (1989) eds, Immigration and the politics of citizenship in Europe and North America. University Press of America.

²⁸ Janowski, T. (1988) Citizenship and Civil Society, University of Cambridge

The aims and objectives of the National Anti-Poverty Strategy (1998) and the commitments by the Government and the social partners under the Programme for Prosperity and Fairness (2000) also articulate the need to address poverty and social exclusion in Ireland. It can be argued that a social rights based approach is a more than adequate measure designed at effecting real change to the material deprivation that underpins poverty and social exclusion.

1.4 A summary overview to the upcoming chapters

When debate arises regarding the topic of social rights issues of expenditure, reciprocal duties and realisation of rights usually assume priority status.¹⁰ However, alongside this there appears to be an acceptance of the underlying assumptions that characterise debate around social rights. Assumptions such as that social rights have an inferior status to civil and political rights, that society cannot afford or confer justiciability on social rights. And that the duties of citizens to the state is just as important as social rights. It is with these assumptions in mind that I have prepared this literature review in such a way as to give a voice to a critical look at what underpins these assumptions. Therefore the review of literature that follows is mainly concerned with teasing out the conceptual and theoretical assumptions that form the basis of discussion pertaining to the issue of social rights.

Chapter two begins with a look at the concept of social citizenship. It draws on the writings by Marshall and Saunders for a contrasting debate around the topic of the chapter. Chapter three looks at the welfare state in terms of a

¹⁰ This observation is based on my attendance at a number of workshops which sought to explore the topic of Social Rights.

debate between a social rights approach to welfare provision which is inspired by Plant while a New Right critique is offered as a contrasting perspective.

Chapter four instead of focusing on specific obligations by state and citizens looks at some of the underlying assumptions around which the topic of the chapter is very often couched in. Chapter 5 touches on the issue of how social rights can be made justiciable. Chapters six, seven, eight and nine look at specific social rights such as housing, education, health and some other issues which many think is deserving of a rights status. Reference will be made to Ireland's obligations under various international human rights instruments meet certain standards of international agreement in relation to the rights outlined. Some models of where social rights can be set in a justiciable framework will be looked at in the case of the European Social Charter and the South African Constitution.

And finally an attempt will be made to link some of the themes emanating from this literature review with the aims and objectives of the National Anti-Poverty Strategy and the Programme for Prosperity and Fairness.

Chapter 2.

Citizenship and Social Rights

2.1 Introduction

The chapter begins with a look at a sociological definition of citizenship followed by a brief overview of some of the key historical points in the journey of citizenship to contemporary times. This brings us to the main theme of this chapter, the conceptualisation of citizenship in modern society and how it may embrace a social rights component. This will be developed within the contestable arena of two opposing perspectives. Arguments for the proposal will in the main be influenced by the voice of T.H. Marshall while the opposing side will be primarily mediated through the ideas of Peter Saunders. This chapter will also touch on the issue of morality surrounding citizenship and finally, to bring the discussion up to date a brief exploration of the theory of Post-Modernism and its impact on the notion of social rights within a concept of citizenship will be looked at.

2.2 Sociological definition of citizenship

It has to be acknowledged that the concept of citizenship can prove illusory in terms of locating a firm definition. For as Leca (1990) ¹¹ has noted the difficulty stems from the status of the concept itself, which is always suspected of implying both a reality and a desired ideal. Nevertheless, for the purposes of the discussion that follows perhaps it will be useful to equip ourselves with a sociological definition of citizenship. According to Turner

¹¹ Leca, A, (1990) in Turner and Hamilton (1994) cds, *Citizenship: Critical Concepts*. London: Routledge.

(1993)¹² Citizenship may be defined as that set of practises juridical, political, economic and cultural which define a person as a competent member of a society, and which as a consequence shape the flow of resources to persons and social groups. As a consequence of this definition, we can say that a general theory of citizenship would have to address the issue of social rights

2.3 Some key historical points of the citizenship journey

Its important to recall that the very notion of citizenship is one that was born out of social and intellectual struggle and has encountered an uphill struggle to maintain its relevance ever since. In order to do justice to this most noble aspiration of humanity it is worth a brief perusal of a perspective of its history.

It can be said that the concept of citizenship gained intellectual legitimation during the enlightenment project of the 17th and 18th centuries although the activity of being a citizen can be traced much further back. According to Dahrendorf (1996)¹³ the citizen was the city dweller, in the first instance the inhabitant of Athens in the fifth century BC.

Emanating from the Enlightenment perspective the individual came to be seen in a different light in theory at least. The emphasis on the individual shifted from being a subject of subservience to the monarch and to their divinely ordained place in the social hierarchy, to one of becoming a

¹² Turner, B.S. (1993) 'Contemporary problems in the theory of citizenship' in Citizenship and Social Theory (eds) Bryan S. Turner. SAGE

¹³ Dahrendorf, R. (1996) 'Citizenship and Social Class' in (eds) Bulmer and Rees, Citizenship Today: The contemporary relevance of L.H. Marshall, University College of London Press.

potential citizen with individual rights. According to Nisbet (1994) ¹⁴the word citizen meant in the middle ages an inhabitant of a town but in time its strictly urban connotations was removed and its gradual utilization first as a synonym for, then as a replacement of, the word subject emerged into discourse.

The theory went that the individuals place in society was no longer fixed as it was now open to change. The actualisation of this change was to proceed through political, economical and social struggle in the years to follow. For instance in gaining the right to own property, the extension of the franchise, the right to a fair trial, and an enunciation of the principles enshrined in the 1948 Declaration on Human Rights. It should be said that these changes did not evolve in a Darwinian sense along linear lines for every section of society but rather it travelled the course of conflict and struggle between competing interests and is still very much ongoing. ¹⁵

It could be argued that the civil and political components of citizenship have been to a large extent actualised, for instance the right to vote and the right to own property is guaranteed under law through the Irish constitution.

2.4 Some factors influencing the revival of social citizenship

Before we engage with the main discussion let us remind ourselves of some of the factors which have influenced the revival of interest in the relationship between citizenship and social rights. The following insight into

¹⁴ Nisbet, R. (1994) in Turner and Hamilton (1994) eds Citizenship: Critical Concepts. London Routledge.

¹⁵ See Barbalet, J.M (1988) Citizenship, Open University Press for a most useful exploration on the origins of Citizenship

the revivalism of the topic is offered by Dahrendorf (1988)¹⁶ when he points out that the crisis of the welfare state around Western Europe in the 70s and 80s and the subsequent erosion of social rights is a strong contributory factor in the revival of interest around the notion of citizenship. Key events in the background were the oil crisis of 1973, the coming to power of Thatcher in Britain and Regan in the USA, and the growth of market ideology which when combined were indicative of a major shift in politics of the 80s. As Gamble (1988)¹⁷ pointed out the object of the attacks coming from Regan and Thatcher in the 80s was to discredit the Social Democrat model of universal citizenship rights, and to replace it with the idea of citizenship rights achieved through property ownership and market participation.

To place this revived interest in a more contemporary Irish setting let us look at the words of Professor Coos McCrudden, Professor of Human Rights Law at Oxford University while speaking to the National Economic and Social Forum on Equality, which took place on 18 May, 2000. I quote "...the attraction of linking citizenship with rights and equality is that, once inside the pale, nothing more needs to be said as a justification for claims of equality other than the claim of citizenship..."

2.5 Marshalls thesis of social citizenship

Any search of the literature on citizenship and social rights will encounter a vast array of references to the work of T.H. Marshall and his pioneering work entitled *Citizenship and Social Class*. According to Marshall (1950)

¹⁶ Dahrendorf, R. (1988) *The modern social conflict: An essay on the politics of liberty*. Weidenfeld and Nicolson. NY.

¹⁷ Gamble, A. (1988) *The Free Economy and the Strong State*. Macmillan.

the twentieth century witnessed the revival of the notion of social citizenship, whereby social rights became equally important alongside civil and political rights in terms of constructing a notion of citizenship. In the words of Marshall himself " . . . By the social I mean the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to the standards prevailing in society. . .".¹⁸ Marshall describes the system of social rights as completing the citizenship package by bringing all citizens into full membership of the community.

Marshall's work has been and remains an important reference point for anyone researching the notion of citizenship and social rights as Rees (1996)²⁰ points out it is mainly from Marshall's classic formulation in *Citizenship and Social Class* that modern commentators draw inspiration. For instance Barbalet (1993)²¹ drawing on Marshall's thesis of citizenship argues that the means whereby citizenship can modify class inequality is through a reduction of class resentment. The addition of social rights to the constitution of citizenship means that citizenship and the capitalist class system come into conflict. The availability of these rights means less of a reliance on selling one's labour to survive and therefore more security is gained for the individual without affecting in a material sense the structures of inequality between classes. Income inequality although an important

¹⁸ Marshall, T.H. (1950) *Citizenship and Social Class*, Pluto Perspective.

¹⁹ *IBID*,

²⁰ Rees, A.M. (1996) 'T.H. Marshall and the progress of Citizenship' in, Bulmer, M. and Rees, A.M. (eds) *Citizenship Today: The Contemporary Relevance of T.H. Marshall* University College London Press

²¹ Barbalet, J.M. (1993) 'Citizenship, class inequality and resentment' in B. Turner (ed) *Citizenship and Social Theory*, SAGE

reference point for analysis in and by itself does not cover the whole pattern of inequality associated with class differences.

For instance according to Held (1989)²² if citizenship involves the struggles for membership and participation in the community, then its analysis should involve examining the ways in which different groups, classes, and movements struggle for power and control over their own lives-rather than analysing citizenship around the relations of capitalist production. The point made by Held is important in that it seeks to broaden the analysis of citizenship, however, it must be borne in mind that in the Western world at least discussions of citizenship takes place against the background of a society built around the market ideology of capitalism.

2.6 Critique of Marshall's claim

It has to be said that the work of Marshall has inspired criticism as well as acclaim. As Bottomore (1992)²³ points out Marshall's study of the development of Citizenship resonates with a peculiarly Englishness about it. For Bottomore it was contextualised in the portrayal of Britain as an homogenous society rallying to the reconstruction of its physical and mental structures in the immediate post-war period. Marshall's thesis sought to convey the development of citizenship as a linear process beginning with the emergence of civil rights in the eighteenth century, moving to political rights in the nineteenth century and finally through the emergence of the welfare state embracing social rights in the twentieth century.

²² Held, D. (1989) 'Citizenship and Autonomy' in (eds) D. Held and J.B. Thompson *Social Theory of Modern Societies: Anthony Giddens and his critics*. Cambridge University Press

²³ Bottomore, T. (1992) 'Citizenship and Social Class Forty Years On' in *Citizenship and Social Class* Pluto perspective.

shift from socialised to privatised provision thereby undermining the notion of social rights being a constituent element of citizenship.

Saunders argued that privatised consumption enhances rather than undermines citizenship. For instance in his study of the 1980s of the sociological implications for the rise in home ownership he found that home owners appear to be more involved in collective life outside the home than are tenants, and this pattern holds when control for social class differences was made between the two tenure groups. This point would undermine the view that privatization leads to a loosening of bonds in community and social life. The stance taken by Saunders would seem to have support from Barbalet (1988) ³⁰ in that instead of providing a means of enabling citizens to partake in the community, social rights may for some turn out to be a barrier to it. Stretton, H. (1976)³¹ appears to be in agreement on this point in saying that people will only engage in the collective of social life when their own individual lives are held to be secure.

However there is an implicit assumption here that house ownership and the acquirement of possessions can provide the basis for individual security. But the question can be asked as to how secure are these possessions if they are dependent on participation in an insecure job market to pay off the mortgages and the loans which have been borrowed to finance these goods. Nevertheless, the argument posed by Saunders is further supported by

²⁹ Saunders, P., (1993) 'Citizenship in a Liberal society' in B Turner (ed) *Citizenship and Social Theory*, SAGE

³⁰ Barbalet, J.M. (1988) *Citizenship*. Open University Press

³¹ Stretton, H (1976) *Capitalism, Socialism and the Environment* Cambridge University Press.

Taylor-Gooby (1991) ³² and feeds into the stance taken by some politicians that see state provision in the form of social assistance or lone parents benefits as leading to dependency on the part of claimants.

However, it could be asked what is to be achieved in giving people a civil right to be free from arbitrary arrest if they have not got the means to feed themselves. Similarly what is the point in giving someone the right to vote and stand for elections if they cannot read and write or comprehend political discussion. Well in response to these points Saunders says that the rise in incomes has enabled people to achieve literacy levels and to maintain proper eating habits. Saunder's main point is that in contemporary society it is not the masses who reside in poverty unlike the last century, but rather a marginal group of people. Saunders would say that the removal of the masses from abject poverty is another indication of the success of the 'trickle down' effect of wealth from the capitalist system.

Another point which Saunders alludes to is that state withdrawal is not inevitable from a market driven society but rather the relationship of the state to the market changes, such as in the form of state subsidies like mortgage interest tax relief. This can be seen to operate in Thatchers policy during the 80s in Britain, where as Culpitt (1992) ³³ has pointed out that behind the rhetorical soundings of 'rolling back the state' and her infamous claim 'there is no such thing as society', Thatcher actually increased the amount of mortgage interest tax-relief in order to encourage more home owners.

³² Taylor-Gooby, P (1991) Social change, social welfare and social science. Harvester Wheatsheaf

³³ Culpitt, I. (1992) Welfare and Citizenship: Beyond the crisis of the welfare state? SAGE

According to Hindess (1987) ³⁴if citizenship can lead to social cohesion and social integration, then anything that undermines this is potentially socially divisive. So the erosion of the idea of universal entitlements based on citizenship rights are seen as divisive by Hindess. In contrast Saunders argues that universalism instead of generating unity leads to fragmentation as people resent paying taxes to those whom they consider undeserving of their assistance. This question of who constitutes deserving/underserving is a throwback to the Victorian ideology in eighteenth century Britain and the famine times in Ireland with the emergence of the poorhouse system.

However, a more contemporary issue can highlight the ambiguity of this point. For instance, do tax-payers feel that the cost of recent tribunals in Ireland can be justified on the basis that the legal teams are more deserving of large fees from the public purse, while at the same time contend that refugees are the underserving and therefore not entitled to state handouts. Also the revelations emanating from these tribunals around the practices of the banking and financial sectors in this country has led to an air of moral ambiguity on the part of the public in general. This can be contrasted to the public, political and media response to the refugee situation in contemporary Ireland and bear in mind that many of the banks under investigation have an international origin similar to the refugees.

2.8 The morality of Citizenship

According to Green (1990) ³⁵ although the efficiency and value of the market can be seen by those on the left, they are still preoccupied with the

³⁴ Hindess, B. (1987) Freedom, equality and the market Tavistock

³⁵ Green, D. (1990) Equalising People. IEA Health and Welfare Unit.

moral notion of selflessness. As a result of this the debate about citizenship is likely to turn into one centred on morality. It may be the case that those on the left that Green is referring to is concerned with the poverty and economic inequality that the market produces rather than being concerned with the motives of the market players.

On the other hand it can be argued that those in favour of the free market can also be accused of taking a moral stance on citizenship. Recent attempts to blame poverty on the individual has resulted in concepts of the underclass (Murray, 1990) which Lister ³⁶ points out is based on the application of a stigmatised label which tends to define the poor in moral rather than economic terms. According to Lister the dominance of this new-right ideology, now embodied in social policies, has gradually undermined social rights as an attribute of citizenship, placing all the emphasis on the privatized activities.

Selbourne (1991) ³⁷ has also stated that the argument for empowering the weak by means of a social rights approach is similar to the politics of envy which characterised the old left wing agenda and its critics of the Capitalist system. However, it could be said that this stance fails to consider the contribution that some of those critics has made to the debate on citizenship and social rights. For instance Townsend (1979) ³⁸ found that levels of poverty were increasing in Britain during the 60s and 70s, despite the

³⁶ Lister, R. (1990) *The Exclusive Society*. London, Child Poverty Action Group

³⁷ Selbourne, D. (1991) 'Who would be a socialist citizen' in G. Andrews (ed) *Citizenship*. Lawrence and Wishart

³⁸ Townsend, P. (1979) *Poverty in the United Kingdom*. Alien Lane

prevailing consensus of the time that the welfare state was effectively tackling poverty and would result in its elimination.

Another view which seeks to denigrate the moral standing of the poor on this issue is that of Stretton (1976)³⁹ who argues that giving the poor cash transfers to purchase health or education services would be a disaster as their levels of incompetence would result in mis-directed spending. Therefore, direct state provision of health and education and other services has to be protected.

2.9 Postmodern theory and its implications for social citizenship

According to Turner (1994)⁴⁰ Citizenship involves the idea of a common status and a common culture, to achieve these goals a common educational system or at least equal educational opportunity must be institutionalised. These political structures cannot easily be reconciled with post-modern culture according to Turner. The post-modern celebration of difference may in the long run signify the demise of the concept of citizenship as relevant to a period in history when the nation state dominated.

Post-modernism is characterised by a central assertion that our grand narrative explanations of life such as Christianity, Socialism and Nationalism for instance has been deconstructed. This has led us to the point where our tolerance of difference has been enhanced. For the purposes of this discussion take the idea of the demise of the nation state which is particularly useful to consider when we embrace the notion of an expanded

³⁹ Stretton, H. (1976) *Capitalism, Socialism and the environment*. Cambridge University Press

Europe, Already we are dependent on the European Central Bank to set the interest rates of member states who have signed up to the Euro and increasingly the legal frameworks of member states of the EU have to reconcile their domestic law with changes initiated in the European Courts, So there is evidence to suggest that the contours of the nation state is changing,

Whether these changes will lead to an erosion of the concept of society is another matter but we can say that some of form of society is paramount to the nature of human beings, In this instance we can use the arguments of Dahrendorf (1996) ⁴¹ who argues that society is necessarily because different people have to create common institutions to survive and advance their lot It is one thing to create common institutions at European level to regulate the transaction of currency or the application of the law, It is quite another thing to expect to create common institutions which will fund the provision of health and educational services of member states or indeed provide social housing to meet the needs of those who cannot compete in the market on a financial basis,

It could be argued that the concept of society in this regard can only be expressed within the boundaries of the nation state. For no matter how respectful of differences that post-modernism would have us believe we have become ask the Irish taxpayer to contribute to the health services of

⁴⁰ Turner, B. (1994) 'Postmodern Culture/Modern Citizens' in Bart Van Steenberghe, *The Condition of Citizenship* SAGE

⁴¹ 'Citizenship and Social Class' in *Citizenship Today: The Contemporary Relevance of T.H. Marshall* (eds) Bulmer, M and Rees, A.M. University College London Press

member states through a harmonised taxation policy and then a real test of respect of difference will emerge,

2.10 A Summary Overview

As is evidenced by this theoretical discussion of citizenship and social rights both perspectives have equally valid viewpoints to make. For instance according to Marshall citizenship comprises of three sets of rights, civil, political and social rights with each complementing each other. Marshall was writing at a time in the 1950s when the civil and political spheres were already encapsulated within a legal framework and where the expression of social rights was seen to be accommodated within the emerging welfare state. Subsequently, it can be said that the expression of social rights through the welfare states in Western societies have not materialised in the sense that perhaps Marshall believed they would, It can be said that perhaps this is primarily due to the process of means-testing which has reduced the status of social rights to reluctant hand-outs by the state,

On the other hand Saunders has argued that the need for citizenship to include a social rights component is obsolete. According to Saunders the market has succeeded in providing a real increase in income levels which has allowed the majority to acquire access to housing, health and education and therefore to enhance their standard of living. It is no longer necessary for the state to provide these services and consequently their provision is no longer a condition of citizenship.

In an attempt to weight the strengths and weaknesses of both perspectives let us remind ourselves that the tripartite components of Marshall's model is

often reflected in an aspirational sense in various international treaties such as the European Convention on Social and Economic Rights and through the European Charter on Social and Economic Rights. Also treaties such as the 1948 Declaration of Human Rights which would be seen to uphold mainly civil and political rights touch on certain issues pertaining to social rights.

National governments will also commit certain levels of spending to health, education and welfare assistance on a yearly basis thereby supporting in an aspirational sense the notion that these services are of benefit to society. It can be argued that the thinking behind international treaties and national governmental policy recognises the inadequacies of the market in delivering social rights. The level of state intervention in the guise of providing mortgage interest relief and regulating capital gains tax is also evidence that government see the potential unfairness of laissez faire capitalism for all sections of society and not the just the marginalised like Saunders has argued.

Therefore it can be said that the main strength of Marshall's thesis is that he attaches the notion of social rights onto the concept of citizenship. This encapsulates the expression of the aspirations of international treaties and government policy and secures legitimation for these claims within a recognised legal instrument, that being the concept of citizenship. Perhaps the main weakness in Marshall's thesis is that he also attaches the expression of social rights to the evolution of the welfare state. In making this link to such a transient instrument as welfare state spending rather than to a formal bill of rights such as the civil and political spheres, one runs the risk of

constantly seeking to justify claims to what are essentially basic human rights and not state privileges.

Perhaps the main strength of Saunderson's argument is that he looks at contemporary trends in society such as the growth in owner-occupied housing and links this to debate on wider issues such as the notion of citizenship. In doing so he shows that when people have their material needs catered for as in the case of having security of tenure then they are more disposed to participating in social and civil events. This shows that essentially humans are social and given the social opportunity they will express their social nature.

However, it can be said that Saunderson's thesis has many flaws amongst which is the uncritical acceptance of government policy which led to the rise in owner-occupied housing. A key factor behind this policy which began with Thatcher's government of the late 70s and 80s was a decrease in capital spending on social housing in Britain. It can be argued that this led to people wanting an alternative away from living in badly maintained housing estates and created a climate where the residents were primed to receive the notion of being private house-owners.

This is not to say that people did not want to own their own homes but merely to point to the ideological shift from state provision to privatization that accompanied changes in Britain and which underpin the argument that Saunderson advances against the notion of social rights being included in citizenship. This is a shift which Saunderson seems to uncritically accept and one that has had profound implications for the notion of social citizenship.

For the driving force behind this shift has been primarily market ideology and one has to ask the question which Saunders failed to do, for the benefit of whose interest did this shift take place.

Finally, from a post-modern perspective the borders of citizenship is changing with the possible erosion of the nation state and the growth of larger blocks countries such as the European Union. However, this position has one main weakness in that it assumes that the emergence of blocks of nation states such as the European Union is done with the support of and in the interests of the citizens of the states in question. A closer analysis of the situation leads one to believe that the main interests to be served by setting up blocks of nation states is that of the business interests in eliminating borders and tariffs on trade and acting as an economic counterweight to existing blocks of power like the United States.

Evidence of this pro-business attitude as opposed to one of where the rights of citizens are paramount was provided by the comments of British Prime Minister Mr Tony Blair at the Portuguese EU summit on 19 June 2000. The issue was whether to have the proposed EU charter on fundamental rights made legally enforceable and therefore to cement the notion of a citizens social rights into a binding legal instrument **In** this instance Mr Blair led the opposition to the charter gaining the status of being legally binding on the grounds that he would oppose " anything which imposed new costs on business-or creates precedents that could bring new cases to the European Court of Justice" ⁴²

Therefore it would seem that one can conclude that the real strength of linking social rights to citizenship is that it encourages governments to provide positive rights to the citizens who vote them into power. In this sense it draws out the primary purpose of governments which Gould (1988)⁴³ points out is to provide for the means to the right to well-being of its citizens. This right to well being leads to the provision of social rights as an obligation of governmental agencies-as well as the requirement that the provision be made in a democratic fashion. Further elaboration of this point is given by Gewirth (1982)⁴⁴ who argues that human rights are essential to every human being as the necessary conditions of human action. These conditions that must be fulfilled if human action (human agency) is possible is the primary justification for governments in that they serve to secure these rights. For example the right to free speech also entails enabling citizens to speak effectively, through improving education and access to the TV and radio and newspapers for those who can speak effectively such as the radical voices of society.

⁴² The Guardian, 20-6-00

⁴³ Gould, A. (1988) *Rethinking Democracy: Freedom and Social Co-operation in Politics, Economy and Society*. Cambridge University Press

Chapter 3

The Welfare State

3.1. Introduction

This chapter first of all considers some of the ways in which the welfare state is defined. The political ideas which underpin and surround welfare state policy will be looked at and a discussion will take place between a social rights approach to welfare and a market based New Right critique of this approach. Concepts such as the needs of citizens and the process of de-commodification will be covered and the future of the welfare state will be touched on. Finally the Irish welfare state will be looked at.

3.2. What is the welfare state?

According to Esping Anderson (1990)⁴⁵ the welfare state is not just a mechanism that intervenes in, and possibly connects, the structure of inequality; it is, in its own right, a system of stratification. It is an active force in the ordering of social relations. For instance the practise of means-testing seeks to stigmatise recipients of welfare which serves the purposes of stratification.

According to Cochrane (1993)⁴⁶ a welfare state can be defined as when the state gets involved in the provision of social security and social services. Admittedly this may be regarded as a narrow definition.

⁴⁴ Gewirth, A. (1982) Human Rights: Essays on justifications and applications. University of Chicago Press

⁴⁵ Esping-Anderson, G. (1990) The three worlds of welfare capitalism. Cambridge, Polity Press.

⁴⁶ Cochrane, C. (1993) **Comparing** Welfare States: Britain in international context. Open University Press

In contrast we can see an example of a much broader definition from Dominelli (1991) ⁴⁷ which argues that welfare states comprise of those public and domestic relationships which take as their primary objective the well-being of the people.

3.3 A political critique of the welfare state

Part of the Neo-Classicism/New Right objection to the welfare state is that suppliers of welfare state services are themselves driven by utilitarianism. They are the professional classes who are not motivated by altruism but by a desire of expansion of their services, despite evidence that their services may be worthless. This is the position of Niskanen (1978) ⁴⁸

Neo-Classicism would argue that in preserving liberty and choice ideally poverty relief should be directed in the form of cash or vouchers, so that beneficiaries can spend on services themselves. This argument is based on the effective use of rationality, however this use of rationality is open to debate as evidence of the self-help groups would show. This is argued by Barry (1999) ⁴⁹

According to Dean (1999) ⁵⁰ Means testing is an essential feature of New Right thinking, they do not accept the doctrine of social citizenship. Limited to poverty relief and not embracing the idea of rights to resources to develop as a human being.

⁴⁷ Dominelli, L. (1991) *Women across continents: Feminist comparison social policy*. London; Harvester Wheatsheaf

⁴⁸ Niskanen, W. (1978) *Bureaucracy: Servant or master* London; Institute of economic affairs

⁴⁹ Barry, N. (1999) *British Social Welfare in the Twentieth Century*. London; MacMillan Press

⁵⁰ Dean, H. (1999) 'Citizenship in New Labour, New Welfare State?' in (eds) Powell, M, *The 'third way' in British Social Policy*,

Dean (1999) while neo-classicals have railed against the costs that social rights have imposed on market economies and the disincentive to work they are said to produce... Conservatives are concerned with production of a culture of dependency with no conespousing sense of duty.

According to Pirie, M. (1994) ⁵¹ referring to moral hazard says that anything done to relieve the distress of unemployed unmarried mothers, will instigate more of the behaviour that caused the distress. I wonder can this be deemed a rational moral action based on the stigma and shame attached to the status of the aforementioned.

Further criticism of the Welfare State is offered by such as Dr. Nigel Ashford ⁵² along the following lines.

- The welfare state is immoral, because it is coercive in that it forcibly redistributes income from taxpayers to those who are deemed to be deserving of it by politicians. Moral behaviour can only be based on free choice.
- The welfare state is against freedom of choice in that the state provides universal health and education and other services leaving little room for alternative provision

⁵¹ Pirie, M. (1994) 'Reforming the Welfare State' in Bell, et.al. The End of the Welfare State. London; Adam Smith Institute.

"Dismantling the welfare state: Why and How' A paper prepared for the Libertarian Alliance by Dr. Nigel Ashford (1993)

- The welfare state creates dependency on state services and subsidies when its initial aim was to provide temporary assistance for people in dire need.
- The welfare state has proved to be ineffective as the numbers of illiterate people coming out of state schools show.
- The producer being the state and in a monopoly position does not have to be accountable for the service provided, so the consumer has no choice of supplier.
- The welfare state has been shown to be inefficient for instance for the amount spent the quality of service is dismal as can be seen in the health services

3.4 A social rights approach Vs a New Right approach to welfare provisions

In the following section I am going to look at two contrasting perspectives around the issue of a social rights approach to welfare state provision. On the one hand there is the ideas expressed by Raymond Plant (1992)⁵³ which argues for a social rights approach to be taken to the provisions of the welfare state. On the other hand there is the perspective of what I will term the 'New Right' which is critical of the notion of welfare rights.

⁵³ Plant, R. (1992) 'Citizenship, Rights and Welfare' in (eds) A. Coote, *The Welfare of Citizens* London; River Oram Press

According to Plant the idea of welfare rights entails the notion that citizens obligations do not stop at mutual non-interference, for citizens should have positive obligations to provide resources for welfare through contributions in taxation. The important point is that these social rights to resources are to be ascribed independently of any character assessment of the individual, in the same sense that political and civil rights are not conditional on lives of virtue.

Whereas, a New Right approach would argue that the market is a more effective means of people securing access to the necessary services of life, such as health, education and this perspective is consequently quite critical to the idea which seeks to strengthen the hand of the welfare state through a rights based approach.

I have chosen to present both perspectives as follows. The initialled NR side will stand throughout for the New Right and the discussion will proceed with this side making a statement opposing the idea of a social rights approach and the side initialled RP will represent the arguments of Raymond Plant in rebuttal.

The discussion is intended to model the confrontational nature of parliamentary democracy and is aimed at teasing out some of the main points for and against the idea of a social rights approach to welfare state provision. Social rights for the purposes of this discussion ought to be primarily treated in a generic sense, with the idea of a right to health and education underpinning any conceptual dislocation that may arise.

- NR:** *Social rights are too costly and dependent on resources being made available, whereas civil and political rights are not.*
- RP:** *The cost of maintaining civil and political rights is also quite high. For instance the financing of the police, the courts, the prisons and the cost of running the political system which reproduces the means to actualising political rights. Also the cost of providing for civil and political rights is dependent on state resources being made available.*
- NR:** *Social rights can prove to be limitless and individuals and groups can come up with new demands of the state on an infinite basis.*
- RP:** *Civil and political rights can also be viewed in the same way. For instance changes in technology have meant that the state are now providing CCTV cameras for security purposes. Similarly attempts to change aspects of the political system has necessitated the recent tribunals in Ireland. These new demands on the states resources are meant to support the continued provision of civil and political rights.*
- NR:** *In a pluralistic society it would be virtually impossible to reach a consensus on what ought to be considered as social rights.*
- RP:** *It could be argued that there is already a great deal of consensualism around the need for a right to health and education, these rights are enshrined in virtually every International treaty on Human Rights. Also there is the many political aspirations such as the right to shelter,*

food, clothing, and a reasonable income which could be said to enjoy a high degree of consensualism.

NR: *Social rights are so vague and dependent on the provision of resources that they are not legally enforceable and therefore non-justiciable.*

RP: *WellfO/' instance the 1937 Irish Constitution safeguards the right to primary school education which can be regarded as a social right which shows that social rights can be justiciable.*

NR: *Freedom must be distinguished from ability. Just because the right to be fi'ee is a given civil right, the social right to the resources to realise one's ability in a fi-ee society does not necessarily follow. Freedom has to be restricted to negative liberty in terms of freedom from rather in positive terms such as the right to (a prOVision) to enable one to do what one is fi-ee to do.*

RP: *On the contrary freedom can be linked to ability for **if** there is no possibility of performing an action then the question of whether we are free to do it or not does not arise. For instance one could say that we are free to jump from Dublin to London but we do not have the ability to undertake this. Therefore the ability to pe/form X ought to be a precondition of whether we are free or unfree to do Y. Furthermore, what makes freedom so valuable. Is it not precisely what we can do with it.*

NR: *It is conceptual confusion to argue that social justice demands the provision of social rights in order to correct the unequal outcomes of the market economy. For market outcomes are the result of intentionable individual acts of free exchange based on the exercise of rational judgement"*

RP: *The concept of social justice can be regarded as a moral concept. Morality is linked to the foreseeable consequences of an act and not just the intention behind the act. It may not be the intention of the players in the market to produce unequal outcomes but they must take responsibility for the consequences of their actions just as they are expected to do for the intentions behind the actions" Also it is questionable whether human acts performed in the market is based on a rational judgement. For instance, is it rational for someone who is suffering adversely from cigarette smoking to continue to purchase cigarettes on the market.*

NR: *The welfare state sought to provide the means for a fairer and more socially just society. Yet it could be argued that its outcomes have been immoral. It can be said that the primary reason why the welfare state has failed is because its basic premise is coercive in that it forcibly redistributes income from taxpayers to those who are deemed to be deserving of it by politicians" Any measures which seek to introduce economic and social rights through the welfare state for instance will suffer the same fate.*

RP: *Well the cost incurred by the welfare state is no greater than the cost to state expenditure in areas in civil and political matters. For instance the cost of maintaining a free legal aid service which undelpins the right to a free trial.*

3.5 The needs of welfare state recipients

According to Hewitt (1992) ⁵⁴ in the welfare state, definitions of need perform an important service in ideology. The conjunction of material, mental and moral features presents the welfare dependent as an ideological subject in need. The subject is cast variously as the fully fledged citizen, as a moral burden on the cost of private wealth or as a unit of labour in the reserve army to be reproduced in the interests of capital

Hewitt argues that social policy is built around the belief that its central purpose is to meet need, therefore it should be aware of the ideological connotations and direct an understanding towards non-ideological needs.

According to Leiss (1978) ⁵⁵ needs can be defined either as intrinsically or procedurally. The former is often referred to as the basic needs approach positing a universal framework of needs shared by all and presupposed prior to understanding the diverse forms of social existence which can make up a society. The latter refers to a consensus of understanding around needs dependent on the culture of where this arises, or subjective wants.

⁵⁴ Hewitt, M (1992) Welfare, Ideology and Need. Harvester Wheatsheaf
⁵⁵ Leiss, W. (1978) The Limits of Satisfaction Calder

Taylor-Gooby and Dale (1981) ⁵⁶ argue that as the level of society's productive capacity is raised, needs above subsistence are met. Two levels of needs arise, basic and higher

Whereas Galtung (1980) ⁵⁷ argues that welfare services often ignore empirical human need in pursuing unclear or alternative objectives. For instance in case of ignoring the clear need for extra hospital beds, yet spending millions on FAS training schemes which is focused on training people for the reproduction of labour for capital accumulation. Other writers have offered differing ideas regarding the idea of needs. ⁵⁸

3.6 The perspective on the de-commodification of social rights

According to Twine (1994) ⁵⁹, when the individual sells their labour to the market place for a wage, then their labour can be referred to as a commodity. For, if a commodity is any product or service that can be bought or sold, then a commodified relationship is one that a price can be put on, that is, it is marketable. De-commodification means removing relationships from the marketplace

The idea that labour power is commodified can be linked to the emergence of the industrial revolution and to the growth of Capitalism as a means of operating economic matters. Therefore, it is not inevitable but rather may be viewed as being historically specific and linked to the separation of people from the land and from the means of production. When labour power

⁵⁶ Taylor-Gooby, P. and Dale, J. (1981) *Social Theory and Social Welfare*. Edward Arnold

" Galtung, J. (1980) 'The basic needs approach' in K. Lederer (eds) *Human Needs: A contribution to the current debate*. Gunn and Hain

ss See Lacan (1977) Marx (1963) Foucault (1980-1982)

became a commodity, people's rights to survive outside the market are at stake. It is this which constitutes the single most conflictual issue in social policy according to Esping-Anderson (1990).⁶⁰ And it is also this issue of de-commodification which has been a hugely contested issue in welfare state development

According to Esping-Anderson de-commodified rights are differentially developed in contemporary welfare states. In social assistance dominated welfare states such as Ireland rights are not so much attached to work performance as to demonstrable need. A person is assessed for social assistance on the basis of means-testing. In the case of those who are unemployed and eligible for work they are forced to meet the criteria that they are available for work and therefore their labour power is still commodified in that they are obliged to sell its potential to the welfare state in order to receive financial assistance.

One of the strongest critiques of this notion of commodification comes from Twine (1994)⁶¹ who argues from a holistic perspective on the interdependence of the self and the social. He points to the dependence upon selling our labour as a means of life and that this may result in selling part of our life, that is, part of our 'self'. In doing so we may sell the very possibilities for our own human development because all we can get is a boring routine task that makes no call on our intelligence and does not engage our human abilities.

"Twine, F. (1994) *Citizenship and Social Rights: The Interdependence of Self and Society*. SAGE
⁶⁰ Esping-Anderson, G. (1990) *The Three Worlds of Welfare Capitalism* POLITY PRESS

According to Twine social rights may protect labour power from being treated as a 'thing', Therefore, we must establish what level of welfare and security is to be provided through social rights such that a person is able to participate in the heritage and civilization of his or her society, independently of the vagaries of the labour market Twine concludes by saying that the basis for a social right thus needs to relate not to a person's unequal and insecure relationship to the labour market but to his or her equal status as a citizen.

This process of commodification can be seen to be replicated in the Post-Modern sense of the selling of the image and the sense that the image is everything. For instance the sense that people who are public property is commodified as can be seen in way that the private lives of celebrities is bought and sold in media and thus becomes part of the commodification process. It would seem that commodification can be looked on as an insidious process which has gained entrenchment in the values and structures of a consumer orientated society.

3.7 The future of the welfare state

According to George and Miller (1994) ⁶² governments that want to maintain even the affordable welfare state will need to concentrate some of their efforts in educating the public that social services are worth paying for, not only for self-interest reasons, but on the grounds of efficiency and community.

⁶¹ Twine, F., (1994) Citizenship and Social Rights: The interdependence of self and society SAGE

Consequently the future may see a divide between a residual and a citizens welfare state. Political parties may be reluctant to stray beyond what may be termed the affordable welfare state plus they are unlikely to differ greatly on their policies to welfare states. Characteristics of political party policy to expect in the future is a commitment to private ownership and an extension of the market into the provision of welfare state services underpinned by an economic aim for high growth, low inflation, low taxation and no party calling for full-employment

These measures are seen to reflect the public mood, which in turn arises from the structural imperatives of a consumption-orientated society. People see consumption as the key to a good life and ironically they are tolerant of the indirect taxation levelled on consumer products. ⁶³

In order to facilitate the direction away from state expenditure on the welfare state political parties have been drawing on the thesis by Albert Hirschman to support their ideological diversion. In this thesis the three components of exit, voice, and loyalty is emphasised.

1. **Exit:** To undermine the universal principle by maximising the opportunities to opt out of state provided services. Examples of this in action can be seen in the sale of council housing and private health insurance, indicating that security can be better achieved outside the state. As well as providing opportunities for the consumer to exit the same must be allowed for the providers in the case of teachers, doctors,

⁶² George, V. and Miller, S. (1994) Social Policy Towards 2000: Squaring the welfare circle. London; Routledge.

etc. and can the inability by governments pay decent wages be not reflective of this particularly if you have a right wing government

2. **Voice:** The public has a low opinion of the services provided but a high opinion of the state institutions that provide the service. Public blame cuts, rather than the nature of state involvement. Explain why state spending is more effective
3. **Loyalty:** People have a misplaced moral loyalty to the weak, but this cannot be moral if it is coerced. Opportunities for the expression of compassion should be encouraged hence the charity's and the People in Need campaign.

3.8 Irelands Welfare State

It could be said that Ireland has not been categorised as a welfare state society. This is to say that in general discussion, the discursive status of Irelands welfare state would seem to reside on periphery of debate. In contrast, to the amount written on the British welfare state and the Scandavian models of welfare little attention has been paid to the Irish case. Indeed this is an observation offered by Cousins (1995) ⁶⁴who argues that despite the enormous importance of the social welfare system in Irish society, there has been relatively little written on the development of the system as a whole

⁶³ See Herbert Marcuse (1968) for further on the forces behind the phenomena of consumption.

⁶⁴ Cousins, M. (1995) *The Irish Social Welfare System: Law and Social Policy*. Round Hall Press

The contribution of this book by Cousins could be regarded as perhaps the seminal text on the Irish welfare state. Its structured around an analysis of some of the key historical and social developments of the welfare state in Ireland since its inception. Among Cousins' central assertions is that to understand the development of the Irish welfare state one must be conscious of the influence on this development of our near neighbours the UK. Two points are necessary to illustrate the connection. First the influence of the UK through the structures of the poor law which were in place from colonial times. And secondly, the geographical and linguistic closeness of the UK to the shaping of social policy in Ireland.

Another body of influence on Irish social policy which Cousins draws attention to is that of the Catholic Church. As does Cochrane (1993)⁶⁵ who argues that the Irish Welfare State from 1922 to 1945 could be regarded as one underpinned by the principles of Catholic Corporatist Welfarism. This is a point picked up and elaborated on by Peillon (1982)⁶⁶ who argues that Catholic social teaching wanted a society into which socio-professional groups organise themselves into corporations and collaborate on decision making-and where the family and voluntary organisations is guaranteed independence from the state in ordering social affairs.

This meant that the teaching of the church governed state social policy. The state came to rely on the family and voluntary organisations to underpin social policy and in doing so could be accused of ceding a large degree of power to the church hierarchy. According to church teaching the family was

⁶⁵ Cochrane, C. (1993) *Comparing Welfare States: Britain in International Context* Open University Press.

the fundamental unit of social order. Evidence of this can be seen from the special position that the family receives in the 1937 Irish Constitution.

Within the family the woman also came in for special attention from the church and again this was enshrined into the Constitution. According to church teaching the woman was responsible for the welfare of the family, the church and the nation. The church also took the lead in the provision and management of health, education, public charity and assistance for the poor

When speaking of the Irish Catholic Church one must be conscious that the Catholic teaching which touched Ireland in these times was always sanctioned by the hierarchy in Rome through the Pope. Therefore, to put the Catholic Church teaching in an International context around this time, it could have been seen as the 'third way' in that it was a mid-point between the forces of full blown Socialism and unconstrained Liberalism.

However, it must be said that the structural influence of the UK and the active influence of the Catholic Church were not the only factors which ensured a minimum of state intervention through welfare policy. For according to Lyons⁶⁷ Catholic social philosophy, middle class nationalists who refused to pay taxes, a shift to laissez faire and a reduction in public spending, all combined to ensure that a state role would be less substantial than in most European nations.

In the 60s and 70s aftermath of Vatican Two church policy shifted to what may be termed a left of centre approach to issues of such as poverty. This

⁶⁶ Peillon, M. (1982) Contemporary Irish Society. Gill and Macmillan

⁶⁷ Lyons, F.S.L. (1979) Ireland since the famine. Fontana books

meant that the church was willing to support increased state expenditure on Welfare state policy on the grounds of social justice.

However according to Breen et al, (1990) ⁶⁸ although the state increased provision of resources this was done in a mainly financial sense. The church still retained the means of delivery of resources such as health and education through private and voluntary institutions-thus ensuring that the middle class interests embedded in the existing infrastructure were not challenged by the increased state expenditure.

However, despite levels of increased state expenditure the Irish government still maintained their belief in free market forces during the 80s despite their concessions to poverty. For instance according to McLaughlin (1993) ⁶⁹ in 1987 the government subsidy to owner occupiers was 218 million pounds whereas the local authority programme subsidy was 194 million. Subsidies for first time buyers included grants and mortgage interest relief. In the period from 1966 to 1987 the owner occupier sector increased from 59.8% to 78% with 47% of homes owned outright. McLaughlin also points to the expenditure on public housing fell from 8.42% to 5.8% between 1971 and 1981 and between 1982 and 1987 Capital expenditure on local authority housing was halved.

Summary Overview

The chapter began with a look at some definitions of the welfare state. These included Esping-Anderson (1990) who sees the welfare state as contributing

⁶⁸ Breen, et,at (1990) Understanding Contemporary Ireland. Gill and Macmillan

to the system of stratification. Cochrane (1993) seen the welfare state as primarily being state involvement whereas Dominelli (1991) sees the well-being of the people as the primary objective of welfare states.

Next the welfare state was critiqued using a Neo-Classical New Right political approach such as Ashford (1995). This New Right critique was then expanded on in direct confrontation to Raymond Plant (1992) who argued for a social rights approach to the provision of welfare services.

The concept of needs was approached by Hewitt (1992) who argued that social policy is built around the notion that welfare dependents can be reduced to an ideological subject in need. Leiss (1978) see's needs as being either intrinsic in that they are basic to human needs or procedural in that they are based on a consensus of what a particular society agrees on at a given time.

The concept of de-commodification was looked at through the perspective of Esping-Anderson (1990) and Twine (1994) who see the dependence on selling human labour for survival as the process of where the individual relationship to the state is commodified and put up for sale. It was argued that a process of de-commodification has to take place where receipt of social rights is no longer dependent on being available for work.

⁶⁹ McLaughlin, E. (1993) *Comparing Welfare States: Britain in international context*. Open University Press

The future of the welfare state is in the hands of governments according to George and Miller (1994) who see the need for governments to educate all citizens on the value of the welfare state to the whole of society.

Finally, Irelands welfare state is examined through the eyes of Cousins (1995) who looks at the influence of British colonialism. Cochrane (1993) discusses the impact of Catholic Corporatism on state policy and Peillon(1982) supports a lot of the points raised by Cochrane. Breen (1990) draws attention to the increase in state spending while the power of delivering state services remained in the hands of the Catholic Church and its advocates.

Chapter 4

Obligations of citizens and states

4.1 Introduction.

In the following chapter I do not propose to offer a prescriptive account on what may be submitted as the basis of reciprocal relations between the individual and the state. This is already a well contested arena as is evidenced by a host of political slogans such as 'back to basics', 'welfare to work' and that old D.S. rallying cry of 'ask not what your country can do for you, but what can you do for your country'. The question that I want to pose here is what ideas and assumptions underpin these rhetorical rumblings that emanate from highly sophisticated party political machines. I suggest that an understanding of some of these key ideas and assumptions is paramount to the debate on what is the rights and obligations of citizens and their state. To do this I will first look at some of these assumptions before going on to look at how the individual can be seen in its relations with the wider society. Finally, I will look at the citizens obligation to work and its attachment to receiving any form of social rights.

4.2 Assumptions of Liberal Democracy

A useful starting point in the discussion of the obligations of citizenship is to examine some of the assumptions which tend to underpin this notion. For instance in a Liberal Democratic such as contemporary Ireland, the question can be posed as to what constitutes the basis of a citizens obligation to the state. Indeed this is a central question confronting any model of Liberal Democracy for on the one hand it is argued that the individual is born free and equal while on the other hand Liberals has to accommodate the

paradoxical question of why and how any free and equal individual could agree to be legitimately governed by anyone else.

According to Pateman (1979)⁷⁰ Liberals view obligation as self-assumed obligation because this is the only conception that is compatible with and has helped shape the liberal view of individuals and their social life. Equally the relationship between the citizen and the liberal state is characterised in terms of self-assumed obligation through voluntarism.

It could be said that there is a number of problems relating to this assumption that citizens freely volunteer to be obligated to the state. For instance as Pateman (1979) has noted Representative Democracy determines the content of your obligation so you are not free to enter into them and therefore the level of self-assumed obligation is but a token gesture. Therefore, Pateman (1979) suggests that the problem of political obligations can only be solved through a theory of participatory democracy.

Perhaps this issue can be highlighted further by reference to what is perceived to be a contemporary problem within the Liberal Democratic model. The issue of voter apathy is one which is becoming increasingly worrying for society with ever decreasing returns of voter participation emanating from general elections in recent times. For instance according to statistics from Voter Turnout 1945-1998: A Global Report, returns from the Irish general elections show that in 1987, 77.87% of the population voted, in

⁷⁰ Pateman, C. (1979) The problem of political obligation: A critical analysis of Liberal Theory.

1992, the percentage voting had decreased to 73.7% and in 1997 the turnout had further reduced to 66.71%. ⁷¹

Much speculation has followed from these decreasing voter turnouts regarding the nature of the phenomenon and how it may be addressed. With reference to Ireland there is an increasing school of thought which says that recent political revelations emanating from various tribunals have undennined the public's trust in the political representatives. But perhaps this is a wider problem and perhaps the true crux of the malaise lies within the nature of the democratic system which pertains in most liberal democracies. For this is a system that operates in paralell to the economics of Capitalism and the outcomes of this interaction can be judged as contributing to voter apathy. This is a point stressed by Pateman (1979) where she states that the problems surrounding political obligations cannot be solved within the liberal democratic theory because the extent of economic inequalities pennits an extent of political inequality which is inconsistent with the possibility of genuinely self-assumed political obligations and its notion of representative democracy.

4.3 The self and the social

Perhaps one of the most radical pieces of writing on the issue of social rights comes from Twine (1994) ⁷². Twine's thesis is built on the basic premise that notwithstanding the biological and genetic attributes of the human being that essentially all humans are social beings and their nature must be understood in social tenns. Twine contends that the nature in question is developmental

⁷¹ Source: http://www.idea.int/voter_turnout/index.html

⁷² Twine, F. (1994) *Citizenship and Social Rights: The interdependence of self and society*. London: SAGE

and that it changes and develops over time in response to *economic*, political and social contexts. Social rights are thus concerned with establishing the material and cultural conditions for social inclusion and participation such that the social self may develop.

This notion of the social self is not popular in contemporary society, in contrast the emphasis tends to be on the self-driven and competitive individual and their ability to shape and create their own lifestyles. But Twine is not negating the role of human agency but rather he places it in a historical and social context and argues that human beings make themselves and their social institutions, but not in conditions of their own choosing. There is always a historical inheritance into which we are born and grow up.

Twine also touches on the economic conditions under which people make choices and argues that it is a limited notion of freedom that focuses only on the capacity to choose without also considering the conditions under which that capacity may be exercised. Therefore to equalise freedom to choose requires action to equalise the material and social conditions for the exercise of choice over the lifecycle. For income inequalities affect not only choices and possibilities for self-development, but also self-identity.

4.4 The citizens obligation to work

The right to vote and the right to a fair trial are viewed as among the most important political and civil rights enjoyed by citizens. Neither right is conditional on participation in the workplace. Why then is there the connection made between acquirement of social rights and the obligation to

work? For this position is well advanced by Mead (1986)⁷³ who argues that only those who bear obligations can truly appropriate their social rights. In this case the obligation to work is the most important obligation a citizen can bear.

When we speak of the obligation to work, what do we mean by work? In general it can be argued that discussion around this topic usually takes place against the background of an underlying assumption that the work in question is paid work. Yet very little recognition is given to the work carried out by people in the home, by those involved in community work and the other forms of work which go to make up what may be termed the 'informal economy'.

This point is eloquently argued by Taylor-Gooby (1991)⁷⁴ who states that more emphasis is put on the contribution to the community that the workaholic makes in the form of tax paid and example set. Whereas in the case of the unemployed who do community work and women who do the unpaid caring work in the home, there is hardly any real recognition.

So when we assert that participation in work is a prerequisite of social rights we must be careful to define what we mean by work. For if we mean contributing to society through unpaid work then the case for social rights is strengthened.

⁷³ Mead, L.M. (1986) *Beyond Entitlement: The social obligations of citizenship*. Free Press NY

⁷⁴ Taylor-Gooby, P. (1991) *Social Change, Social Welfare and Social Science*. Harvester and Wheatsheaf.

Of equal importance is the need to unpackage the notion of work as a means through which the individual can express their self-assumed obligation to society. For work is seen to tie the individual to the social in a number of diverse ways. Consequently this can allow the debate on social rights to become embroiled in this tripodatic relationship between work, society and the individual and therefore the rights and obligation accruing from this relationship become entangled also.

According to Mead (1986) work has many functions for society. Through work social networks evolve and integration into society is enhanced. In modern society traditional institutions like the church, family, and the community are seen to have suffered varying degrees of erosion, and therefore work is seen as increasingly essential in helping people to integrate into society.

This integrative function would seem to serve the Liberal Democratic model quite well as it denotes a level of voluntarism on the part of the individual. The individual is seen to be expressing consent to society by their participation in the workplace and their willingness to comply with the demands of social integration.

However in contrast to this functionalist perspective, the conflictual school of thought might say that in a society based around a series of conflicting relations the workplace acts primarily as a mechanism of control. For instance Dahrendorf (1988) ⁷⁵ in discussing the purpose of the workplace

⁷⁵ Dahrendorf; R. (1988) *The modern social conflict: An essay on the politics of liberty*. Weidenfield and Nicolson. NY

asked are we really talking about social and political control for which no other measure but the discipline of employment has yet been found.

Work or indeed the non-participation in work is also used in a punitive sense in modern society. Contemporary governments have taken to getting people back into the workplace through training programmes and failure to comply may result in loss of benefits to the defaulters. This point is alluded to by Bagliou and Crouch (1990) ⁷⁶ who have pointed out that many Western states have introduced all kinds of employment programmes, offering training, work experience, community service projects while at the same time forcing sanctions on unemployed claimants who are unwilling to accept such offers made to them.

By touching on the functions of work as serving an integrative as well as a controlling and disciplinarian force to society we can see the development of a discourse emerging. It is quite easy and in some cases convenient to include in popular discourse terms such as rights, and responsibilities to society alongside integration into and control of society and therefore it can be seen how work can act as a conceptual device of linkage in this context. An example of the indiscriminate interchangeable usage of the term work in social theory can be seen in the concepts 'community work' or 'community employment'.

4.5 Summary Overview

The section begun with a look at some of the assumptions which underpin the Liberal Democratic model including one where the individual feels that

they have a self-assumed obligation to offer support to the state. This argument can be used to encourage people that they have a duty to reciprocally correspond to whatever rights the state may confer on them. Because of the power imbalance that exists in terms of gaining access to the media, individual citizens are at a disadvantage when it comes to offering a counter-argument to the stance taken by politicians and policy makers. Pateman (1979) argues that the tensions within the Liberal Democratic model will not be reconciled by the present representative democracy that exists in most of the Western world. A switch to a model of participatory democracy will only suffice in this regard, according to Pateman.

Twine (1994) argues that the individual is essentially a social being. His focus is on the need for society to have due regard for this aspect of the individual and to put in place comprehensive sets of social rights to allow the social self to develop in accordance with changing economic, cultural and social aspects of the wider world. Therefore, the emphasis is on the duty of the state rather than the individual.

The obligation to work was touched on as being often referred to as a primary obligation on the part of the citizen towards the state. This was a position which Mead (1986) concurred with. However attention was also drawn to some of the other functions that work can serve in society such as that of being a force for social integration or as Dahrendorf (1988) has noted it can also serve as a mechanism of social control. This rather cynical approach taken to the issue of work is echoed by Lindblom, (1977)⁷⁷ who argues that

⁷⁶ Bagliou, G. and Crouch, C. (1990) *European Industrial Relations*. Sage

⁷⁷ Lindblom, C. (1977) *Politics and Markets* BASIC BOOKS

the alleged freedoms of choice regarding the range of jobs available **in** the workplace for workers is a claim to a fictitious freedom.

Chapter 5

The Justiciability of Social Rights

5.1 Introduction

In the following section I will look at a definition of justiciability, at two competing ways of justiciability in practice and the nature of state obligations on the issues pertaining to justiciability. Irish legal remedies and the Constitutional constraints of attaching social rights to policy will also be touched on.

5.2 The meaning of justiciability

According to Addo (1992) ⁷⁸Justiciability is a juridical mechanism triggered off by the inadequacies in the enforceability or execution of human rights. Using the definition provided by Addo we can clearly see that justiciability is distinguishable from enforceability. This is an important distinction to draw for often the argument is made that social rights are not enforceable and therefore non-justiciable. Justiciability ideally therefore calls on the role of a person or body with no interest in the controversy giving rise to the review. Whereas the enforcement of any legal regime, including that of human rights, is carried out by the executive branch of government.

5.3 Adversarial and inquisitorial justiciability

Another important distinction to draw is the different ways that justiciability can be practised and in this case one can differentiate between inquisitorial justiciability and adversarial justiciability. Inquisitorial justiciability involves the initiation of an enquiry mechanism as undertaken by bodies such as the

Human Rights Committee when it examines state . Instead of securing redress after the violation of the right, inquisitorial justiciability seeks to prevent violation by ensuring state compliance with human rights obligations. Adversarial justiciability is the nature of the one which predominates at present before a court of law where the plaintiff brings a case seeking redress.

5.4 Attempts to show that civil and political rights are distinct from social rights in terms of justiciability

A distinction is usually identified between civil and political rights and, social rights and in some cases this relates to the preciseness of the definition being used and the interpretations put on the rights expressed in the international human rights instruments. However, closer inspection of International treaties will reveal that not all civil and political rights are elaborated in detail and even where they are does the idea of closed concepts negate the role of the courts for interpretation.

There does not appear to be a problem with the idea of the justiciability of civil and political rights, however the same cannot be said for the issues pertaining to social rights. One of the arguments made for the injusticiability of social rights is that a court cannot decide on a case where the rights of more than one individual is at stake. In other words the courts must not seek to collectivise social action.

⁷⁸ Addo, M.K. (1992) 'Justiciability Re-examined' in (eds) Beddard, R. and Hill, D.M. Economic, Social and Cultural Rights. London; Macmillan

However, a closer look at this stance can reveal it for what it is, a mere attempt to sidestep the real issue. Violating the rights of more than one individual at a time does not make social and rights of groups or people any less subject to review and redress. For instance, the logic of this position can be challenged when one considers that court precedents are made to apply to more than one person, in fact this is an example of the courts directing the interpretation of the law towards the collective.

Furthermore the argument that social rights are non-justiciable is further weakened by the fact that the right to primary education is already enshrined in the Irish Constitution. Also there is the inclusion of social rights in the International treaties albeit in an aspirational form but certainly not held to be outside the bounds of justiciability as they are seen to be held in overlapping form with the justiciability of civil and political rights. Also the African Constitution is an example where the social rights included within is deemed to be justiciable.

It would seem the case that the domestic courts is the most effective way of dealing with a citizens complaint against the state at present. For the statute of the International Court of Justice restricts access to states. This means that there is an absurd yet implicit situation in which a state acts both as an applicant and a defendant before the court when it violates the rights of its own citizens and this applies to the civil and political arena as well as to issues pertaining to social rights.

5.5 Legal remedies for infringement of Rights in an Irish context

Addo (1992) further contends that as justice in its various forms is the goal of justiciability, the mechanism of review is standard to it. This is obviously based on the notion that the tenets of the legal regime requires some form of legal redress. The following remedies exist in Irish law as a form of legal redress for breaches of Human Rights which are protected by the Constitution of Ireland:

Judicial Review is a remedy which lies against persons or bodies exercising a public function, (including the lower courts) to restrain them acting contrary to law or to compel them to act in accordance with law. In the case of acts or decisions by the executive or administration, they may also be challenged on the grounds of unlawfulness, procedural irregularity, breach of the rules of natural justice or irrationality.

Injunctions can be sought when a constitutional right is threatened by a private person or body an action for an injunction to restrain the unconstitutional behaviour will apply.

Damages can be sought when there has been a breach of constitutional rights

5.6 The constraint of policy on justiciability

It can be said that one of the constraining factors which surrounds a more thorough examination of the justiciability of social rights is the links between policy and issues pertaining to social rights. Evidence of this

constraint is contained within the Irish Constitution where Article 45 declares that "the principles of social policy set forth in [the] article are intended for the general guidance of the Oireachtas exclusively, and shall not be cognisable by any court under any of the provisions of the constitution".

5.7 Summary Overview

As we can see from Addo (1992) justiciability is primarily concerned with justice. It can take place in the adversarial context of the courtroom where a plaintiff seeks legal redress or it can occur as an instrument of inquiry which may predate a violation of a right. The argument that social rights are non-justiciable unlike their civil and political counterparts can be readily challenged on the twin grounds of illogicality and the existence of legal instruments which already express social rights. In this context it must be recalled that the expression of social rights requires the provision of terms of legal redress, hence their justiciability.

Finally to interpret International treaties such as the Covenant on Economic, Social and Cultural Rights as being non-justiciable is to defeat the aims and purposes of its undertaking. Surely the parties to this exercise can be accused of acting in bad faith which is contrary to the good faith that a lot of international documents are agreed upon.

Chapter 6

The Right to adequate Housing

6.1. Introduction

In the following section I will look at why we ought to consider the case for a right to adequate housing. In doing so I will highlight the various International and European treaties and agreements which Ireland have signed and ratified and which expresses the belief that housing is a viable notion for inclusion in a bill of rights. Finally I will touch on some of the gaps between Irelands obligations under the treaties mentioned and their actualisation of meeting international obligations at a national level.

6.2. Why should we consider a right to adequate housing?

The question of why have a right to adequate housing can be considered a reasonably legitimate inquiry deserving of a response. First of all let me make the point that I don't believe we should base our response on the basis of Irelands contemporary economic boom. If this were to happen proponents of a right to adequate housing could be accused of jumping on the financial gravy train and consequently their claims for resources would fall into the scramble with a host of other competing interests for a slice of government expenditure. Also to base an argument for rights on the sudden availability of financial resources is to tie the nature of rights to a particular historical and social point in time. This course of action brings the status of rights to the alter of public auction which can only serve to undermine the essential nature of human rights. A right to adequate housing can only be expressed properly when its understood as a human right with social implications and not a commodity to be auctioned in the market.

Present policy tends to equate the provision of shelter with the provision of housing. This must be challenged as shelter is a means of protection from the harsst elements of the weather, whereas housing can be seen as a means to participation in society as well as a means of reproduction for the household and the society. In fact how we view housing is important in terms of considering a rights based approach. For instance we can:

- see housing as a means of providing essential shelter and accomodation necessary to the reproduction of the household, its members and the wider society
- or we can see housing as a means to the creation of wealth through investment. ⁸⁰

6.3 What type of housing is it feasible to have rights to?

To argue for a right to adequate housing is not to seek to remove the provision of housing totally from the market for this would be impossible without a fundemental structural change in the economic framework of society. Indeed if we look at the proposed wording for a right to housing expressed by the Irish Commission for Justice and Peace (1998). According to them the right to housing that they proposed was worded in such a way to emphasise that it is the individuals, not the state, who have the primary responsibilities for housing themselves and their dependents, whether through ownership or rent. However the ICJP felt that while conferring constitutional recognition to the right to housing will not in itself solve the problems of homelessness for instance (any more than a right to primary education ensures that levels of illiteracy is eliminated) such recognition

nevertheless would provide a sound basis for measures of remedy and accountability. A substantive right to housing is of particular importance to low income or non-earning groups for whom lack of accommodation is a central part of their situation. „⁸¹

However, it has to be acknowledged that a case can be made for the provision of housing by other sources other than the market and in this context we can call up the notion of social housing. Social housing consists of rental accommodation constructed with state subsidy where allocation of dwellings is somehow linked to social needs and where the landlord usually has a non-profit status or is a state agency such as a local authority...It can also special housing projects by voluntary or co-operative groups or associations. In sum it can refer to different types of housing provision which are provided on a non-market basis. ⁸²

Social Housing can also be defined as "the housing needs of households whose resources are insufficient to provide them with access to suitable and adequate housing" ⁸³ These housing needs can be changed according to the economic nature of the society, eg, inflation, rising house and rent prices and unemployment and increase in family size.

⁸⁰ For an analysis of these two approaches see Clapham, D et.al, (1990) Housing and Social Policy. London; Macmillan

⁸¹ Re-Righting the Constitution: The case for New Social and Economic Rights; Housing, Health, Nutrition, Adequate Standard of Living. Irish Commission for Justice and Peace, September 1998

⁸² Fahy, T. (1999) Social Housing in Ireland: A study of success, failure and lessons learned. Ireland; Oaktree Press.

⁸³ Social Housing: The way ahead, Dublin, The Dept of the Environment, May 1995

Social Housing is also the form of housing where there is the greatest scope for state intervention in terms of provision. This acknowledgement is echoed in the following statement set out by the Department of the Environment's SMI Strategy Statement where a number of policy objectives relevant to the provision of social housing is outlined. Amongst which the Department have agreed to:

- ensure that households not in a position to provide housing from their own resources have suitable accommodation available to them at an affordable price
- to support a prompt and adequate response to the accommodation needs of homeless people

6.4 The right to adequate housing as a human right

And let us be clear that a right to adequate housing can indeed be considered a human right. And in this context Hausermann, (1992) ⁸⁴has argued that while human rights may be confirmed by legal instruments positive law is not their source, they are rights that precede law, deriving from the essential nature of humankind, and include the fundamental right to adequate housing. The right to adequate housing ought to be recognised precisely because it can be considered a human right. According to the 1948 Universal Declaration of Human Rights: Article 25.1

"Everyone has the right to a standard of living adequate for the health and well-being of himself and his family including the right to*housing*..."

6.5 The implications for other rights in denying the right to housing

⁸⁴ Hausermann, J (1992) 'Economic, The realisation and implementation of Economic, Social and Cultural rights' in Beddard, R. and Hill, n.M. (eds) Economic, Social and Cultural Rights. London; Macmillan.

The right to adequate housing is so important because its denial has the potential to impact on a range of other rights from civil to political. For example the right to vote is conditional on having a fixed address. Also the right to work is potentially impaired if one does not have an address. This is an example of the indivisibility of civil, political and social rights as each strand is connected to each other in a fundamental way.

The fundamental importance of a right to adequate housing has also been recognised by certain sections of our society at national level. For instance the Housing Commission of 1999 concluded that "housing is a social good and that every person should have a right to good quality affordable housing appropriate to their particular needs. This right should be enshrined in the Constitution or in legislation" ⁸⁵

6.6 European recognition of the right to housing

This right to housing has also been recognised at European level by the following member states, Belgium, Finland, Portugal, Spain, Sweden and the Netherlands-have included the right to adequate housing in their respective constitutions. ⁸⁶ Perhaps one of the strongest areas to allude to when making the case for a right to adequate housing is the number of International and European treaties which seek to embrace this right and to which Ireland have already become party too, and its to this area that I will now turn to.

⁸⁵ Housing A New Approach: Report of the Housing Commission. May 1999

⁸⁶ Avramov, D. (1996) The invisible hand of the housing market: A study of the effects of change in the housing market on homelessness in the European Union. Brussels; FEANTSA.

6.7 The Right to Housing as already expressed in the UN Convention on Economic, Social and Cultural Rights

The UN Convention on Economic, Social and Cultural Rights: Article 11.1 "The states parties...recognise the right of everyone to an adequate standard of living for himself and his family, including food, clothing *and housing* and to the continuous improvement of living standards. The State Parties will take appropriate steps to ensure the realisation of this right..."

The Covenant on Economic, Social and Cultural Rights contains the most important legal foundation of the right to adequate housing found under international human rights law. This treaty has been ratified by 108 countries including Ireland who ratified the Covenant on the 8 December 1989.

6.7.1 Irelands first report on its obligations on the right to adequate housing under the UN Convention

In Irelands first national report under the Covenant which was submitted in 1996, pages 132-155 sets out the measures taken by the Irish state to realise the right to housing. It is acknowledged therein that legislation does not confer any statutory rights to housing, but the range and extent of measures implemented pursuant to the right to housing demonstrates the Governments long standing commitment to housing needs, especially social housing needs. ⁸⁷ Since 1991, 108 state parties to the Covenant are required to report on over 30 separate questions specifically concerning the fulfillment of housing rights within each country. ⁸⁸ It has to be noted that NGOs have also

⁸⁷ Irelands first national report to the International Covenant on Economic, Social and Cultural Rights, (1996) Dept of Foreign Affairs Govt of Ireland Publications.

⁸⁸ Further information concerning the submitted reports from the State Parties on the right to adequate housing can be obtained from, The Centre on Housing Rights and Evictions, Havikstrlat 38 bis, 3514TR Utrecht, Netherlands.

the right to submit alternative reports assessing the housing situation for instance.

The governments commitment to social housing needs as expressed in this 1996 first report to the UN Covenant can be seen to be challenged by O'Connell (1999) ⁸⁹ where he argues that the overall stock of social housing continues to decline, new stocks are not being built to keep pace with demand and the image of the sector is blighted by the emphasis on issues pertaining to anti-social behaviour.

6.8 The right to housing as expressed in the European Social Charter

Council of Europe Revised European Social Charter (1996) Article 31: states "The right to housing: With a view to ensuring the effective exercise of the right to housing, the parties undertake to take measures designed:

to promote access to housing of an adequate standard to prevent and reduce homelessness with a view to its gradual elimination and to make the price of housing accessible to those without adequate resources

Article 16 of the European Social Charter states: "with a view to ensuring the necessary conditions for the full development of the family, which is the fundamental unit of society, the contracting parties undertake to the economic, legal and social protection of family life by such means as....provision of family housing..." This is a particularly relevant section in terms of Ireland corresponding Constitutional recognition of the family as the fundamental unit of society.

⁸⁹ O'Connell, C. (1999) 'Housing Policy Review 1998' in (eds) McCashin, A. and O'Sullivan, E., Administration: Irish Social Policy Review 1999 Vo147. No. 2. Dublin; Inst. of Public Administration.

Article 4 of an additional protocol to the ESC adopted on the 5 October 1988 says: "With a view to ensuring the effective exercise of the right of elderly persons to social protection, the State Parties undertake to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular, to enable elderly persons to choose their life-style freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, *by means of provision of housing suited to their needs and their state of health or of adequate support for adapting their housing...*" *My Italics.*

The Social Charter according to Lewis and Seneviratne (1992)⁹⁰ is the most important International agreement on social rights. However, it seems that from the literature reviewed it is often a much neglected instrument of referral in an Irish context. Part Four of the Social Charter outlines the process of enforcement which is primarily concerned with supervising how contracting parties to the charter seek to apply its contents. The contracting parties at the signatory stage agreed to report every two years to the Secretary General of the Council of Europe on measures taken to apply the provisions of the charter that the parties agreed to. The reports are also scrutinised by a panel of independent experts.

6.9 Gaps between Irelands International obligations and National policy

It can be said that one of the strengths of the European Social Charter is that it seeks to identify certain sections of society who may benefit mostly from a right to adequate housing. **In** this case it mentions the family and the elderly,

⁹⁰ Lewis, N. and Seneviratne, M. (1992)'A social charter for Britain' in (eds) Coote, A. *The Welfare of Citizens*. London; River Gram Press

two social categories which most governments would claim to provide for in terms housing. This commitment to housing needs on the part of the government is open to challenge as recent figures suggest. For example it is estimated that there is at least 40,000 households on a waiting list for social housing of some variety at the present time in Ireland. Furthermore, according to Focus Ireland headquarters in Dublin in the first six months of this year 2000 it has dealt with 4,500 enquiries from people in accommodation crisis and 700 of these were first time users of the service. This would suggest a significant gap between the International obligations that Ireland agreed to under ratification of the Covenant and attempts to meet these obligations at national level.

6.10 Other international human rights seeking to express the right to adequate housing

- **United Nations General Assembly resolution 42/146** 11 The General Assembly reiterates the need to take, at the national and international levels, measures to promote the right of all persons to....adequate housing... ". Adopted 7 December 1987.
- **The Global Strategy for Shelter to the Year 2000.** 11 The Right to adequate housing is universally recognised by the community of nations...All citizens of all states, poor as they may be, have a right to expect their governments to be concerned about their shelter needs...11 Adopted by the UN General Assembly (Res 43/181) 20 December 1988
- **European Parliament Resolution on Shelter for the Homeless in the European Community.**

Par. 4. "The Parliament calls for clear priority to be given to the legal mles concerning the implementation ofthe right to adequate housing...

Par. 8. "That the right to a home should be guamteed by legislation, that member states should recognise it as a fundemental right and that no person or family should be evicted without being rehoused"

(Res. No. C190/39 adopted 16 June 1987)

6.11 How to express a right to housing in a European legal framework

According to Scott Leckie (1992) ⁹¹ a legal based approach to promoting housing rights in Europe could be approached in a number of ways. Such as for instance the following is an example of some of those under consideration

- the adoption of an entirely new European treaty such as a European Convention on Housing Rights
- amendments of certain existing European legal instmments to include the right to adequate housing, for instance a protocol to the European Social Charter or the European Convention on Human Rights
- initiatives to change national housing policies, legislation or jurisprudence through a reliance on European or International fonnulations of housing rights
- initiatives designed to pressure governments to take their existing legal obligations seriously concerning housing rights

⁹¹ The role of housing in the building of a Soeial Europe: Housing policies in a European perspective and as a factor of social **integration**. Brussels; The Commission of the European Community, 1992

6.12 Summary Overview

It can be argued that a right to adequate housing can be considered in essence a human right which legitimises its inclusion in a social rights approach. For according to Twine (1994)⁹² humans require the social conditions necessary for human development. This can only occur in a socially cognisant framework underpinned by social rights.

The inclusion of the right to adequate housing in various international human rights instruments further enhances the legitimisation of the right being expressed as a social right. And the fact that Ireland has signed up to and ratified many of these International treaties is evidence of the essential importance of housing as seen by government.

It can be said that the gaps between Ireland's international obligations and its internal policy on the provision of housing is further exacerbated by the absence of the right to adequate housing being expressed at Constitutional level. The presence of a right to adequate housing in the Constitution would equip citizens with a legal means of address when their circumstances warranted state provision of housing and where the state was seen to be failing in this regard.

⁹² Twine, F. (1994) *Citizenship and Social Rights: The interdependence of self and society*. London; Sage.

Chapter 7

A right to education

.7.1 Introduction

In the following section I will look at why we should consider a right to education before looking at a definition of education that may be useful in terms of seeking to broaden the understanding of education beyond the narrow confines of the present Irish Constitution. I will then touch on one of the purposes of education which brings in the issue of wealth creation which is important when considering the socially excluded. Finally I will mention the right to education as expressed in two International treaties which is recognised by Ireland.

7.2 Why we should consider a right to education

It can be said that a right to education is often expressed in terms of being a civil and political right rather than a social right. It also has to be recognised that the right to primary school education is already enshrined in the Irish Constitution **and** therefore many would say that it has already been catered for by Article 42 sections 4 and 5 of the Constitution which says that:

4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.
5. 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.

However, these terms are clearly inadequate, for education is perhaps the most effective device at societies disposal for including people in a more just and equitable society.

Therefore the right to education needs to be broadened from its present rather narrow Constitutional definition to embrace other aspects of social life such as an embodiment of the concept of lifelong learning. By approaching education from a social rights perspective you can encompass it in terms that is cognisant of the socio-economic circumstances which surrounds peoples efforts to educate themselves and their children. This approach has the potential to release education from being seen as a means of socialisation to being appreciated as a wider social good.

7.3 A definition of Education

We can see education from a broad perspective as being a process of socialisation into the norms and values of the society into which one is placed. On the other hand we can look at education from the rather narrow sense of what happens in the school. But essentially as Lonbay (1992) has pointed out education involves learning and to assure a right to education the individual must be granted access to realising this right.

7.4 The purpose of education

It can be argued that one of the purposes of education is the generation of wealth. This approach can be applied at an individual level as well as at a societal level. Individuals generate wealth for many reasons from the need to

⁹³ Lonbay, J. (1992) 'Implementing the right to education in England' (eds) Beddard, R. and Hill, D.M. Economic, Social and Cultural Rights. London; Macmillan

provide sufficient resources to live to investing for the future of family members. By the same token societies invest in resources such as education for the potential wealth generation that this can bring to the reproduction of the society. The purpose of seeing education in this way has been made by the The Report of the Constitutional Review Group who stated that because of the central role that knowledge plays in determining the generation of wealth, it is extremely important that all people have access to education, and can participate and benefit from it so that they are not precluded from the process of wealth generation in society. ⁹⁴

The opposite side of this particular coin is to consider what happens when sections of society are for whatever reason unable to access education of a sufficient quality to enable them to participate in the generation wealth. The likelihood is that people cut of from access to education will be consigned to struggle against poverty and social exclusion. The provision of a right to education would not remedy this complex relationship between educational disadvantage and social exclusion over night. However, it would send a clear message to all sections of society indicating that to persist in maintaining barriers to the primary gateway of human development is a gross injustice and one deserving of Constitutional rectification.

7.5 The right to education as an important component of International treaties.

Article 13 of the International Covenant on Economic, Social and Cultural Rights asserts that the state parties present to the Covenant recognise the

⁹⁴ Quoted by Hyland, A. (1997) 'Primary and Second-Level Education in the Early Twenty-First Century' in (eds) O Muircheartaigh, F. Ireland in the Coming Times: Essays to celebrate T.K. Whitaker's 80 years.

right of everyone to education, They agree that education shall be directed to the full development of the human personality and that education shall enable all persons to participate effectively in society,

In their first report to the International Covenant on ESCRs 95(1996) , the Irish government outlined measures taken to guarantee equal access to all levels of education in Ireland plus steps they had taken to effect the realisation of education for all.

Article 26 of the Universal Declaration of Human Rights declares that:
Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

7.6 Summary Overview

It has to be said that there is not a great deal of coverage given to education in terms of the literature that's available on social rights. The primary reason for this as mentioned earlier is that education is seen as being primarily the property of civil and political rights.

Nevertheless, it can be argued that on the one hand education services the civil and political process quite well. For according to Meehan (1993) ⁹⁶ If education is neither affordable nor provided by the state, many citizens would be unable to read manifestos or newspapers and their capacities to

⁹⁵ Ireland: International Covenant on Economic, Social and Cultural Rights (1996) First national report on Ireland. Govt. Publications.

vote and to judge governments would be diminished. Therefore, education can be viewed as being indispensable when it comes to a citizen realising their civil and political rights. Consequently the right to an education needs to be extended beyond primary school level to take recognition of the needs of adults educational needs and particularly those who require re-skilling through market forces and redundancies and those who were early school leavers and merit a second chance.

Chapter 8

The Right to Health

8.1 Introduction

In the following chapter I will look at how health and health inequality can be defined. Commitments to expenditure on the health sector can be ambiguous at times and I will offer an example of this. The main part of the chapter will consider why we should be looking at a right to health and this approach will be underpinned by Ireland's ratification of international human rights instruments which seeks to embrace that right to health. Finally, some future challenges to the health sector will be looked at.

8.2 What is health?

It can be said that health is perhaps one of those concepts that can prove hard to define in any definitive way. Definitions can range from those which focus specifically on the physical components such as the absence of any disease of the organs. Some definitions can also embrace the psychological aspects such as the absence of excessive stress and others can refer to the social factors such as good/bad living conditions and the nature of one's diet. One definition which seeks to embrace all three components of health is that of the World Health Organisation who defines health as 'a state of complete, physical, mental and social well-being, not merely the absence of disease or infirmity'.⁹⁷

Although this may be seen to be an idealised account of what health can consist of in the perfect world, it nevertheless offers the opportunity for

⁹⁷ Constitution of the World Health Organisation: Basic Document ISth edition, Geneva 1961

researchers to operationalise the different components of health as defined by the WHO and consequently achieve a greater exploration of the topic. In terms of national health policy in Ireland the Dept of Health is responsible for matters pertaining to this issue. However, it must be borne in mind that the status of health in a broader sense is affected by a wider spectrum of concerns falling within the mandate of other departments. As one can look at issues which impact on health such as housing, violence, nutrition, and other environmental concerns.

8.3 What is health inequality

It could be said that one of the greatest tests of justice that a nation will face is that to what extent is provision made for the health needs of those who experience poverty and social exclusion within that nation. In Ireland groups such as the travellers come into this equation with some anecdotal evidence to suggest that there is a certain degree of negligence evident on the state's behalf when it comes to providing health care services for this particular group. Also there is the issue of the homeless people in Ireland whose health needs particularly in winter time is often greater than that recognised by the state.

There is clear evidence to suggest that those living in poverty and social exclusion are at more risk to poor health than the general population. In one of the conclusions emanating from the British report entitled the Health Divide (1988) which sought to examine further the relationship between socio-economic inequality and poor health which the Black Report (1982)

⁹⁸ Whitehead, M. (1988) The Health Divide. England; Penguin Books

99 had highlighted it was stated that the weight of evidence continues to point to explanations which suggest that socio-economic circumstances play the major part in subsequent health differences.

However, it could be said that minority groups very often do not get included in state definitions of health inequality for political reasons perhaps. Maybe it is the case that sections of society whose voting participation is required for the reproduction of the political system is given priority when it comes to defining what health inequality is. As Quin (1999) 100 points out the definition of health inequality is ultimately an ideological one concerning qualitative judgements about what is acceptable, preventable and just.

8.4 A mix of state opinion on the issue of health

Aside from the various international agreements that Ireland have put their signature to in terms of recognising the importance of health there is evidence that from a national point of view this recognition is replicated. According to the Dept of Health (1994) 101 its primary aim is to enhance the health and quality of life of the people of [Ireland]

However, very often those noble aspirational aims tend to get enmeshed in fiscal concerns and inevitably the issue of health spending is situated in the discourse of prudence. An example of this can be seen from this press

99 Townsend, P. and Davidson, N. (1982) (eds) *The Black Report*. England; Penguin Books

100 Quin, S (1999) 'Improving health care: Health policy in Ireland' in (eds) Quin, et al *Contemporary Irish Social Policy*. Dublin: UCD press

101 Dept of Health (1994) *Shaping a healthier future: A strategy for effective healthcare in the 1990s*. Dublin, Stationary Office.

statement issued by Mr Brian Cowen, Minister for Health (1998) ¹⁰² where he states that "there is no point in talking about increasing levels of expenditure in the health services at the top of the economic cycle when in three years you have to retrench again."

This is the kind of political concern that surrounds the area of health where priority is given to curtailing spending and where the very essence of a rights approach to health is neglected. It can be said that when matters pertaining to spending dominate an issue then the content of that issue enjoys no greater status than that of a commodity. To seek to treat the healthcare of a nation in terms of commodification is to render obsolete the good faith with which Ireland participated in with their international cousins when agreeing terms of the various treaties which I have touched on.

It is also a move away from realising the goals set out in the Department of Health's own strategy as outlined above. These trends can only be reversed if the principle of need replaces the tendency to curtail spending as the cornerstone of the ideological underpinnings of health care in Ireland. For according to Devlin (1997) ¹⁰³ if the overall aims of the Dept of Health's strategy entitled, *Shaping a healthier future* are to be achieved then access to health care should be determined by actual need.

8.5 Why consider a right to health

Health is one of the few issues of public concern that is almost guaranteed to raise a high level of public support in terms of providing state funding for

¹⁰² Irish Times (1998) 'Planning for the ageing population' 20 April

the health service. It could be said that it would be political suicide for any political party to include cutbacks in health spending in their party's manifesto and this is irrespective of which end of the political spectrum that their ideological beliefs reside.

This public consensualism around the importance of a health service was captured by the Commission on Health Funding (1989)¹⁰⁴ who found that there was a consensus among the population as a whole that health needs were matters of priority and public justice. Therefore, if the presence of consensualism is a precondition of ascribing the status of a right in a certain direction, then the area of health is a strong candidate.

Nonetheless, there has been in recent times a tendency to shift the ideological boundaries surrounding the topic of healthcare to encapsulate a market orientated approach to health provision in place of the traditional state centred approach. This can be seen as symbolic of a shift from the paternalistic model of health provision where the state through the medical profession were seen to be the best assessors of delivering what was necessary for the patient.

This shift has tended to lean towards one where the recipient of health care is now given some consultative status through the market principles of consumer rights. A prime example of this is the approach recently adopted by the Department of Health with their policy of 'customer service'. **In**

¹⁰³ Devlin, J. (1997) 'The State of Health in Ireland' in (eds) Robins, J. Reflection on Health: Commemorating 50 years of the Dept of Health. '947-1997. Ireland, Dept of Health

¹⁰⁴ Report of the Commission on Health Funding (1989) Dublin: Stationary Office

theory this entails ensuring that all matters pertaining to customer dissatisfaction will be dealt with as a matter of expediency.

However, it is pertinent to ask the question, how useful is it to apply the market principles of customer satisfaction to people whose primary reason for contact with the health service is usually characterised by great trauma and anxiety regarding their own or a family members state of health. In fact there is a number of reasons why this trend should concern us and move us to look for alternative strategies for empowering the citizen when it come to their dealings with the health service.

The main grounds for this concern is best summed up by O'Donovan and Casey (1995) ¹⁰⁵ who argues that in the 'new consumerism' the basic message is that delivery of services needs to be more business like achieved through private sector principles of consumer satisfaction. This is radically different from consumer empowerment where the core concern is with the struggle by marginalised groups for participatory democracy.

It can be said that moves towards treating patients like consumers is an example of political conectness gone astray. In reality it serves the purpose of being seen to be doing something for users of the health service which is conjusive with a rights based approach. In essence this is destined to amend nothing of material substance vis-a-vis someones access to health services. In fact it may inadvertently lengthen the bureaucratic process through which most users of the health services are forced to struggle with.

¹⁰⁵ O'Donovan, O. and Casey, D. (1995) 'Converting Patients into Consumers: Consumerism and the Charter of Rights for Hospital Patients' *Irish Journal of Sociology* 1995, p 43-66.

In contrast a rights based approach to health enshrined in the Constitution has the potential to effect real change. The citizen will inevitably gain a sense of real empowerment by virtue of their right to health being legally protected and not conditionally based on a set of criteria which may have been set in place without any consultation with the recipients of the service. A rights based approach will also go some way to securing a high level of state accountability on their obligations under the various international treaties which they have signed and ratified towards the taking of certain measures to realise the right to health as agreed at international level

8.6 International recognition of the right to health

Article 12 of the International Covenant on Economic, Social and Cultural Rights (1976) recognises '...right of everyone to the enjoyment of the highest attainable standard of physical and mental health'

The treaty of Amsterdam, Article 129 states that 'a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities'

Article 25 of the Universal Declaration of Human Rights (1948) state that; 'Everyone has the right to a standard living adequate for the health and well-being of himself and his family, including food, clothing, housing *and medical care and necessary social services.* '

8.7 Challenges facing the health service

It can be said that the health sector is always likely to be facing new challenges given the unpredictable nature of controlling and maintaining one's health. Situations like flu outbreaks or excessive harsh winters can throw the health sector into a state of chaos and when coupled with wage disputes between staff and managers the priority of looking after the patients can become lost to some extent. Nonetheless, it is important to be aware of some of the more predictable challenges that is likely to arise in the future and in this regard the observations of Wiley (1997)¹⁰⁶ seem particularly pertinent. For according to Wiley the following elements make up the challenge facing Ireland's health service in the coming years.

1. Increased life-expectancy and declining birth rates have contributed to the ageing of the population in general
2. the rapidity of scientific and technological advancement means that the pressures for health system expansion will be ongoing and
3. controlling health expenditure present a continuous challenge

8.8 Summary overview

The Black Report (1982) found that despite what appeared to be a growth in affluence in Britain since the inception of the welfare state one of the areas of public life to manifest persistence of inequality was the health sector. A clear relationship was established between poverty and poor health. The Health Divide (1988) followed up this and concluded that the health service despite its many claims to have addressed the health of the nation had manifestly failed to meet or amend health needs of those living in poverty

¹⁰⁶ WHey, M. (1997) 'Irish Health Policy in Perspective' in (eds) O'Muircheartaigh, F. Ireland in the Coming Times: Essays to celebrate T K Whillaker's 80 years" Ireland, IPA

and social exclusion. This is clear evidence to suggest that a more concerted attempt to address the needs of the underprivileged has to be made by governments in order to effect any real change in the health status of the poor.

Despite this evidence in recent times there have been attempts by the Department of Health in Ireland to introduce what they termed 'consumer rights'. It can be said that this measure will have little effect in empowering those most in need of the service and that what is really needed is a constitutionally enshrined right which cements the commitment made by the state in various international human rights treaties. The health needs of the poor and marginalised will not be materially changed by attempting to speed up bureaucracy. What may effect real change is when the state becomes accountable for providing an efficient health service of quality based on need rather than the fiscal requirements of exchequer spending.

Chapter 9

Additional rights to be considered

9.1 Introduction

In the following chapter I am going to look at some additional rights to those already mentioned that can be considered for inclusion in the social rights category. As a basis for locating these rights I am going to use the discussions from the recent conference on Fundamental Rights which was held in Dublin, (2000) and was part of a European wide momentum to inform discussion around this topic. Then I will be looking at the current status of the proposed charter for Fundamental Rights which is being discussed at European level.

9.2 The issue of rights emanating from the fundamental rights conference in Dublin

On the 19 June, 2000 the European Anti-Poverty Network in conjunction with the Irish Congress of Trade Unions held a conference on the proposed European Fundamental Rights Charter. The conference was part of a Europe wide campaign aimed at informing people across Europe of the potential of the charter regarding social matters and also it was an attempt to stimulate debate and discussion around what may eventually be contained in the charter.

Opening the conference Mr. Robert Hannon of the European Anti-Poverty Network stated that we needed to change the focus of Europe to one which is driven by peoples needs as opposed to one which is designed to protect the privileges of the few. Reference was made to the ironic situation

prevailing in Ireland where on the one hand we are intent on recruiting labour from outside countries while on the other hand we seem to be excluding people who are viewed to be refugees, asylum seekers depending on which perspective is utilised.

The point was made that perhaps this reluctance to recognise the status of refugees and economic migrants is symbolic of the governments tendency to ignore the human rights element of these cases. Whereas in the case of those recruited for labour purposes they are being viewed as being economically active at the point of entry to the state and less in need of a rights protection policy or legally binding framework of rights. Examples such as this is evidence of the need for a European Charter on fundamental rights which is inclusive of social and economic rights and is legally enforceable suggested Mr. Rannon.

In concluding his address Mr. Rannon referred to the opposition to the charters proposed legal status and to the inclusion of social and economic rights in any proposed charter. In this instance the case of IBEC was highlighted as they have expressed opposition on both counts. In doing so they have cited two main reasons for their opposition, (a) that it would be too expensive to implement and (b) that it would be too complex.

Next to speak was Ms. Sandrine Orenier from the Platform of European Social NOGs who outlined some principles which the conference wanted to propose that should be part of the proposed charter. These are listed as follows;

1. The charter should be respectful of existing human rights instruments including those which emanate from member states constitutions
2. The indivisibility of rights needs to be emphasised with recognition given to the equal importance of social and economic rights to the parallel effectiveness of civil and political rights
3. The charter should be legally binding as opposed to being a set of political objectives

Ms. Sinead Tiernan speaking on behalf of the European Trade Union Confederation outlined their position regarding the proposed charter. **In** this regard the ETUC wanted the charter to reflect the following:

1. it be legally binding
2. it be enshrined within the framework of a treaty
3. it to be used to provide additional material to existing treaties
4. and it to contain a right to a minimum income

Mr. Des Geraghty, Executive Member of the Irish Congress of Trade Unions outlined their position regarding the proposed charter in the following way. Firstly it was stated that certain values are not for compromise namely:

1. the protection of all recognised fundamental human rights
2. the right to shelter, in particular in Ireland where the inclement weather can be a greater detriment to health in contrast to warmer European states
3. the right to a basic income

In addition it was proposed that the following concepts ought to underpin the social and economic values which should be reflected in the proposed charter:

1. *The right to citizenship within the workplace. A transformation of existing relationships between employers and employees to one where the employees enjoy a multiple stakeholders position.*
2. *The right to shelter. A right to accommodation not based on the right to buy.*
3. *The right to equality before the law. An example of where this is lacking at present in Ireland is through the extensive use of the courts by people accused of what may be termed white collar. This is done to protect their interests as can be seen in the numerous constitutional challenges to the tribunals. Whereas those from worldng class backgrounds are processed through the courts on a daily basis without the financial or social means to challenge their position under the constitution.*
4. *Right to social security. Through the state provision of a good health service, good provision of education and training. And the need to provide services which is not based on the lowest denominator.*

In conclusion to the conference Mr. Fintan FarrelI from the European Anti-Poverty Network offered the following suggestions towards the framing of social and economic rights within the proposed charter:

1. The right to an adequate level of income, not tied to work
2. The right to work and participation in the labour markets
3. The right to minimum standards in health care

4. The right to affordable housing and services to maintain housing
5. The right to free access to education and training up to qualification level
6. The right to enjoy one's culture and have this enjoyment respected
7. The right to live free from discrimination

9.3 The current status of the proposed European Charter for: Fundamental Rights

In June 1999 the European Council in Cologne decided that a Charter of Fundamental Rights for Europe be drawn up. It was proposed that in addition to containing the fundamental rights expressed in the European Convention on Human Rights the ED charter should also contain certain fundamental social and economic rights as contained in the European Social Charter as well as some new social rights. The background to this decision was to find a way of assuring the citizens of Europe that the ED represents more than economic interests. The emergence of the new European currency the Euro and the European Central Bank being given the power to fix member states interest rates were seen by some around Europe as evidence of an overemphasis on economic matters. Therefore, the call for a Charter of Fundamental Rights inclusive of social and economic rights was proposed as a countervailing measure to the prevailing emphasis on economics.

Subsequent to the 1999 Cologne Summit a convention was formed to draw up a draft Charter for presentation at the Nice summit in December, 2000. This convention comprised of 62 members with a breakdown as follows:

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Chairman

30 members from the parliaments of member states

15 representatives from heads of state or governments

One representative from the European Commission

16 MEPs

Irish representation on the convention was in the guise of:

Mr Michael O'Kennedy

Mr Desmond O'Malley

Mr. Bernard Durkan

Mr. Mahon Hayes (Fonner legal advisor to the Dept of Foreign Affairs)

The remit of the convention was to prepare a draft charter for the Nice summit scheduled for December 2000. The final proposal would then be submitted to the EU Parliament and the EU Commission with the recommendation that it should be accepted. Then it would be up to the Parliament and the Commission to consider the most effective ways of integrating the charter.

Alongside Mr. Blair in the opposition corner to the charter becoming legally enforceable was Spain, Finland, Sweden, Denmark and Ireland. While those in support of the charter having a legally binding status was France, Italy and Germany. Mr. Brian Cowen, the Irish Minister for Foreign Affairs appeared to be in agreement with the opposition camp when he stressed that

"the trend is quite clear" ¹⁰⁷ regarding the direction of the status of the charter. However, a couple of points is worth noting at this stage.

Those in opposition to the charter argue against the inclusion in the charter of a new set of social and economic rights as this may in the case of Ireland necessitate changes of the Irish Constitution to accommodate these new rights. The popular consensus is around an enunciation of current Human Rights principles to be included in the charter with the focus on a re-recognition of current international treaties and agreements purporting to safeguard the rights of citizens. This is clearly an attempt to preserve the status quo and is symptomatic of an unwillingness on the part of the majority of European governments to translate political aspirations into concretised and legally enforceable rights.

9.4 Summary overview

A couple of points have emanated from the theme of the discussion which took place at the Dublin conference and also from the reports emerging from Europe on the position of various ED governments including Ireland regarding the scope of the proposed charter on Fundamental Rights.

First of all, the conference was useful in that it gave interested parties the opportunity to bring their ideas to the debate. However, it could be argued that perhaps there needs to be a distinction drawn between what people perceive as social rights and what may be termed economic rights. There was a tendency for speakers at the conference to equate the rights of workers which for the purposes of this discussion we will call 'economic rights' with

¹⁰⁷ The Irish Times, 20-6-00

what ought to be a right of the socially excluded to essential services such as health, education and housing which may be termed social rights. Perhaps it may be useful for further discussion if an attempt was made to draw a distinction between social rights and what can be termed 'economic rights'.

Secondly, the position of the Irish government deserves attention on the issue of whether the proposed charter on Fundamental Rights should be legally binding. As is evidenced by the comments of the Minister for Foreign Affairs Ireland seems quite happy to align themselves to the majority position in Europe which is opposed to the inclusion of social rights in the charter as well as the proposed justiciable nature of the charter.

Chapter 10

Models of the expression of social rights

10.1 European Social Charter

The European Social Charter is an important international agreement between members of the Council of Europe¹⁰⁸. The charter was adopted in 1961 and came into force in 1965. Ireland signed up to the agreement on the 18-October 1961 and ratified the agreement on 7-October 1964. The European Social Charter emanates from shared beliefs in social justice and human rights between members of the Council of Europe. It was drawn up to embrace the social and economic rights touched on in the UN Declaration on Human Rights (1948) and to complement the European Convention of Human Rights which sought to cover the civil and political sections of the UN convention of 1948. The charter asserts that it contains legal obligations of an international character.

The following declaration is contained in the instrument of ratification, deposited by the Irish government to the Council of Europe on 7 October, 1964

, The Government of Ireland do hereby confirm and ratify the charter and undertake faithfully to perform and carry out the stipulations contained in part I, 2, 4, and 5 of the charter and in accordance with the provisions of paragraph I(b) and I (c) of article 20, the stipulations contained in the following articles and paragraphs of part 2 of the charter'.

¹⁰⁸ The Council of Europe is a political organisation founded in 1949 and in 1999 had 41 states as members.

The substance of the *following articles and paragraphs* referred to is as follows:

Article 20, Paragraph 1(b) translates as the state of Ireland considers itself bound by at least five of the following articles of part 2 of the charter. They could choose from Articles 1,5,6,12,13,16,19. At this point Ireland chose not to be bound by article 12 which was the *right to social security* and entailed the 'maintenance of the social security system at a satisfactory level at least equal to that required for ratification of International Labour Convention (No. 102) concerning minimum standards of social security'.

Ireland did choose to be bound by the following:

Article 1: The Right to work

Article 5: The Right to organise

Article 6: The Right to bargain collectively

Article 13: The Right to social and medical assistance

Article 16: The Right of the family to social, legal and economic protection

Article 19: The Right of migrant workers and families to protection and assistance

As can be detected the substance of the rights outlined in this charter and particularly those to which Ireland agreed with tend to be favourable to those who are working. Nevertheless, the significance of this charter at least in a symbolic sense needs to be appreciated as it characterises the willingness of the council of Europe including Ireland to agree on what may be regarded as universal principles pertaining to economic and social rights. According to

Lewis and Seneviratne (1992) ¹⁰⁹ the Council of Europe maintains that the European Social Charter and the European Convention on Human Rights, should be taken together as the buttress to upholding the fundamental rights of the individual.

On the 3 May 1996 the revised European Social Charter (ETS. No. 163) came into existence. The revised charter is an international treaty which embodies in one instrument all rights guaranteed by the original charter of 1961 and subsequent protocols and adds the following rights.

Article 30: The Right to protection against poverty and social exclusion.

With a view to ensuring the effective exercise of this right the parties undertake to:

- (a) take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance.
- (b) to review these measures with a view to their adaptation if necessary

Article 31 : The Right to housing.

The parties undertake to promote access to housing ¹¹¹ the following ways

- (a) to promote access to housing of an adequate standard

¹⁰⁹ Lewis and Seneviratne (1992) in *The Welfare of Citizens* (eds) A. Coote. River Oram Press

(b) to prevent and reduce homelessness with a view to its eventual elimination

(c) to make to price of housing accessible to those without adequate resources

The revised charter also requires state to guarantee free primary and secondary education.

Enforcement of the European Social Charter

The enforcement of the treaty is carried out by means of a supervisory process. Contracting parties undertake to submit a report every two years to the Secretary General of the Council of Europe who then passes it on to the Committee of Independent Experts drawn from member states for their scrutiny. There then follows an assessment from a legal standpoint of the compliance of national laws and practise with obligations arising from the charter. Then the Committee of Ministers in conjunction with the Committee of Experts adopts resolutions requesting states to bring national law into conformity with the obligations of the charter.

Additional Protocols to the European Social Charter

Ireland did not sign or ratify the additional protocol (ETS No128) which was designed to extend protection to the rights of workers and the rights of the elderly to social protection. Neither did Ireland sign or ratify additional protocol (ETS No158) which acknowledged the right of NGOs, trade unions and other of the social partners to submit collective complaints alleging unsatisfactory application of the charter in domestic affairs. This was seen as an important addition to the overall body of the charter as it provided a

means to challenge the official national premises on the extent of meeting the obligations of the charter.

10.2 The South African Constitutional embracement of social rights

South African Constitutional Social Rights as a model for Ireland

A bill of rights contained in the South African Constitution (1996) manages to link together civil, political and social rights.

26. (1) Everyone has the right to have access to adequate housing

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right

27. (1) Everyone has the right to have access to-

(a) health care services, including reproductive health care;

(b) sufficient food and water; and

(c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

(3) No one may be refused emergency medical treatment

29. (1) Everyone has the right-

- (a) to a basic education, including adult basic education; and
- (b) to further education, which the state, through reasonable measures, must make progressively available and accessible.

Unlike the Irish Constitution where the property rights have been seen in the past to interfere with Social Rights, the African Constitution also includes property rights:

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

This does not say that all persons has the right to own property however it still covers the need to protect property rights adequately does it not.

Chapter 11

Social Rights, the NAPS and the PPF 110

When considering a social rights approach to the NAPS and the PPF the main concern to bear in mind is that the NAPS and the PPF are not legally binding documents. Therefore the usefulness of seeking to apply a rights approach to these documents is questionable.

The NAPS and the PPF can best be described as containments of aspirations agreed by government and the social partners. In essence they are not dissimilar to the status of various international agreements to which Ireland has signed up to and which includes similar aspirations of a socially important nature. Perhaps the main differences between the combined aspirational nature of the PPF and NAPS and the existing international agreements such as the European Social Charter is that in the case of the international context the aspirations are set in terms of rights whereas in the former there is virtually no recognition of the rights based approach.

The literature reviewed thus far and the esteemed international opinion such as Professor McCrudden (2000) states quite clearly that there are two main options for introducing a rights based approach to social issues such as housing, health, etc. One is a drip-drip approach through social reform and policy change and the other is Constitutional change to enshrine the legal protective basis for social rights. Emanating from practically all the literature and the international opinion is the belief that Constitutional option is the best course to take.

¹¹⁰ NAPS stands for the National Anti-Poverty strategy. (1998) The PPF stands for the Programme for Prosperity and Fairness (2000)

However, if a rights based approach to social policy through the NAPS and the PPF is to be considered then the position put forward by Raymond Plant (1992) is perhaps the strongest base for a social rights approach to welfare provision.

Of paramount importance in this regard would be the need to distinguish rights from privileges and what may prove beneficial in this regard is the setting up of a panel of experts to review the extent to which the state is meeting their commitments under such umbrella terms as the PPF and the NAPS. This would introduce the concept of accountability by the state in similar terms to that which exists at present under the terms of the International Convention on Economic, Social and Cultural Rights. This is the process where state parties to the agreement report to an independent panel of experts on the measures taken at domestic level to meet the obligations of the various international treaties.

Finally, a case ought to be made for the NAPS document to embrace the principle 'enhancing citizenship'. I make this point whilst considering the comments contained within the foreword of the NAPS document which states "the guiding hand of state policy will not encourage dependency". Unless the objectives and targets of the NAPS is aimed at the enhancement of citizenship rights they will continue to be associated with hand-outs from the state as the foreword mentioned above infers. Consequently this hand-out connotation undermines any attempt to argue for the rights of the poor and socially excluded.

Social Rights cannot stand alone, they must be discussed in a framework which is acceptable, coherent, which identifies the indivisability of civil, political and social rights and finally which allows for the potential justiciability of social rights. And according to D'arcy (1999) ¹¹¹ Citizenship, in recent times, has become an indispensable concept in which it provides a framework for the discussion of social rights.

¹¹¹ D'arcy, I. (1999) 'Citizenship and Irish Social Policy' in (eds) Kiely, G. et.al., *Irish Social Policy in Context* Dublin, UCD Press.