



Reimagining adoption in Ireland: a viable option for children in care?

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Abstract

This article considers how adoption may develop as a viable option for permanency planning for children in care in Ireland following the Constitutional Referendum in 2012 on Children's Rights. The Referendum led to the broadening of the scope for using adoption as an option instead of long-term care. While a common approach used in other jurisdictions for many years such as the UK and the US) this is new for Ireland. , In order to be prepared to consider how adoption can be developed as a viable alternative to long term care, we need to focus on the specific context of Ireland *and* the learning from elsewhere. t. In the present, opportunities for a different style of adoption influenced by open adoption and concurrency planning are evident and highly appropriate for the use of adoption for children in care. The themes that are central to understanding the Irish context are: the history of adoption in Ireland; the impact of a dominance of a familist ideology underpinned by the Irish Constitution's Article 41 and 42 and the nature of Irish child and family law. With reference to learning from other jurisdictions, we have selected three inter-related themes that are of importance: learning from the development of adoption as a permanency option; critical overview of concurrency planning and a consideration of open adoption. From this discussion, we make some suggestions about the best ways forward in Ireland to inform the development of adoption as a viable option for children in long term care in the present day. This article is intended to be informative and exploratory in recognition that this theme is likely to evolve over a number of years within the system in Ireland. It is based on a seminar series developed to stimulate discussion and debate in light of the potential changes to policy and practice.[__](#) The article highlights, as a case example, the extent to which the local socio-cultural and historical context influences policy development and should have resonance for both for readers in Ireland and other jurisdictions who are experiencing similar reforms.

Reimagining Adoption in Ireland - A Viable Option for Children in Care?

Introduction:

In 2012, the 31st Amendment to the Irish Constitution was voted for in Ireland. The result is that Article 42A has now been inserted into the Constitution. This adds to the existing Article 41 on the Family and Article 42 on Education (Irish Constitution Bunreacht na hEireann, 1937). This has led to some very significant changes in law and includes the extension of the potential use of adoption including its use as an alternative to long term care and the insertion of the child's right to have their views given due weight and attention in all proceedings relating to them (Constitution of Ireland, 2015)

In this article, we address specifically the implications of this change to the use of Adoption for care purposes in Ireland by considering the unique context of Ireland and the potential learning we can gain from use of adoption for care in other jurisdictions. The focus is primarily 42a and its impact on legal and policy changes re use of adoption for care in Ireland. The starting point for this article is the acknowledgement that adoption in Ireland has always been controversial. Historically, there was huge cultural resistance to placing adoption on a legal footing and, therefore, Ireland lagged behind its European counterparts in only making adoption a legal process in 1952 (O' Hallorahan, 2009; 2010). Ireland has always operated a closed system of adoption which meant that legally, all legal ties are severed perpetually and socially, all social and emotional ties are severed. This form of adoption was traditionally adult-centred. And adoption was regarded as an optimal solution for everyone. The adoption was closed both in the legal sense (all legal ties were severed perpetually) and in social terms (all social and emotional ties were severed), with the adoptive parents never having to worry about "interference" from the natural family. Under the Adoption Act 2010 this still remains to be the case.

Traditionally, the majority of adoptions in Ireland were infant stranger adoptions and it is estimated that to date more than 40,000 people in Ireland have been affected by domestic adoption. The number of infant children placed for adoption has decreased significantly with recent statistics indicating that 7 stranger non-relative adoptions took place in 2015 (AAI, 2016). The total number of children placed for adoption from care in 2015 totalled 13. Indeed, since 2012 the number of children placed for adoption from long-term foster care was 63 (AAI, 2016).

Where children are adopted, the majority of children (65%) adopted from long-term foster care were 17 years of age as the young people approached adulthood (statistics relating to 2014: AAI, 2015). Current statistics on children in care show that Ireland has not generally used the care system as a route into adoption as would be the case in the UK and the US. For example, regarding children in care in Ireland, in April 2015, there were 6,420 children in care with 93% placed in foster care. (DCYA, 2016). In Ireland, of the 6,011 children in a foster care placement, 4,137 (69%) were in general foster care while 1,874 (31%) were in relative foster care. Children in residential care totalled 325 while only 18 children were adoption from foster care in that year (www.Tusla.ie). Conversely, statistics from the same period (on 31st March 2015) for England show that 69, 540 children were in the care of the state and of this number, 52,050 (75%) were in a foster care placement and that 5,330 (7.7%) children were adopted from care (CoramBAAF, 2016).

There have been a number of recent Constitutional and legal changes affecting children in Irish society. Some of these changes are very significant for those in the care of the State. These changes bring the emotive and often controversial theme of adoption in Ireland in juxtaposition to an equally sensitive and central theme relating to the privacy of the family and the right of the state to intervene in cases of child protection. It will lead to greater overlap between the work of two aspects of the Irish System under the governance of the Department of Children and Youth Affairs (DCYA) –adoption legislation and Policy and Child Welfare Legislation and policy – and will potentially transform the way in which long term solutions for children in Ireland will be decided into the future.

The aim of this article is to consider what are the possibilities and limitations of using adoption as a means of permanency planning in Ireland when considering the Irish context and the wider international context? Linked to this, we ask how can concurrency planning and open adoption change the way adoption is understood and applied in the Irish context specifically when it comes to using adoption as an alternative to long term foster care. This article explores these recent constitutional and legal changes and what it might mean for Ireland's children in care. It will draw on the experiences of the UK and Northern Ireland (in particular) in examining the role of adoption for children in care, the complexities associated with open adoption and the uncertainties that exist within Irish social work and adoption service practice. This article puts forward some of the concerns that currently prevail when implementing a policy such

as adoption for care. The conclusion draws together the main messages highlighting the purpose of this article are to help inform current developments in the use of adoption for care in Ireland.

Critical Reflection on the Irish Context for Use of Adoption as a Care Option.

Contextualisation of the Referendum: A Brief history of its evolution and Implications

While it is fairly well –established that any policy or development needs to be understood within the specific context within which it is implemented, the significance of this influence cannot be overstated when it comes to the question of family and child rights in Ireland. Adoption Law was late coming to Ireland in 1952. By this time, there were only eight countries in the western world that had no provision for adoption (Kornitzer, 1952), even though the informal practices were in existence prior to this and indeed illegal practices also (see for e.g. Milotte 2011; Whyte, 1971). There are a few main arguments offered for why this was the case; a concern about maintaining religious identity in the adoption and avoiding proselytization; a concern for the impact on core issues in a mostly rural society regarding land ownership and inheritance and a possible influence of the dominance of institutional forms of care for children in Ireland up to 1970 (Skehill 2, 2004; Darling, 1974; Abramson, 1984,).

In 1937, Article 41 and 42 of the Irish Constitution enshrined the centrality of the family – based on Catholic marriage – and established the rights of parents (who were married) as ‘imprescriptible’ and ‘inalienable’. As child care legislation became more informed by the principles of early intervention, prevention and children’s best interest, reflected in the Child care Act 1991 for example, the balance between the protection of the rights of the parents and those of children at risk of harm and abuse became under increasing scrutiny. The 1993 Kilkenny incest Investigation (McGuinness 1993) brought to harsh light the problem with a society that valued patriarchal family values, family privacy and minimal state intervention when it came to the needs and interest of a young person who was being harmed and abused within a family that took that authoritarian stance to an extreme. Justice Catherine McGuinness provided a measured review that pointed to many areas that required reform. One of the most urgent was identified as the need for constitutional reform. McGuinness attributed the extensive and extraordinary (when compared in a global

context) weighting given to parents' rights, by comparison to children's rights, as one of the reasons why the abuse that the young woman in this case occurred for so long without adequate intervention (Burns, in Burns & Lynch 2012). In 2010, the report of the Roscommon Child abuse inquiry outlined how the parental rights enshrined in Article 41 and 42 of the Irish Constitution which found that the authorities failed to intervene in relation to the abuse and neglect of children partly due to a challenge to their intervention brought through the High Court (HSE, 2010). In this case, the parents sought to get a High Court Injunction to prevent the removal of their children based on the argument that their Constitutional rights as parents were being infringed by the intervention in relation to the children's care and welfare. Another stark example of parental rights taking precedence over those of children was evident in the *N v Health Service Executive* case (commonly referred to as the Baby Ann case) (See Kilkelly, 2008). This involved a young unmarried couple who placed their child for adoption. They subsequently married and then revoked their consent to the adoption. Although the High Court granted custody of Baby Ann to the adoptive parents, this decision was later overturned by the Supreme. The fact that the birth parents married during the adoption process, influenced the course of action taken by the courts. The remarks of Justice McGuinness indicated a strong reluctance in granting the appeal. She stated that the Baby Ann case had to be decided under the Constitution and the law as it stood. It was with reluctance and some regret that she allowed the appeal. (see: <http://www.courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/b43e456d7a8eea87802572250052b81b?OpenDocument>)

Indeed between 1993 and 2012, the call for a Referendum went through various stages and debates. A Constitution Review Group was established in 1996 which reiterated the call for change to A41 to give children basic rights and to emphasise that the child's best interests should be paramount in line with the Child Care Act 1991 and the United Nations Convention on the Rights of the Child, ratified by Ireland in 1992. The UN committee on Rights of Child called for constitutional reform in its response to Ireland's submission in 1998 and again in 2006. The following year, 2007, The Joint Oireachtas Committee for Constitutional Amendment was established and they produced the wording for a new Article 42A (see Kennan & Kelleher, CYP, 2012). Agreement was never reached on the

wording but two years later, further impetus for reform emerged. The momentum for the need for reform was reinforced in light of the Ryan Report on the Commission to Inquire into Child Abuse in 2009 which brought to the fore the issue of children's rights and cemented commitment to work towards reform (Ryan, 2009). As mentioned earlier, the Roscommon Child Abuse Inquiry 2010 served as a reminder of the problem related to the former position of children before the amendment was passed in 2015 when it came to balancing the (imprescriptible and inalienable) rights of parents.

The major issue is that the rights of children were, up to this point, enshrined mostly in relation to their status as children of their parents in Articles on the Family (41) and Education (42). Other than this, there is only vague coverage of generic human rights under Article 40 of the constitution which extend to both adults and children. While some argued that this was sufficient (Freeman, 1997), most children's rights activists were agreed that constitutional reform was essential in order to allow policy and procedure to follow that ensured best interests of the child as the primary factor in decision making in child welfare cases. In 2012, the wording for the Referendum was finally agreed and ironically, did not differ significantly from that proposed in 2007. A new 42A was proposed which in itself is worthy of further debate in terms of the question of whether this was sufficient, bearing in mind that Art 41 and 42 remain unchanged. For this article, the focus is the crucial change 42A implies in relation to the provision for adoption of children from married parents (this was allowed only in exceptional cases up to now) and the use of adoption as a means of securing long term care for certain children.

Recent legal changes: Constitutional Referendum Opens Up Adoption as a Care option

As aforementioned, In November 2012 the Irish Government asked its Irish citizens to vote in a Children's Rights Referendum. This was passed and article 42A has now been inserted into the Constitution. This has led to some very significant changes in law and includes the following (Constitution of Ireland, 2015):

- Provision for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.
- Provision for the voluntary placement for adoption and the adoption of any child.

- A Child who is capable of forming his or her own views, the views of the child shall be ascertained and given due weight having regard to the age and maturity of the child.

At the time of writing the only additional information that practitioners could draw from was the accompanying Adoption (Amendment) Bill 2016 which replaced the Adoption (Amendment) Bill 2012. The Bill also provides for couples who are civil partners or cohabitees to be eligible to apply to adopt a child. The relevant provisions are being brought forward into this Bill from the Children and Family Relationships Act 2015. The Bill also makes much improved provisions on step – parent adoption. It provides for the adoption of a child by his or her step parent without the requirement for the child’s other parent to adopt his or her own child. The detail regarding the scope of adoption in Article 42A is very significant in light of the proposed amendment of section 54 of the Adoption Act 2010. This Bill proposes to provide for the High Court to make an Adoption Order without parental consent where: a) 36 months of failure on part of the parents (immediately before application to court) by parents; b) no reasonable prospect that they will be able to care for the child; c) failure is abandonment of parental rights; d) due to failure the State will step in where: (i) the child is in custody of and has had a home with applicants at time of application; (ii) the child has been in custody of applicants for 18 months; f) adoption is considered a proportionate means to supply parents; g) voice of child/best interests of child given due consideration

Two important points are worthy of note here. The first is that prior to the recent thirty-first amendment to the Irish Constitution in 2012 (i.e. the addition of 42a clause relating to children’s rights), proof of abandonment up to the age of 18 years on the part of the parents was required before adoption could be considered as a viable option. The criteria were too high and were impractical. The Adoption Act 1988 states that “for a continuous period of not less than 12 months immediately preceding the time of the making of the application, the parents of the child to whom the declaration under section 2(1) relates, for physical or moral reasons, have failed in their duty towards the child”. The Act continues and says that “it is likely that such failure will continue without interruption until the child attains the age of 18 years,” and that “such failure constitutes abandonment on the part of the parents of all parental rights, whether under the Constitution or otherwise, with respect of the child”

(Adoption Act, 1988, Section 3). In practice, this has been a very difficult criteria to satisfy which in turn has led to many children remaining in long-term foster care. In a small-scale study carried out in 2015 some social workers suggested that within the Irish child protection system, parental rights have often taken precedence over the rights of children (McCarthy, 2015). Children who had been placed with foster carers from a young age, and for all intents and purposes, were living as a family member, were affected by this and left in a legal limbo. Children belonged to two families; a social family and a legal family. If, for example, they wanted to leave the jurisdiction for a family holiday, this required consent from either their biological parents or those acting on behalf of the parents (social worker, judge). It also meant that children had to have a surname that was different to their social family. The second point worthy of note is that post article 42A the emphasis and focus has shifted away from parental failure with more of a focus on children's rights. The focus is also on the effect of the failure (whatever that is) on the child (McCaughren & Parkes 2016).

While we now have the referendum passed, and this option for adoption included as one of the reforms, due to our socialisation, cultural context, non-interventionist and familialist orientation, it will take a different way of thinking and analysis to consider when, how and why it may be suitable for legal family ties to be severed in cases of children in long term care (Powell & Scanlon, 2015, Canavan, 2012,). It will also take a change of understanding of adoption as a necessarily closed and final matter to a view of adoption as potentially more open and fluid. In order to inform this challenge, the following section contextualises the Irish experience within a wider international context to help us to rethink and reconceptualise the possibilities, as well as the limitations of using adoption as an alternative to long term care for some children in Ireland.

Contextualising the Irish debate within wider international context regarding use of Adoption for Care

In the following section, we outline the historical development of adoption in Ireland and contextualise this in a wider international context with a focus in particular on learning from Northern Ireland, the UK more widely and to a lesser extent the US..

The Case against Wider Use of Adoption for Care in Ireland.

It could be argued that considering adoption as a permanency option for children in care is a retrograde step. We need to reflect critically on the concept itself specifically within an Irish context as a means of informing current and future policy development. Given Ireland's chequered history of adoption (See O' Halloran, 2009; 2010) which, in recent times (See Richardson & Palmer, 2015), has been further marred by the Government's reluctance to give adopted persons a right to access their information, perhaps we should be reassessing the true meaning of adoption in context. Adoption in Ireland, in its current form continues to be based on the closed model of adoption as aforementioned. . In the eyes of the law, this means children are regarded as if they have been born to their adoptive parents. Adoption, therefore, removes a person's basic right to their family of origin. We can't and we should not ignore the fact that adoption, for some people, has resulted in a tremendous amount of hurt, anguish, loss and pain. The cornerstone of adoption was built on secrecy and denial. While the practice of adoption has more recently embraced a much more open approach in recognition of the diverse needs of adopted children, the law has not changed. Although the Adoption (Information & Tracing) Bill was published in 2015 that makes provision for statutory entitlement to identity information, it has been heavily criticised as a discriminatory piece of legislation that requires conditional access to birth information. Ireland remains out of kilter with other European countries that have long addressed the issue of access of birth information *In 1975 Britain addressed the issue of closed records where persons became entitled to obtain their original birth certificate from the age of 18 years. In Scotland, adopted persons can access their birth records once they reach 17 years of age and this has been the case since 1930 (Parkes & McCaughren, 2013).*

The history of adoption in Ireland is intrinsically connected to the history of the illegitimate child and their unmarried mother. Ireland's history has demonstrated that as a society it has shown little or no concern not only for single mothers who were regarded as "penitents", but also their 'illegitimate children' (Enright, 2015). Furthermore, Ireland's adoption history aligns itself, in more ways than one, to traditional constructions of slavery as Ann Enright's "*Antigone in Galway*" argues. She suggests that Magdalene laundries - one of the sources of confinement for women who had children out of wedlock in Ireland - might also be "styled as labour camps" and cites the McAlesse report, chapters 15 and 19 that make reference to women's lack of wages (p. 8). She writes "Broadly speaking, the

report asks us to believe that women working an eight or ten-hour day ('we never knew the time,' one of them says) six days a week, before falling asleep in unheated dormitories, could not earn enough to keep themselves fed...The question is not one of business management, but of human rights." (ibid). It has also been well documented that nuns made decisions for single mothers and that unmarried mothers were "strongly encouraged" to place their children for adoption (Maguire, 2009; Milotte, 2011).

Research from a wider international context would also strongly caution Irish society from going down the route of using the permanent practice of adoption as a way of resolving temporary problems (see Tefre, 2015). Tefre (2015) considers the use of adoption in the United States through analysing how competing discourses have influenced the debate from the 1980's onwards and pondering how such a strong endorsement of use of adoption for children in care has prevailed. Through an analysis of congressional hearings on the use of adoption to terminate parental rights, he proposes that three core discourses have influenced the dominant preference for adoption reflected in the US system. These discourses are as follows. Risk Pragmatism explained as an emphasis on avoiding future risk of harm for children in their own best interest; parental responsibility ethics which places particular blame on parents for the need for termination of rights and child re-familiarisation ethics which emphasises the non-blame position in relation to children's role in the termination of rights. There seems to be general consensus in much of the debate that while the pursuit of permanency for children needs to be a priority perhaps it should not always be sought in the form of a permanent legal severing of ties between the child and his/her family of origin. Non-consensual adoptions are particularly sensitive. Indeed the adoption of children from the care system in England has, at times, been heavily criticised as an option that is pursued more vigorously than most of its counterparts (Tickle, 2016; Kirton, 2013, Skivines & Tefre, 2012; McDonald 2015)

Recognising the many challenges arising in the UK context, The British Association of Social Workers have recently launched a year-long inquiry into the role of the social worker in adoption cases. An interrogation of the "ethical and human rights bases on which recommendations for severing a birth family's legal bond with a child are made" will take place (ibid). A recent case brought to the European Court of Human Rights highlights the potential for discrimination (in this case on the grounds of poverty) that can arise in

adoption cases. The case, *Soares de Melo V Portugal* found that the Portuguese Government had violated Article 8 of the European Convention on Human Rights. In the judgment the opinion of one judge read: “The unilateral and absolutist understanding of the concept of the child’s interest supremacy is ignorance of the need to interpret this notion harmoniously with other fundamental rights. Absolutism in the child’s interest in reading can easily become administrative formalism source from the child protection services, formalism which in turn was quick to degenerate under cover of an alleged paternalistic benevolence of the state”. The judge further stated that “to prevent this history from repeating itself, it is of utmost importance that the child welfare services fully respect the human rights of all, including parents, even when caring people are convinced that they only serve the best interests of children” —(See more at: <http://childprotectionresource.online/the-judgement-of-the-european-court-against-portugal/#sthash.CaaoJZ9m.dpuf>). Kirton (2013) also cautions us to the “risks of growing injustice for birth families” and the wider systemic dynamics at play which might well elevate adoption over other forms of permanence. Writing from a UK context, he believes that “offering a (largely) privatised solution to some of the consequences of social problems relating to substance misuse, mental ill-health and domestic violence” resonates with a “strong neo-liberal emphasis” (Kirton 2013:104). Kirton also highlights a danger that pursuing permanency via adoption might not only further highlight societal inequalities but might also threaten or undermine the more supportive aspect of child and family social work associated with foster care support.

Indeed, some contributors to the adoption debate believe that because adoption has caused so much anguish and hurt for so many people, it is a practice which should be abolished (Robinson, 2003). Focusing on the Australian context Robinson also draws parallels between adoption and slavery and writes that “slavery’s defenders pointed out that slaves were better off being owned by a good master, that it provided them with a home and security and rescued them from a life of disadvantage” (p. 203). As a society we vehemently abhor the practice of slavery, “it is ethically wrong and morally indefensible” (ibid). Robinson (2003) argues that “it is time for society to realise that adoption is ethically wrong and morally indefensible” (p. 204).

Given the level of debate surrounding adoption in Ireland, many practitioners are understandably feeling somewhat apprehensive about what this legal change will mean for social work practice. Some of the reservations expressed by social workers in a small-scale Irish study reflected issues mentioned above centred on the permanence of adoption which severs the child's legal relationship with his or her carers (McCarthy, 2015). As we have already acknowledged, it is early days and we cannot claim to have the answer as to what is the best direction for Irish policy and practice to go down to maximise outcomes for children. We can however benefit from measured critical consideration of some of the themes that have arisen in other jurisdictions (see for e.g. Skivines & Tefre, 2012) and learn from this while noting the uniqueness of the Irish context given the specific journey that has led to this option for adoption being available at this moment in time. The themes that seem of particular relevance to consider centre around the debate regarding use of Adoption to promote Permanence and stability and research relating to this, namely concurrent planning and open adoptions that indicate a different type of adoption practice more fitting for present day context.

Permanence and Stability in the Context of Adoption.

The relationship between adoption and permanence has already been addressed in this article with regard to some negative connotations of this from an Irish historical perspective and international debate about legal and social permanence of adoption and potential risks inherent in using this route for children in care. However, there is a strong case also to be made for adoption as a permanent option that gives greater stability for children. We know that in Ireland, as elsewhere, normally the first priority is towards reunification with the parents /family of origin but this is not always successful for the many reasons evidenced in research (O' Brien, 2014; Farmer 2014; Moran et al, 2016). It is at the point of long term planning for a child in care that the question of how adoption offers one option for permanence alongside the possibility of long term foster care or for a small number of children in residential care. In the UK (see for e.g. Triseliotis, 2002) and Northern Ireland (see for e.g. Kelly & McSherry, 2003, McSherry et al, 2015), adoption has been highlighted as offering a particular form of stability for children in care suggesting that, notwithstanding the challenges involved, we need to seriously consider what it can offer to some children within the Irish care system .

Moran et al (2016) provide an extensive review of Irish and International research relating to outcomes for permanence and stability in Ireland and internationally. The negative impacts of instability for children in care are evidenced strongly. Over recent decades, a concern about drift of children in care led to greater focus on the need for planning for children in care, stability and security (See for e.g. Biehal, 2014; O'Brien and Conway, 2004; O'Brien & Palmer, 2015; 2016a; 2016b). Nonetheless, many children continue to have placement instability and multiple move which are generally found to have negative effects (Rock et al., 2013; O'Brien, 2013; Daly and Gilligan, 2005; McSherry et al, 2008; Moran et al, 2016). While the experience of 'stability' is arguably a subjective one (See Goodyer, 2016; Mason and Tipper, 2008; Moran et al, 2016), the objective nature of the placement is also an important extrinsic factor. One strand that has emerged from this increased awareness of the importance of placement stability in an objective sense is the emergence of adoption as a preferred option for legal and social stability in the US and the UK (See Biehal, 2014; Tefre, 2015). In Northern Ireland, on a slightly later timescale, a similar momentum emerged in recent decades (See Kelly (1998; Kelly & McSherry) . Some countries, such as Norway, are similar to Ireland where use of adoption remains rare (Skivines & Tefre, 2012). Others, like the US, have embraced it as the normative response for 'permanent' care for children at risk (Tefre, 2015).

If adoption from the care is being considered as a viable option for some children in the care of the Irish state, the inherent complexities of using adoption to achieve the goals of stability need to be fully recognised. The limitations and potential of adoption as an option for care need to be carefully consider in Irish policy and practice. The type of adoption (e.g. open and/or via concurrency planning) is important to consider. A child-centred practice needs to be developed where permanency is considered as the optimal solution solely for the child as opposed for the interests of the adoptive parents or the child welfare system. The permanence of the decision must also be carefully considered. Kelly (2015), for example, talks about the importance of adoption being a proportionate response and lists the requirements needed to satisfy the justification of adoption as the option for permanence and stability. This includes the follow: the child has suffered or is likely to suffer extensive abuse or neglect and where the evidence has been rigorously examined by the courts; efforts have been made and opportunities given to overcome the difficulties in

the child's family; there is no prospect in the foreseeable future of the child returning its birth family; adoptive parents are recruited, trained and supported to meet the child's needs and where appropriate, ongoing birth family contact is facilitated (Kelly, 2015). In Ireland, this approach will require a considerable change in mind-set for the traditional group of adopters who are seeking permanency from an early a stage as possible. We cannot ignore the fact that both nationally and globally there is a significant decrease in the numbers of children available for adoption (AAI, 2014, Selman, 2014). Prospective adoptive parents may now look to the adoption for care route as their only possible route to parenthood.

Other key challenges to consider in implementation of adoption from care as a permanency option should include consideration of adoption as a set of options for permanence, the importance of post-adoption support to adoptive parents, greater critical attention to the views and wishes of children in the processes of adoption and critical reflection on how best practices within both child protection and welfare on the one hand and adoption services on the other can best be developed to meet the most important ambition of the Constitutional Referendum in 2012: to enhance and extend the rights and best interests of children and young people in Ireland.

In the following two sections, we briefly consider concurrency planning and open adoptions as mechanisms that have potential to change how adoption is understood and applied in the Irish care context. It seems it is only through this approach to adoption, as opposed to the more traditional closed approach, that the option will be viable for children in care. Consideration of such options may improve the viability and relevance of use of adoption for care within the Irish system as way of opening up the range of lenses through which we can progress to consider how adoption for care can best be set out as one of the options for children designated as being in need of 'long-term care'.

Concurrency planning – a paradox in practice?

When considering adoption for care, the concept of concurrency planning might initially pose some challenges for adopters when comparing it to traditional constructions of adoption in that the process is (i) not about meeting the needs of adults and providing a child for a family, but more about finding a suitable form of substitute care for the child, (ii)

the permanency offered by adoption is only considered when all routes to return the child to its family of origin have been meticulously exhausted. This process, in practice, is referred to as concurrent planning.

Concurrent planning is “a scheme in which both rehabilitation to birth parents and adoption would be worked on concurrently, with intensive resources deployed for each alternative” (Kenrick, 2009; 5). The child is placed with foster carers who have also been dually assessed as prospective adopters. Contact is maintained with the birth family while the child is being cared for by the foster carers. Concurrent planning is not something that has been commonly practiced within Irish social work contexts. The traditional model within fostering and adoption contexts is that people are assessed as *either* foster carers or adopters but not as both. The departure from this model of practice introduces a whole new set of considerations, and, without doubt would necessitate the introduction of a very different type for fostering/adoption assessment, as well as additional resources to support it. Concurrent planning is a model of practice that has the potential reduce the number of foster placements for children and therefore provide continuity of care. It is also viewed as a transparent process whereby birth parents can be part of the planning process at an early stage. By making efforts to sustain contact with the biological family, the objective is that parents maintain attachments and at the same time enhance their parenting skills (Monck et al, 2005). Monck et al’s (2005) study noted that preparation for the concurrency carers included the acceptance of a relatively high rate of contact over several months (ibid, p. 24). Contact with birth parents was supervised by social workers and court ordered. It is also very clear to see some of the complexities associated with this practice where the concurrency carers’ end goals are in stark contrast to those of the birth parents who ultimately hope for the return of the child into their permanent care. Kenrick (2009) refers to the “tension behind the philosophy underpinning concurrent planning: to maintain and nurture existing attachments between birth parents and infants while also expecting babies and CP carers to manage the intense attachment that quickly develop between them” (p. 15). Some of the adoptive parents identified in Monck et al’s study (2005) experienced the high level of contact with birth parents as a considerable challenge, with some apprehension about encountering people from backgrounds very dissimilar to their own. In another study, carers talked about having to manage expectations and uncertainty (Kenrick,

2010). Similarly, the contact arrangements were experienced by birth parents as a stressful experience.

Open adoption: Northern Ireland/Republic of Ireland

Open adoption is a related and broader consideration that means that some members of the child's birth family maintain some level of contact with the adopted child and its adoptive family after the final adoption order has been made. This is a practice that has emerged internationally as a response to some of the difficulties experienced by adopted persons in the closed model of adoption. Today, most adoptions incorporate some level of openness both pre and post-adoption. Adoption agencies can play a very important role both negotiating and facilitating open adoption agreements between birth families and adoptive families. In the Republic of Ireland open adoption has no legal standing and all agreements between birth families and adoptive families are based on goodwill. Up until now, open adoptions have been facilitated between infants placed in adoptive families and their birth families. Although we can learn from the experiences of adopters who have contact with the birth families of children who relinquished voluntarily, it must be noted that "contact for all the adult parties involved in concurrent planning has meanings and responsibilities that are not the same as the contact arrangements for other looked-after children, either those in 'traditional' foster placements or those placed for adoption" (Monck et al, 2005, p. 16).

In a study (McCaughren, 2010) exploring the narratives of adoptive parents in Ireland who had adopted children in infancy, their stories illustrated the complexities of living with open adoption. Their narratives highlighted the variety of open adoption arrangements that are in existence and the endless permutations. Their stories suggested that the experience of open adoption is unique to each and every family. What worked for one family might not work for another. Therefore, it would seem that there can be no absolute blueprint for open adoption and oftentimes it is unpredictable. Open adoption is, therefore, a process that requires renegotiation and re-evaluation over time and in order serve the changing needs of children and families it is a practice that needs to be resourced and monitored efficiently. If, however, we are now gravitating towards adoption from care, then the issue of open adoption must be viewed in a whole new light. Children coming to adoption from the care

system have, in most cases, pre-existing relationships with their birth families or extended birth families. However, children entering adoption via the care system route have also been exposed to adversity in their lives including neglect, emotional/physical abuse and carry the psychological effects of this with throughout them. Therefore, the needs of this group of children are potentially more complex and more challenging.

This, then raises the question: would making an open adoption part of the adoption order be of any benefit to those involved, or would it just add another layer of complications to what is already a rather complex process? The UK and Northern Ireland have provisions in legislation to make open adoption part of the adoption order; however, this appears to be an underutilised facility in practice.

Dr Mandi McDonald (2015) asks the very pertinent question, “To what extent should legally severed relationships be kept alive through post-adoption contact?” Referring to the experience of Northern Ireland the majority of adoptions are of children in the care system and are made with parental consent via a Freeing Order. Most children will live with their parents before entering care where extensive reunification efforts have been made. The average age of children placed for adoption is 4 years and 4 months old and 62% are placed for adoption with their (dually assessed) foster carers (McDonald, 2015).

Conclusion: The way forward

Wherever a policy as decisive and impactful as use of adoption for care is imminent, the need to critically inform its use and application to the specific context is imperative. Skivines & Tefre (2012) give a stark example of the extent to which the context of implementation of adoption influences not only the policy and law itself but also its use and application on a practice basis. By doing a cross-country analysis, they give understanding to the complex reasons why Norway, similar to Ireland, uses adoption rarely while in the UK and US, it has become one of the main options once long-term care is decided. Tefre (2015) makes a particularly strong case for the importance of informing what he argues to be a normative acceptance of adoption as a main option for children in need of care and

protection in the States through critically considering the impact of discourse around risk, parental responsibility and child refamiliarization discourses. Likewise, our main intention with this article has been twofold. We have argued that there is a need for vivid critical awareness that the way r adoption as a care option becomes implemented will be vastly specific to the Irish context in many ways. And yet at the same time, an equally strong argument is made for the need to ensure that the way forward in Ireland, whatever direction it takes, is informed by learning from other jurisdictions, especially our Near Neighbours in Northern Ireland and the UK . Underpinning both propositions is the message that we need to consider adoption from a present perspective with a focus on open adoption and the potential of concurrency planning. There is immense value in exploring critically how the debates relating to permanence have developed and consider evidence from research in jurisdictions where it is now a well-established mode of delivery. At this present moment in Ireland, there is an important opportunity to critically reflect on adoption alongside the other care options for children given the level of policy and legislative development underway in this area. In this way, we can contribute to an assurance that the pathway to use of adoption is focused on the best interests of the child, taking cognizance of their views and ultimately ensuring that whatever decision is made with regard to the permanence and security of each individual child, that it is indeed the child's interest that will tip the scales as the decisive influence.

But we must also emphasise that amongst the diversity of context, there are some universal themes that are central in terms of the potential pull between identity and family tie and the security and permanence. These include: the historical construction of the family in society and its relationship with the State; the extent to which a state considers itself the corporate parent, the orientation of the child welfare system in terms of emphasis on risk and welfare and the legal frameworks that exist which enable and constrain how practices develop. By looking at a live case example such as Ireland as policy develops in the coming years, other jurisdictions have the opportunity to observe and apply learning to their own unique context. As we move towards the implementation of adoption as a care order, readers can continue to watch 'live' how this evolves in the Irish context in the coming few years.

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References

Abramson H. J. (1984) *Issues in Adoption in Ireland*. Dublin: Social Research Institute.

Adoption Authority of Ireland (2016) Statistics obtained via personal email communication with authors

Adoption Act (1998) Republic of Ireland. [Last accessed 30th May 2016] available at <http://www.irishstatutebook.ie/eli/1988/act/30/enacted/en/html#>

Adoption (Amendment) Bill (2016) Republic of Ireland. [Last accessed 30th May 2016]
available at
<http://www.dcy.gov.ie/documents/legislation/20160505AdoptionABill2016.pdf>

Adoption Authority of Ireland (2014) Annual Report. [Last accessed 30th May 2016]
available at
<http://www.aai.gov.ie/attachments/article/32/Annual%20Report%202014%20FINAL.pdf>

Biehal, N. (2014) 'A sense of belonging: Meanings of family and home in long-term foster care', *British Journal of Social Work*, 44: 955–971.

Burns, K (2012) 'Moving beyond 'case-management' supervision: Social workers' perspectives on professional supervision in child protection'

Burns, K.; (2012) 'Moving beyond 'case-management' supervision: Social workers' perspectives on professional supervision in child protection' In: Burns K & Lynch D (eds) *Children's Rights and Child Protection: Critical Times, Critical Issues in Ireland*. Manchester: Manchester University Press

Canavan, J. (2012) Family and Family Change in Ireland: An Overview, *Journal of Family Issues*, Vol. 33, No. 1, pp. 10-28.

CoramBAAF (2016) *Statistics England*, [Last accessed 13th June, 2016] available at:
<http://corambaaf.org.uk/res/statengland>

Daly, F. and Gilligan, R. (2005) *Lives in Foster Care: The Educational and Social Support Experiences of Young People Aged 13 to 14 Years in Long-Term Foster Care*. Dublin: Children's Research Centre.

Darling, Vivienne, *Adoption in Ireland* (Dublin: CARE 1974)

Enright, A. (2015) London Review of Books, *Antigone in Galway: Anne Enright on the dishonoured dead*, Vol. 37, No.24, 17th December 2015, [Last accessed 13th June, 2016] available at: <http://www.lrb.co.uk/v37/n24/anne-enright/antigone-in-galway>

Freeman, M. *Essays on the Rights of the Child*. The Netherlands: [Martinus Nijhoff Publishers](#).

Gilbert, N, Parton, N. & Skivenes, M (2011) *Child Protection Systems: International Trends and Orientations*, New York. Oxford University Press.

Goodyer, A. (2016) 'Children's accounts of moving to a foster home', *Child and Family Social Work*, 21(2): 188–197.

Health Services Executive (2010) *Report of the Roscommon Child Abuse Case*. Dublin: Stationary Office.

Kennan, D. & Keenaghan, C. (2012) 'Children's rights and the family: A commentary on the proposed constitutional referendum on Children's Rights in Ireland'
http://www.childandfamilyresearch.ie/sites/www.childandfamilyresearch.ie/files/2012_03_21_commentary-cyp.pdf

Kelly, G. (2015) *Adoption as an option for children in long term care with reference to the Northern Ireland experience*, Presentation at National University of Ireland Galway, 'Reimagining Adoption as a Viable Care Option in Ireland: Seminar 1', 6th May 2015

Kelly G. & McSherry, D (2003). *Review of the Freeing Order Processes in Northern Ireland* Belfast: Department Of Health, Social Services and Public Safety.

Kelly G & Gilligan R (2000) *Issues in Foster Care*. London: Jessica Kingsley.

Kenrick, J. (2009) *Concurrent Planning: A retrospective study of the continuities and discontinuities of care, and their impact on the development of infants and young children placed for adoption by the Coram Concurrent Planning Project*. *Adoption & Fostering*, 33(4) page numbers

Kirton, D. (2013). 'Kinship by design' in England: Reconfiguring adoption from Blair to the coalition. *Child and Family Social Work* [Online] 18:97-106. Available at: <http://dx.doi.org/10.1111/cfs.12027>.

Kirton, D., Beecham, J. and Ogilvie, K. (2006). Adoption by foster carers: a profile of interest and outcomes. *Child and Family Social Work* [Online] 11:139-146. Available at: <http://dx.doi.org/10.1111/j.1365-2206.2006.00400.x>.

Kilkelly, U. (2008) *Children's rights in Ireland*. Dublin: Tottel Publishing

Kornitzer, M. (1952) *Child Adoption in the Modern World*. London: Putnam.

Maguire, M.J. (2009) *Precarious Childhood in Post-Independence Ireland*. Manchester: Manchester University Press

Mason, J. and Tipper, B. (2008) 'Being related: How children define and create kinship', *Childhood*, 15(4): 441–460.

Milotte, M (2011) 2nd Edition. *Banished Babies*, Dublin: Attic Press.

McCarty, D. (2015) *Exploring Social Workers' Opinion of Adoption from the Foster Care System in Ireland* Bachelor of Social Work Thesis. Cork: University College Cork

McCaughren, S. (2010) A Study of Open Adoption in Ireland through the Narratives of Adoptive Parents. Unpublished PhD Thesis. Cork: University College Cork.

McCaughren, S and Ní Raghallaigh, M. (2015) 'Adoption in Ireland: Exploring the Changing Context' in Christie, A, Featherstone, B, Quin S, and Walsh, T. (Eds). *Social Work in Ireland: Changes and Continuities*, Palgrave Macmillan: London.

McCaughren, S. & Parkes, A. (2016) New Directions for Adoption Law & Practice, Paper presented at "From Fostering to Adoption - Social Work & Adoption Out of the Care System" Paper presented at University College Dublin, 27th May 2016

McDonald, M. (2015) Contact after Adoption from Care, University College Cork, 'Reimagining Adoption as a Viable Care Option in Ireland, Seminar II', 24th September 2015

McSherry, D., Fargas Malet, M. and Wetherell, K. (2015) The Care Pathways and Outcomes Study: The Children's Perspective Summary Report Belfast: Queen's University Belfast.

McSherry, D., Larkin, E., Fargas, M., Kelly, G., Robinson, C., Macdonald, G., Schubotz, D. and Kilpatrick, R. (2008) *From Care to Where? A Care Pathways and Outcomes Report for Practitioners*. Belfast: Institute for Child Care Research, Queen's University Belfast.

Monck, E., Reynolds, J. & Wigfall, V. (2005) The Role of Contact in Concurrent Planning: The Experience of Birth Parents and Carers, *Adoption Quarterly*, Vol. 9(1)

Moran, L., McGregor, C. & Devaney, C. (2016) *Scoping Review of International and Irish Literature on Outcomes for Permanence and Stability for Children in Care*. Galway, UNESCO Child and Family Research Centre
<http://www.childandfamilyresearch.ie/publications/policy-practice>.

O'Brien, V. and Conway, E. (2004) *Guide for Practitioners – A Standardized Framework for Domestic Adoption Preparation, Assessment and Decision-making Procedures*, Irish Adoption Board, Dublin.

O'Brien, V. & Cregan, M (2015) 'Fostering the future: A change agenda in the provision of alternative care'. In Christie, A and Quin, S and Walsh, P. (Eds) *Social Work in Ireland*, London: Palgrave.

O' Brien, V. & Palmer, (2015) Adoption and the Irish Care System: context and Drivers for Change. *Irish Journal of Family Law*. 3 1 pp. 52-59

O'Brien, V. & Palmer, A. (2016a) Adoption as Part of the Irish Care System: A New Challenge for Social Work? *Irish Social Worker*. Spring.

O'Brien, V. & Palmer, A.(2016b) Permanence and Long-Term Foster Care: What are the Options? *Foster Issue* 2, pp, 27-45.

O'Halloran, K. (2010) *Adoption Law and Practice*, 2nd Edn, Round Hall, Dublin.

O' Halloran, K. (2009) 'The Politics of Adoption' *International perspectives on law, policy and practice*. 2nd Edn, Springer, Brisbane

Parkes, A. & McCaughren, S. (2013), Viewing Adoption through a Children's Rights Lens: Looking to the Future of Adoption Law and Practice in Ireland. *Irish Journal of Family Law*.2013(4)

F Powell and M Scanlon (2015) *Dark Secrets of Childhood: Media Power, Child Abuse and Public Scandals*. Bristol: Policy Press

Robinson Burns, E. (2003) *Adoption and Loss: The Hidden Grief* (Revised Edition), South Australia: Clova Publications.

Ryan, S. (2009) *Report of the Commission to Inquire into Child Abuse*. Dublin. Stationary Office.

Shannon, G. (2010) *Adoption Law*, Roundhall, Dublin.

Skehill C. (2004) History of the Present of Child Protection and Welfare Social Work in Ireland. Lampeter: Edwin Mellen Press.

Soares de Melo V Portugal (2016) [Last accessed 30th May 2016) available at

[http://hudoc.echr.coe.int/eng#{\"itemid\":\"003-5301659-6598920\"}](http://hudoc.echr.coe.int/eng#{\)]

Skivenes, M & Tefre O.S. (2012) Adoption in the Child Welfare System: A cross country analysis of child welfare workers recommendations for or against adoption. *Children and Youth Services Review* 34 (2012) 2220–2228

Tefre, O. S. (2015) The justification for terminating parental rights and adoption in the United States. *Children and Youth Services Review* 48 (2015)87–97

Tickle, L. (2016) How can it be right to have targets for breaking up families, in *The Guardian*, 14th December 2016

Whyte, J.H. (1971) *Church and State in Modern Ireland 1923-1970*. Dublin: Gill and Macmillan Ltd.