



Girvin, B. (2018) An Irish solution to an Irish problem: Catholicism, contraception and change, 1922–1979. *Contemporary European History*, 27(1), pp. 1-22. (doi:[10.1017/S0960777317000443](https://doi.org/10.1017/S0960777317000443))

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Deposited on: 13 March 2018

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## An Irish Solution to an Irish Problem: Catholicism, Contraception and Change 1922-1979

Introduction:

In 1979 after a decade of controversy and debate contraception was legalised in the Republic of Ireland. For the first time since 1935, contraceptives could be imported, distributed and sold within Ireland.<sup>1</sup> This legislation was enacted at a time when many European states had introduced far reaching reforms on matters of sexual morality. Britain had decriminalised homosexuality, legalised abortion and liberalised access by unmarried women to contraception. Consequently, 'reproduction could be treated as entirely separate from and irrelevant to female sexual pleasure'.<sup>2</sup> For Ireland, the changes in Catholic Europe were of particular significance. France legalised contraception in 1967 and abortion in 1975 ('loi Veil'). The Italian parliament and electorate endorsed divorce and abortion despite opposition from the Catholic Church and the dominant Christian Democratic Party. Here, as in other predominantly Catholic societies, there is evidence for significant change in attitudes on complex moral issues.<sup>3</sup> In the Netherlands, a conservative moral order was

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<sup>1</sup> Chrystel Hug, *The Politics of Sexual Morality in Ireland* (Houndmills, Basingstoke: Macmillan, 1999), 96-115; Unless otherwise indicated Ireland refers to the 26 counties that seceded from the United Kingdom in 1922 to establish the Irish Free State.

<sup>2</sup> Hera Cook, *the Long Sexual Revolution: English Women, Sex and Contraception 1800-1975* (Oxford University Press, 2004), 256; 271-317; Matt Cook, 'Sexual Revolution(s) in Britain' in Gert Hekma and Alain Giami *Sexual Revolutions* (Houndmills, Basingstoke: Palgrave Macmillan, 2014), 121-40

<sup>3</sup> Lena Lennerhed, 'Sexual Liberalism in Sweden' in Hekma and Giami, *Sexual Revolutions*, 25-45; Melanie Latham, *Regulating reproduction: A century of conflict in Britain and France* (Manchester University Press, 2002), 36-9; 92-6; Bruno P. F. Wanrooij, 'Italy: sexuality, morality and public authority' in Franz X. Eder, Lesley A. Hall & Gert Hekma, (eds.) *Sexual Cultures in Europe: National histories* (Manchester University Press, 1999), 114-38; Mark Seymour, *Debating Divorce in Italy: Marriage*

overturned during the 1960s and replaced with a liberal and permissive consensus. Change was driven by de-confessionalisation and secularisation in previously homogeneous Catholic cultures. In Quebec and Flanders church going collapsed and the authority of the church was widely challenged, especially on contraception.<sup>4</sup>

The Irish legislation was not part of this progressive wave of reform. It highlighted Ireland's distance from British and European liberal norms, reinforcing rather than weakening its distinctive moral code. The legislation was restrictive in intention and reflected the continuing influence of the Catholic Church on moral issues. It closely regulated access to all forms of contraceptives, especially condoms, making all devices more expensive.<sup>5</sup> It is arguable that without the 1973 Supreme Court decision in the McGee case, contraceptives would have remained illegal.<sup>6</sup> The

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*and the Making of Modern Italians, 1860-1974* (Houndmills, Basingstoke: Palgrave Macmillan, 2006)

<sup>4</sup> Harry Oosterhuis, 'The Netherlands: neither prudish nor hedonistic' in Eder, Hall and Hekma, *Sexual Cultures in Europe: National histories*, 71-90; Wannes Dupont, 'Catholics and Sexual Change in Flanders' in Hekma and Giami, *Sexual Revolutions*, 81-98; Kevin J. Christiano, 'The Trajectory of Catholicism in Twentieth-Century Quebec' in Leslie Woodcock Tentier, (Ed.) *The Church Confronts Modernity: Catholicism since 1950 in the United States, Ireland and Quebec* (Washington D.C.: Catholic University of America Press, 2007), 21-61; Callum G. Brown, *Women and Secularisation in Canada, Ireland, UK and the USA since the 1960s* (Woodbridge, Suffolk: Boydell Press, 2012), 253-55

<sup>5</sup> The contrast with Britain and France is telling, Latham, *Regulating reproduction*, 53-81; Cook, *The long sexual revolution*, 296-317; Roger Davidson and Gayle Davis, *The Sexual State: Sexuality and Scottish Governance, 1950-80* (Edinburgh University Press, 2012), 127-55

<sup>6</sup> *McGee v. Attorney General* [1974] IR 284 at 298; the original decision was made on 19 December 1973, NAI:1194/43 Cosgrave papers, Attorney General to Taoiseach, 19 December 1973; the decision is available at <http://osaka.law.miami.edu/~schnably/McGeev.AttorneyGeneral%5BIreland-1974%5D.pdf>

Minister for Health, Charles J. Haughey maintained that legislation on moral issues should reflect 'our community, our beliefs, our traditions, our sense of values'. His aim was to set Ireland apart from the sexual revolution taking place in neighbouring states.<sup>7</sup>

Discussion of this legislation emphasises the break with the past. Hug concluded, 'The 1979 law will remain, despite its limitations, the first in the socio-moral area to be detached at its basis from the teaching of the Catholic Church'. Even more forcibly, Beatty insisted that this was 'the first time that an Irish government had successfully legislated for a more "liberal" vision of sexual practise'.<sup>8</sup> However, this misreads the legislation and its political outcome. Contraceptives were legalised, but it was not a major turning point in respect of Irish moral politics. This approach also reflects a broader historiographical consensus that the period from the 1960s can be understood in a linear fashion. In these influential accounts, the process of change begins in the 1960s, quickly achieves momentum and leads inexorably to the transformation of Irish society by the beginning of the new century. Ferriter concludes that the Ireland of the conservative Archbishop of Dublin, John Charles McQuaid 'was dead and buried before he vacated his post'.<sup>9</sup> This article maintains that the

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<sup>7</sup> *Parliamentary Debates Dáil Éireann* (PDDE), Vol. 312 no. 3 c. 335, 28 February 1979; PDDE, 25 April, 1979 cited in Aiden Beatty, 'Irish Modernity and the Politics of Contraception, 1979-1993' *New Hibernia Review* 17: 3 (2013), 100-18; Finola Kennedy, *Cottage to crèche: Family Change in Ireland* (Dublin: Institute of Public Administration, 2001), 158

<sup>8</sup> Hug, *The Politics of Sexual Morality*, 115; Beatty, 'Irish Modernity and the Politics of Contraception', 102

<sup>9</sup> Diarmaid Ferriter, 'Sex and the Archbishop: John Charles McQuaid and Social Change in 1960s Ireland' in Thomas E. Hachey (Ed.) *Turning Points in Twentieth-Century Irish History* (Dublin: Irish Academic Press, 2011), 137-54, 154; Brian Girvin and Gary Murphy, 'Whose Ireland? The Lemass Era' in Brian Girvin and Gary Murphy (Eds.), *The Lemass Era: Politics and Society in the Ireland of Seán Lemass* (Dublin: University College Dublin Press, 2005), 1-11; R. F. Foster, *Luck & The Irish: A Brief History of Change 1970-2000* (London: Allen Lane, 2007), 3; Diarmaid

legislation should not be seen as a turning point or as a liberal point of departure for a progressive future.<sup>10</sup> Moreover, for over a decade after 1979, Ireland continued to diverge from its European neighbours on moral questions. Indeed as Finola Kennedy has observed, by the end of the 1980s ‘it might even have seemed possible that there was a strengthening of attitudes which coincided with church teaching’.<sup>11</sup>

The emphasis on change has been challenged recently. Girvin has drawn attention to the strength and significance of continuity throughout these decades. Mary Daly claimed, ‘that much of the process of change and modernisation did not happen until the 1980s or perhaps the 1990s, and that as in other aspects of its history, Ireland pursued a *sonderweg*’.<sup>12</sup> This article provides additional support for the emphasis on continuity over change during the period from the 1960s to the 1990s. It recognises that change does occur but suggests that this takes place within a political and social context that constrains change in moral and constitutional issues. The campaign to legalise contraception provides an opportunity to assess the nature of change in a controversial policy area and to appreciate the limits and constraint on change. Change in Ireland should not be seen as a first instalment of liberalism or permissiveness but as a battlefield between a conservative majority and a liberal minority. Contraception was the most divisive issue in Irish politics during the 1970s. The issue was polarising because both sides invoked first principles, making it

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Ferriter, *The Transformation of Ireland 1900-2000* (London: 2004), 536-759; an important early presentation of this case can be found in J. J. Lee, *Ireland 1912-85: Politics and Society* (Cambridge: Cambridge University Press, 1989), 329-410.

<sup>10</sup> Enda Delaney, ‘Modernity, the Past and Politics in Post-War Ireland’, in Hachey, *Turning Points in Twentieth-Century Irish History*, 103-18

<sup>11</sup> Kennedy, *Cottage to crèche*, 174

<sup>12</sup> Mary E. Daly, *Sixties Ireland: Reshaping the Economy, State and Society, 1957-1973* (Cambridge University Press, 2016), 11; Brian Girvin, ‘Continuity, Change and Crisis in Ireland: An Introduction and Discussion’ *Irish Political Studies* 23: 4 (2008), 457-76.

difficult to find middle ground.<sup>13</sup> While the consensus on moral issues that had prevailed since the 1920s broke down in acrimony, a new consensus was not established. In contrast with much of Western Europe, a conservative majority imposed its values democratically on the society. Despite this, the controversy also forced the government, electorate and the Catholic Church to reconfigure their relationship and expectations in this new and unstable environment.

### The Catholic moral order and the contraceptive threat

The origins of this controversy can be located in the response of the Independent Irish state and the Catholic Church in Ireland to the threat modernity posed to Irish Identity, values and morality in the 1920s.<sup>14</sup> The Irish Free State was established in 1922. After a short and divisive civil war, the new government embarked on a state building project that included the imposition of political order and the reinforcement of democratic governance. Political independence provided the opportunity and the means to promote a comprehensive moral order based on Catholic principles. This was justified on majoritarian grounds as the society was overwhelmingly Catholic. The evidence suggests that most Catholics were devout and enthusiastic about their religion.<sup>15</sup> Moreover, the relationship between church and people was intimate, providing political legitimacy for religious influence.<sup>16</sup> The aim of this campaign was

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<sup>13</sup> Christoph Knill, Christian Adam and Steffen Hurka. *On the Road to Permissiveness? Change and Convergence of Moral Regulation in Europe* (Oxford University Press, 2015), 1-10; Kennedy, *From Cottage to Crèche*, 153-4.

<sup>14</sup> Maurice Curtis, *A Challenge to Democracy: Militant Catholicism in Modern Ireland* (Dublin: The History Press, 2010), 15-34; Michael P. McCabe, *For God and Ireland: The Fight for Moral Supremacy in Ireland, 1922-1932* (Dublin: Irish Academic Press, 2013).

<sup>15</sup> In 1926, 92.5 per cent of the population were Catholic; this increased to 94.8 per cent by 1961. In 1961, the census enumerated only 0.036 per cent with no religion.

<sup>16</sup> Tom Inglis, *Moral Monopoly: The Rise and Fall of the Catholic Church in Modern Ireland* (Dublin: University College Dublin Press, 1998 2<sup>nd</sup> ed.), 15-94

to demarcate, as far as possible, Irish behaviour and values from those in Britain, which were often represented as 'godless' by Irish conservatives.<sup>17</sup> These included prostitution, sexual crime, censorship of literature, including information on contraception, the prohibition of contraception and divorce as well as severe controls over the cinema, dance halls and public houses.<sup>18</sup>

Proximity to Britain facilitated the circulation of newspapers and periodicals which carried advertisements for information on contraception. Individuals could also receive contraceptives from Britain by mail order.<sup>19</sup> Furthermore, Marie Stopes published *Married Love* in 1918 (subsequently banned by the Irish censor) and birth control clinics opened in England, Scotland and Wales during the 1920s. The British Ministry of Health issued a circular in 1930 which allowed married women to receive birth control advice on health grounds. While there was no likelihood that Stopes could open a clinic in the Irish Free State she did open one in Belfast in 1936.<sup>20</sup>

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<sup>17</sup> Diarmaid Ferriter, *Occasions of Sin: Sex and Society in Modern Ireland* (London: Profile Books, 2009), 100-214; Daphne Halikiopoulou, 'The Changing Dynamics of Religion and National Identity: Greece and the Republic of Ireland in a Comparative Context' in *Journal of Religion in Europe* 1:3 (2008), 302-28

<sup>18</sup> J. H. Whyte *Church and State in Modern Ireland 1923-1979* (Dublin: Gill and Macmillan, 1980 2<sup>nd</sup> ed.), 24-61; Curtis, *A Challenge to Democracy*, 78-103; Dermot Keogh, *The Vatican, The Bishops and Irish Politics 1919-39* (Cambridge University Press, 1986), 123-84

<sup>19</sup> National Archives of Ireland Department of Justice (NAIDJ) JUS/H315/7 for details of advertising and mail order contraceptives; NAI Department of the Taoiseach (NAIDT) S. 2804 Fr Richard Devane to Eamon de Valera 20 March 1934 drawing attention to various places where contraceptives could be purchased in Dublin

<sup>20</sup> Peter Neushul, 'Marie C. Stopes and the Popularization of Birth Control Technology' *Technology and Culture* 39: 2 (1998), 245-72; Greta Jones, 'Marie Stopes in Ireland - The Mother's Clinic in Belfast, 1936-47' *Social History of Medicine* 5: 2, (1992), 255-77; Kate Fisher, *Birth Control, Sex and Marriage in Britain 1918-1960* (Oxford University Press, 2006), 27-41; Cook, *The Long Sexual Revolution*, 302

There was also some demand for contraceptives and advice on birth control within Ireland, though it is difficult to quantify. The Carrigan Committee claimed there was widespread use of contraceptives, even in rural areas.<sup>21</sup> Furthermore, the Anglican Church overturned its opposition to contraception at the 1930 Lambeth Conference, adopting a more tolerant and supportive position for married couples who wished to regulate family size. The Church of Ireland Bishops of Cork and Derry had been members of the committee that drafted the resolution on contraception. A positive article on the issue was published in the *Church of Ireland Gazette*.<sup>22</sup> Irish Protestant couples had 36 per cent fewer children than their Catholic counterparts after 5-9 years of marriage, suggesting some regulation of births.<sup>23</sup>

The Lambeth resolution was condemned by the Catholic Church. Pope Pius XI's encyclical *Casti Connubi* was a direct rejoinder to this major shift in the Anglican position. One Irish theologian asked if 'the heads of Irish Protestantism are in harmony with the Catholic bishops' on this issue, but feared they were not.<sup>24</sup> The

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<sup>21</sup> The Committee on the Criminal Law Amendment Acts (1880-85) and Juvenile Prostitution (known as the Carrigan Committee after its chair William Carrigan KC) circulated a report which was never published. There is a copy in National Archives of Ireland Department of the Taoiseach (NAIDT) S.5998, *Report of the Committee on the Criminal Law Amendment Acts*, (1931) 36-7

<sup>22</sup> Sandra McAvoy, "'A Perpetual Nightmare' Women, Fertility Control, the Irish State, and the 1935 Ban on Contraceptives' in Margaret H. Preston and Margaret Ó hÓgartaigh (Eds.) *Gender and Medicine in Ireland 1700-1950* (Syracuse University Press, 2012), 189-202

<sup>23</sup> Mary E. Daly, 'Marriage, Fertility and Women's Lives in Twentieth Century Ireland (c.1900 - c. 1970)' *Women's History Review* 13: 4 (2006), 571-83 at 573; Mary E. Daly, *The Slow Failure: Population Decline and Independent Ireland, 1920-1973* (Madison, Wisconsin: The University of Wisconsin Press, 2006), 85-91;

<sup>24</sup> John T. Noonan Jr., *Contraception: A History of its Treatment by the Catholic Theologians and Canonists* (Harvard University Press, 1965), 424-32; Rev. M. P. Cleary, 'The Church of Ireland and Birth Control' *Irish Ecclesiastical Record* xxxviii 5<sup>th</sup> series (1931), 622-69



Carrigan Committee recommended a ban on contraceptives, 'except in exceptional circumstances' in 1931. Subsequently an all-party committee chaired by the Fianna Fáil Minister for Justice James Geoghegan concluded that a universal ban would undermine patient-doctor confidentiality and interfere with individual conscience.<sup>25</sup> The Pharmaceutical Society was pressurised to alter its rules in respect of contraceptives, declaring that sale and supply of them would be unethical. Protestant members of the society quickly fell into line, fearing loss of business if the issue was publicised.<sup>26</sup>

Fianna Fáil introduced legislation that prohibited contraceptives. It initially contained a conscience clause as proposed by the Geoghegan committee. However, the Vice-President of the Executive Council (deputy prime minister), Seán T. O'Kelly insisted that there should be a universal ban on contraceptives, arguing that 'no Catholic could permit what was intrinsically wrong no matter how much a person might say that they in their conscience saw no wrong in it'.<sup>27</sup> A cabinet majority upheld the view that individual conscience and minority rights could not be sustained in the legislative process. O'Kelly subsumed the notion of Catholic and Irish, asserting 'the practise of contraception is contrary to Catholic doctrine and is abhorrent to the people of Saorstát Eireann'.<sup>28</sup> What this view and the legislation ignored was the change in

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<sup>25</sup> NAIDT, S. 5998, Carrigan Committee, *Report*, 31; Kennedy, *Cottage to crèche*, 160 citing a Justice memorandum, NAIDT, S. 6489A, 10 November 1933: Fianna Fáil formed its first government in 1932 and returned to office in every election until 1948.

<sup>26</sup> Sandra McAvoy, "'Its effect on public morality is vicious in the extreme": defining birth control as obscene and unethical, 1926-32' in Elaine Farrell, *'She said she was in the family way': Pregnancy and infancy in modern Ireland* (London: Institute of Historical Research, 2012), 35-52

<sup>27</sup> Cited in Patrick Murray, *Oracles of God: The Roman Catholic Church and Irish Politics, 1922-37*, (Dublin, 2000) p. 289; Mark Finnane, 'The Carrigan Committee of 1930-31 and the "moral condition of the Saorstát"' *Irish Historical Studies* XXXII, 128 (November 2001), 519-36

<sup>28</sup> Keogh, *The Vatican, the Bishops and Irish Politics*, 203-04

Anglican opinion on the matter of contraception and in particular the objections voiced by a number of Protestant members of Dáil Eireann.<sup>29</sup>

It is likely that a conscience clause would have been unacceptable to the Catholic Church and Fianna Fáil was anxious not to alienate the Bishops. The Fianna Fáil leader Eamon de Valera was a devout Catholic but was not a clericist. He made a judicious, if cynical, judgement that there was no political advantage to be gained by supporting minority rights in this case. De Valera justified denominational legislation on majoritarian grounds, making the personal judgement to adopt a universal ban. He took a similar position on divorce when drafting the 1937 Constitution, though on other matters he was not prepared to accept Catholic interpretations even when that risked alienating the Pope.<sup>30</sup> The *Criminal Law Amendment Act 1935* prohibited the importation, sale and distribution of contraceptives. The state vigorously applied the law to outlets within the state and to external sources of information and supply. At the League of Nations Ireland adopted the Vatican's position and actively opposed pro-contraception resolutions there. As late as 1951 the state threatened to withdraw from the World Health Organisation when it adopted a pro-contraception policy.<sup>31</sup>

Daly and Ferriter imply that the Irish prohibition on contraceptives does not depart significantly from the practice of other European democratic states. Paşeta notes these similarities but also draws attention to differences.<sup>32</sup> The most appropriate

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<sup>29</sup> Kennedy, *Cottage to crèche*, 162-4; Senia Paşeta, 'Censorship and Its Critics in the Irish Free State 1922-32' *Past & Present*, 181 (2003), 193-218

<sup>30</sup> NAIDT: S. 6489A Attorney General to de Valera, 23 January 1935; Parliamentary Debates Dáil Eireann (PDDE), Vol. 67, c. 1890, 4 June 1937; Ronan Fanning, *Eamon de Valera: A Will to Power* (London: Faber & Faber, 2015), 174-80

<sup>31</sup> Keogh, *The Vatican, the Bishops and Irish Politics*, 203-04; Frances Dennis, 'The IPPF: 21 years of achievement' *Journal of Biosocial Science* 5 (1973), 413-19

<sup>32</sup> Mary E. Daly, "'Oh, Kathleen Ni Houlihan, Your Way's a Thorny Way!'" The Condition of Women in Twentieth Century Ireland' in Anthony Bradley and Maryann Gialanella Valiulis (Eds.) *Gender and Sexuality in Modern Ireland* (Amherst:

focus for comparison is other democratic states rather than authoritarian or Fascist ones. Ireland was a conservative society but it was also a stable democratic state with universal franchise (which was not the case with Belgium, France or Switzerland). The 1937 Constitution was distinctive in its blend of Catholic, nationalist, liberal and democratic features which provided the basis for institutionalising majoritarian values.<sup>33</sup> When Ireland is compared with other democratic states during the inter-war period, the differences on contraception and divorce are most notable. A direct comparison can be made with Belgium and France but even here, the laws were frequently evaded. Moreover, unlike Ireland, condoms were never illegal in France. In the Netherlands, the legislation was opposed by liberals and socialists. Attempts to outlaw birth-control movements failed.<sup>34</sup> In the case of Sweden and Norway the 1930s is a period when the laws on contraception are reformed and health considerations become the primary focus of legislation.<sup>35</sup>

The contrast with Britain is particularly revealing. Knowledge of birth-control methods was widespread during the inter-war period, even though traditional methods such as withdrawal were most commonly used. There may have been low levels of attendance at birth control clinics, as noted by Daly, yet the key point in Britain was that the clinics existed. There was also political support for birth control advice and methods on health grounds. In Britain, as in Scandinavia, there was disapproval and

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University of Massachusetts Press, 1997), 102-26; Ferriter, *Occasions of Sin*, 191-2; Pašeta, 'Censorship and Its Critics in the Irish Free State', 217

<sup>33</sup> Brian Girvin, *From Union to Union: Nationalism, Democracy and Religion in Ireland* (Dublin: Gill and Macmillan, 2002), 106-35

<sup>34</sup> Oosterhuis, 'The Netherlands', 74-77; Frans van Poppel and Hugo Rölling, 'Physicians and Fertility control in the Netherlands' *Journal of Interdisciplinary History* 34: 2 (2003), 155-85.

<sup>35</sup> Sølvi Sogner, 'Birth control and contraception: Fertility decline in Norway' in *Journal of Interdisciplinary History* 34: 2 (2003), 209-34. In both Norway and Sweden the presence of socialist movements with strong women's sections contributed to the change of opinion in the 1930s.

at times harassment but traditional objections to contraception were being countered by appeals to secular reasoning and health concerns.<sup>36</sup> Even in Northern Ireland, possibly the most conservative region of the United Kingdom, contraception was never illegal even if there was disapproval. A birth control movement existed before Stopes opened her clinic. This movement was predominantly Protestant and middle class yet it survived the closure of the Mother's Clinic in 1947 and provided the basis for opening the Women's Welfare Clinic in Belfast in 1951. The movement expanded and some 38 clinics were in operation two decades later.<sup>37</sup>

Ireland's distinctive regulation of contraception was maintained into the 1960s. Irish policy and attitudes on this and other moral questions differs significantly from the reforming tendencies that strengthen in Europe and the UK. Public discussion of birth-control remained taboo and there was widespread self-censorship even among those critical of the censorship laws. Humphrey's research distinguished between spacing births (commonly by abstention) which was supported by those he interviewed and birth-control (involving contraception) which his sources assured him was not considered. Nor was the issue treated in any detail by the Commission on

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<sup>36</sup> Daly, "Oh, Kathleen Ni Houlihan", 116-19; Cook, *the Long Sexual Revolution*, 122-42; 302-3; Simon Szreter and Kate Fisher, *Sex Before the Sexual Revolution: Intimate life in England 1918-1963* (Cambridge University Press, 2010), 229-65

<sup>37</sup> Browne, 'Marie Stopes in Belfast' Leanne McCormick, *Regulating Sexuality: Women in Twentieth Century Northern Ireland* (Manchester University Press, 2012), 180-96; Leanne McCormick, "'The Scarlet Woman in Person": the Establishment of a Family Planning Service in Northern Ireland, 1950-1974' *Social History of Medicine* 21: 2 (2008), 345-60

Emigration and other Population Problems.<sup>38</sup> This moral uniformity was not universal and individual couples sought advice and contraceptives from clinics in Belfast and London. The authorities told one author that they were not unduly intrusive in respect of mail from Britain that might contain contraceptives or information. There is also likely to have been some interest in the safe-period, particularly after Pope Pius XII endorsed this method in 1951. A survey in 1973 reported that a majority of women interviewed used the safe-period as a form of birth-control.<sup>39</sup>

### The Moral Consensus Unravels

Nor was this moral consensus disrupted by the economic and social crisis that Ireland experienced during the 1950s. The crisis led to a major change in economic policy and the decision to apply for membership of the European Economic Community in 1961. The moral and social teaching of the Catholic Church remained unchallenged and relations between church and state continued to rest on well-established principles. There was wide spread support among the public for traditional Catholic teaching on contraception. A survey in Dublin reported that 57 per cent believed that child bearing was the only reason for engaging in sexual activity.

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<sup>38</sup> Sandra L. McAvoy, 'The Regulation of Sexuality in the Irish Free State, 1929-1935' in Elizabeth Malcolm and Greta Jones (Eds.) *Medicine, Disease and the State in Ireland, 1650-1940* Cork, 1999), pp. 253-66, 257; Alexander J. Humphreys, *New Dubliners: Urbanization and the Irish Family* (London: Routledge & Kegan Paul, 1966), 211; Michael Adams, *Censorship: The Irish Experience* (Dublin: Scepter Books, 1968), 145 claims that 'birth-control censorship has never been a major issue'; Girvin, *From Union to Union*, 154-67

<sup>39</sup> Daly, 'Marriage, Fertility and Women's Lives', 576-7; Adams, *Censorship*, 145; K. Wilson-Davis, 'Irish Attitudes to Family Planning' *Social Studies* 3: 3 (1974), 261-75; Mary Daly, 'Rhythm and blues: natural family planning in Ireland (1930s-1980s)' podcast at <http://www.chomi.org/family-planning-in-ireland/>; Garret FitzGerald recalled that he and his wife Joan had worked out the rhythm method independently after they married in order to space their children (interview 2 Nov. 2007).

Not only did significant majorities endorse church teaching on moral issues, they also expressed strong support for intolerant and theocratic attitudes.<sup>40</sup>

Notwithstanding this continuity, the period after 1959 differs from that which preceded it. New attitudes and behaviour appear and are expressed in public more openly. After 1966 confrontation and disruption replace consensus and uniformity. For the first time, contraception became a major political issue. Proximity to the UK, developments in the media and the emergence of a new women's movement challenged the consensus. By 1967, an estimated 12,000 Irish women were regularly using oral contraceptives as German author Heinrich Böll noted with alarm. Irish women had also begun to avail of abortion services in England by the end of the decade.<sup>41</sup> However, it is possible to exaggerate the extent of change and the levels of support for progressive policies. For example, Fianna Fáil won a decisive victory at the 1969 general election on a defensive and conservative platform by emphasising the need for continuity and stability in the face of disruption and confrontation.

The importation and sale of contraceptives remained illegal. When a consignment was impounded in 1965 the company involved protested that doctors had prescribed them for 'female functional disorders'.<sup>42</sup> A debate followed among the responsible government departments to determine 'when is a contraceptive not a contraceptive'. It was agreed that there were circumstances when a contraceptive need not be treated as a contraceptive if prescribed by a doctor for medical reasons. In the

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<sup>40</sup> Bruce Francis Biever, *Religion, Culture, and Values: A Cross-Cultural Analysis of Motivational Factors in Native Irish and American Irish Catholics* (New York: Arno Press, 1976), 272; 281-309; 481.

<sup>41</sup> Brown, *Women and Secularisation*, 253; Heinrich Böll, *Irish Journal* (Evanston, Illinois 1998; translated from the 1967 German edition), 122; Daly, *The Slow Failure*, 230-31; NAI: 2005/7/344 for details of Irish women travelling to England for abortions.

<sup>42</sup> Department of Justice (DJ): 104/1/5 Notice of seizure 14 April 1965; Cahill to Customs and Excise, 20 April 1965; Customs and Excise to Cahill, 12 May 1965: NAIDT: 93/3/32 contains correspondence 1961-69

course of these discussions the Revenue Commissioners warned that the operation of the Criminal Law Amendment Act, 'in so far as it relates to the importation of contraceptives, has become increasingly difficult' to apply.<sup>43</sup> As a result of this decision, women were in a position to obtain prescriptions from a sympathetic doctor while engaging in the fiction that Ireland had the highest rate of menstrual disorder in the world.

Discussion on controversial issues in the media and on television was widespread. Many believed that the Catholic Church was about to change its position on the issue. In 1967, the Catholic National Maternity Hospital began to prescribe the pill to women whose conscience permitted it. However, this facility was withdrawn after the publication of *Humanae Vitae* in 1968. A 1967 survey of students (lay and clerical) and adult workers attending night classes reported strong support for a reassessment of the church's position on family planning. Moreover the sample embraced liberal positions on many questions in respect of the church.<sup>44</sup> The Irish Labour Party passed a motion in favour of legalising contraceptives. This was condemned by one conservative politician as a 'brazen defiance of Catholic teaching' and a 'slap in the teeth' for the Pope.<sup>45</sup> The first family planning clinic was opened in Dublin in 1969 by contraceptive activists and a review of the situation in early 1970 concluded that the pill was now widely available on prescription despite the law.<sup>46</sup>

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<sup>43</sup> DJ: Cahill to Department of Health 18 May 1965; Health to Justice 13 July 1965

<sup>44</sup> John Cooney, *John Charles McQuaid: Ruled of Catholic Ireland* (Dublin: O'Brien Press, 1999), 393-4; Fuller, Gordon F. Streib, 'Attitudes of the Irish toward Changes in the Catholic Church' *Social Compass* 20: 1 (1973), 49-71

<sup>45</sup> Michael Gallagher, *The Irish Labour Party in Transition 1957-82* (Dublin: Gill and Macmillan, 1982), pp. 83-4; Niamh Puirseil, *The Irish Labour Party 1922-73* (Dublin: University College Dublin Press, 2007), pp. 232-71. The politician was Oliver J. Flanagan, a member of Fine Gael.

<sup>46</sup> University College Cork Archives (UCCA): Keery papers, Box 54, Annual Report Fertility Guidance Clinic, 19 March 1970; Michael Solomons, *Pro Life? The Irish*

How are these changes to be explained? A small but increasingly liberal movement emerged during the 1950s and increasingly challenged authoritarian and intolerant aspects of Irish society. Furthermore, those born after 1945 held decidedly more liberal views than all those born before that date. This tendency is reinforced by education and by place of residence.<sup>47</sup> The Taoiseach Seán Lemass was deeply influenced by the documents on religious freedom published by the Second Vatican Council. He established an all-party committee on the Constitution to explore the possibility of change. The committee was particularly concerned with the rights of minorities within predominantly Catholic societies, recommending a radical change in divorce legislation based on these assumptions. While the Committee's report was rejected by the Catholic Bishops, it marked an important shift away from the majoritarianism that had previously characterised public opinion. The civil rights movement in Northern Ireland drew attention to the rights of minorities within dominant ethno-religious regions and Irish liberals applied these arguments to contraception, divorce and education in the south.<sup>48</sup>

Many Catholics were disappointed with the condemnation of artificial contraceptives by Pope Paul VI in the encyclical *Humanae Vitae* (of human life) in July 1968. In Ireland, the Catholic Bishops highlighted the authoritative nature of the decision, emphasising that there could be no 'compromise on principle'. This issue undermined for the first time the moral uniformity that had characterised Ireland since independence. The question became a touchstone for many Catholics who would not

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*Question* (Dublin 1993), 12-14; D. Goldberg, 'Contraception and the law', *Irish Times* 9 April 1970

<sup>47</sup> Biever, *Religion, Culture and Values*, 519-21; Table 19, 445; Garret FitzGerald, *All in a Life*, (Dublin: Gill and Macmillan, 1991), 83-4; Calculated from the European Values Survey, 1981; the survey data was provided by Professor Christopher T. Whelan.

<sup>48</sup> Brian Girvin, "Lemass's brainchild": The 1966 Informal Committee on the Constitution and change in Ireland' *Irish Historical Studies*, XXXVIII: 151, 406-21; *Irish Independent* 30 March 1971 where Garret FitzGerald makes many of these points.



accept the church's authority uncritically, favouring a more open and pluralistic society.<sup>49</sup> While conservatives welcomed *Humanae Vitae* as an opportunity to reassert traditional teaching, they also recognised that the Vatican Council had provided legitimacy for liberalism among Irish Catholics. Cardinal William Conway identified Garret FitzGerald as a key figure among these liberal Catholics.<sup>50</sup> An even more threatening figure was Mary Robinson (nee Bourke) who was the first Catholic elected to the Irish Senate by the graduates of Trinity College Dublin. Robinson expressed strong liberal and feminist views, arguing that 'the law should not be used to uphold or enforce beliefs of any particular Church in a democratic society'. She also became the public face of contraception when along with fellow Senators John Horgan and Trevor West they introduced a bill to amend the legislation prohibiting contraception. Vital support for Robinson's initiative was provided by the General Synod of the Church of Ireland which unanimously supported a motion to amend the legislation.<sup>51</sup>

### **Contraception becomes a divisive issue**

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<sup>49</sup> The debate in the media was unprecedented in its vigour and openness. For the first time a strong strain of anti-clericalism is evident in this correspondence (I have reviewed the correspondence and editorials in the main national newspapers for this period).

<sup>50</sup> Louise Fuller, *Irish Catholicism since 1950: The Undoing of a Culture* (Dublin: Gill and Macmillan, 2002), 197-208; Stephen Collins 'Cardinal criticises influence of Dublin 'liberals' on public policy', *Irish Times*, 30 December 2006; FitzGerald, *All in a Life*, 83-4

<sup>51</sup> *Sunday Independent* 26 April 1970; John Horgan, *Mary Robinson: An Independent Voice* (Dublin: O'Brien Press, 1997), pp. 29-59. Robinson paid a heavy personal price for her liberalism. Her family refused to attend her marriage to a Protestant and show was the recipient of hate mail of the most vulgar kind. Her Senate colleague John Horgan believes that this reaction was due to her gender; correspondence with Horgan, 28 August 2007 and interview November 2009.

The Bill placed the government on the defensive. The Taoiseach Jack Lynch was never prepared to act decisively on this issue. He acknowledged 'that while the matter was important in its own right, it was not the most pressing problem to be considered'.<sup>52</sup> The Taoiseach's office denied in 1972 that its attitude to divorce or contraception was 'determined by the official teaching of any religion'.<sup>53</sup> This claim may have been true in the sense that Ireland was not and never had been a theocracy. However, such a claim ignores the powerful and subtle influence of Catholicism on government and the political parties.

The Robinson bill exposed the difficulties that a government in a predominantly Catholic state faced when demands for change were made in respect of moral questions. The Irish Hierarchy argued that legislation should reflect the wishes of the electorate and 'the Bishops confidently hope that the legislators themselves will respect this important principle'. Moreover, appeals to pluralism and civil liberties were rejected as elitist. Cardinal Conway argued that recent moral changes in Britain had been driven by unrepresentative elites. He hoped that this would not happen in Ireland.<sup>54</sup> However, events moved rapidly in the course of 1971. The main opposition party agreed to support a moderate reform that would take 'account of the requirements of public morality', while many Labour Party TDs actively promoted a change in the law. More dramatically, members of the Irish Women's Liberation Movement defied the law by bringing contraceptive into the state on the train from Belfast.<sup>55</sup> At the same time, Senator Robinson represented Mrs Mary McGee in a

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<sup>52</sup> *Irish Press* 22 May 1971; Brian Girvin, 'Contraception, Moral Panic and Social Change in Ireland, 1969-79' in *Irish Political Studies* 23: 4 (2008), 555-76; NAIDT: 2000/6/67 which contains Lynch's speeches with notes clarifying what was intended.

<sup>53</sup> NAIDT: 2010/53/70, 5 April 1972

<sup>54</sup> *Irish Press* 12 March 1971; *Irish Times* 15 March 1971.

<sup>55</sup> *Irish Times*, 31 March 1971; UCCA: Keery Papers, Box 54 press release by Neville Keery 30 March 1971; Anne Stopper, *Mondays At Gaj's: The Story of the Irish Women's Liberation Movement* (Dublin: Liffey Press, 2006), pp. 167-90.

legal challenge against the Revenue Commissioners, who had confiscated spermicidal jelly she was importing.<sup>56</sup>

Lynch's caution was certainly warranted. Correspondents to his department expressed anger and dismay at the prospect of change. He also led a party that was conservative on moral and constitutional questions. Lynch was surprised by the extent of opposition within the parliamentary party following the Bishops' March statement.<sup>57</sup> A 1971 survey reported that a clear majority opposed changing the law. Support for legalisation came from middle class men and those living in Dublin, while most other categories opposed change. 50 per cent believed that if contraceptives were sold in Ireland, the condition of family life would deteriorate. Furthermore, 73 per cent of those polled would vote against any proposal to make divorce available in Ireland.<sup>58</sup> In contrast with European trends, Ireland remained a religious and conservative society during the 1970s. In 1971 over 98 per cent said they were religious and at the 1981 census, just 1 per cent reported having no religion. Church going remained remarkably high with over 90 per cent of Catholics attending mass at least once a week in 1974; by 1990 the figure was still 85 per cent.<sup>59</sup> A survey in 1981 reported that it was the least permissive among the nine states studied,

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<sup>56</sup> UCCA: Keery Papers Box 54 IFPRA Committee meeting 7 April 1971; DJ: 104/1/5 McGee to Revenue Commissioners 1 April 1971; Dr James Loughran to Revenue Commissioners 31 March 1971; Revenue Commissioners to Department of Justice 29 April 1971; Department of Justice decision note 6 May 1971.

<sup>57</sup> NAIDT: 2002/8/458; DT 2002/8/459 for correspondence; University College Dublin Archives (UCDA): Fianna Fáil Parliamentary Party minutes P176/448, 31 March 1971; Whyte, *Church and State*, 405; UCDA: Fianna Fáil national Executive minutes P176/359 26 April 1971; 26 July 1971.

<sup>58</sup> *This Week*, 25 June 1972 which sponsored the poll organised by Irish Marketing Surveys

<sup>59</sup> Market Research Bureau of Ireland, 'Religious Practice and Attitudes Towards Divorce and Contraception among Irish Adults' *Social Studies* 3: 3 (1974), 276-85; Brown, *Women and Secularisation*, 75-80; 112

especially in respect of abortion and divorce.<sup>60</sup> These features of Irish society help to explain why Robinson's reform bill was overwhelmingly defeated in a hostile Seanad.<sup>61</sup>

The Minister for Justice, Desmond O'Malley, initially hoped to avoid controversy by appointing a specialist committee to make recommendations. He recognised that this would not be acceptable to either side of what had become an acrimonious public debate. O'Malley then considered introducing legislation which would be moderate and a 'reasonable compromise'.<sup>62</sup> His departmental secretary Andy Ward questioned whether policy should be changed, when the majority opposed such a move. After further consideration, O'Malley conceded that he could not devise a suitable legal framework that would not lead to the permissive society. His main concern was to prevent contraceptives becoming available to young unmarried persons. He feared that even the most limited change would lead inexorably to widespread availability and permissiveness. The issue remained a moral and a legal question rather than a health matter. O'Malley's thinking was influenced by the Bishops' March 1971 statement and the longest section of his memorandum for government in April 1971 is a detailed and sympathetic engagement with their position. Nor were these considerations prompted by direct representations from individual Bishops or the

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<sup>60</sup> Stephen Harding & David Phillips with Michael Fogarty, *Contrasting Values in Western Europe: Unity, Diversity and Change* (Houndmills, Basingstoke: Macmillan, 1986), 8-9; Brian Girvin, 'Church, State, and Society in Ireland since 1960' *Éire-Ireland* 43: 1&2 (2008), 74-98

<sup>61</sup> *Seanad Éireann Debates*, 31 March 1971, Vol. 69, c. 1360; DJ: 104/1/3 Lynch to Senator Bourke 5 April 1971

<sup>62</sup> NAIDT 2003/16/34: Department of Justice memorandum 104/1, 'Contraceptives' 19 April 1971, paragraph 29; DJ: 104/1/3 note by O'Malley for Secretary 2 March 1971; internal department draft on importation of contraceptives, 5 March 1971; Ward to Minister 12 March 1971; NAIDT 2003/16/34: DJ, 'Contraceptives' 19 April 1971

Hierarchy. Departmental officials explicitly denied that such representations were made by the Bishops between 1969 and 1973.<sup>63</sup>

The evidence from the departmental files suggests that the policy options were constructed within a Catholic natural law framework. O'Malley and his officials explicitly drew on Catholic natural law theory in evaluating the issue. O'Malley was critical of those promoting contraception, arguing that they did not appreciate the consequences of such a change for state and society. The 'real issue' for him was whether 'the availability of contraceptives would lead to a significant increase in immorality, i.e. immorality which would not occur were contraceptives not available'. He believed that Ireland was becoming increasingly immoral and permissive and that such developments posed 'a grave danger of either a moral break-down or serious damage to mental health'. This pessimism led him to reject change on grounds of individual conscience. Invoking natural law and the Irish constitution, he drew a distinction between the freedom to practise a religion and the right to act in a specific way based on conscientious considerations. He warned his colleagues that if a human rights perspective was adopted then pornography, the use of addictive drugs and divorce would have to be accepted. While recognising that a case could be made for married couples to have access to contraceptives, he was not prepared to do so because of the consequences for the young and unmarried. The cabinet agreed with O'Malley that no action be taken and the government opposed Robinson's bill in the Seanad.<sup>64</sup>

When O'Malley returned to the question in 1972, Ward suggested that it would be difficult to legislate if the High Court concluded that 'there was nothing in the Constitution requiring the change to be made'. However, O'Malley seems to have changed his mind. He now grappled with the issue of regulation and control,

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<sup>63</sup> NAI Department of Foreign Affairs (NAIDFA): 2004/27/12, note by Justice to Foreign Affairs, 5 October 1973

<sup>64</sup> NAIDT 2003/16/34: DJ memorandum 104/1, 'Contraceptives' 19 April 1971, paragraphs 18-19; Department of Justice 'Supplementary Memorandum on possible limitations on the availability of contraceptives' 21 May 1971; note by Justice to Taoiseach's office 6 July 1971.

concluding that all contraceptives should be available on prescription only. This would provide the state with legal authority to determine under what circumstances contraceptives would be available. Despite this, O'Malley remained doubtful that such a change would be acceptable to public opinion.<sup>65</sup> The High Court rejected McGee's case in July 1972 and she appealed to the Supreme Court. Surprisingly, O'Malley continued to draft legislation, suggesting that he, at least, was prepared to bring proposals to the cabinet. There was some support among his colleagues for reform, but it is questionable if the political conditions existed in the party or the electorate for such a change.<sup>66</sup>

Fianna Fáil lost the general election in February 1972 and was replaced by a Fine Gael-Labour Party coalition government led by Liam Cosgrave. The new government was committed to social reform but contraception was not a priority. This government was more liberal on social matters than its predecessor and Garret FitzGerald the Minister for Foreign Affairs was committed to reforming the laws on divorce, contraception and education to make the Republic more attractive to unionists in

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<sup>65</sup> DJ: 104/1/3 Ward to O'Malley, 24 April 1972; O'Malley to Ward 3 May 1972; O'Malley to Lynch draft dated May 1972 (but not sent); O'Malley to Ward 22 May 1972; NAIDT: 2003/16/34 Justice memorandum for government 'Contraceptives' 30 May 1972

<sup>66</sup> DJ: 104/1/3: Draft head of bill to amend the laws relating to contraceptives' no date but likely to be July/August 1972; memorandum 'Contraceptives' July 1972; Ward note to O'Malley 29 December 1972; O'Malley reply 12 January 1973; D. Quigly, Attorney General's office to Justice 19 January 1973; Justice reply 19 February 1973; *Irish Times* 1 August 1972 for court decision DJ: Childers to O'Malley 19 January 1973, emphasis in the original; Childers handwritten note to O'Malley, no date but likely to be January 1973 from place in file and context; Barry Desmond, *Finally and in Conclusion*, (Dublin: New Island Press, 2000), 225.

Northern Ireland. He approached the Vatican hoping to receive their 'constructive co-operation', which was not forthcoming.<sup>67</sup>

### **The devil is in the detail: continuing obstacles to legislation**

Despite the presence of liberals in the government, it is unlikely that action would have been taken without the Supreme Court's decision in late 1973 that Mrs McGee's right to privacy had been infringed. Though the decision continued to reflect natural law theory as the basis of constitutional interpretation, it challenged the government's reluctance to legislate.<sup>68</sup> The balance of opinion within the government remained conservative but, unlike Fianna Fáil, open to change. The Cabinet agreed that any legislation should restrict access to married couples.<sup>69</sup> The Catholic Bishops issued a critical statement in November 1973 but entered the important caveat that legislators' could, in conscience, vote for a law opposed by the church. This was a complex but subtle shift by the Bishops, but not significantly different from views expressed by Catholic Bishops in Belgium, the Netherlands or Quebec. They continued to oppose legalisation, warning that the consequences would be negative. What was not clear was how politicians would vote if the church remained opposed to legalisation.

Public opinion had shifted since 1971. A 1974 survey reported that 42 per cent supported legalising contraceptives for married couples only. A further 16 per cent favoured no restrictions. Fully a third opposed legalisation on any grounds.

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<sup>67</sup> NAIDFA: 2004/27/12 memorandum from FitzGerald to Most Reverend Agostino Casaroli, 14 August 1973 Ciara Meehan, *A Just Society for Ireland? 1964-1987* (London: Palgrave Macmillan, 2013), 105-47.

<sup>68</sup> *McGee v Attorney General* [1974] I. R. 318 Justice Walsh drew attention to rights 'which are superior or antecedent to positive law'; Amy M. Buckley, 'The Primacy of Democracy Over natural Law in Irish Abortion Law: An Examination of the C Case', *Duke Journal of Comparative and International law* 9: 1 (1998), 276-309

<sup>69</sup> NAI: 1194/43, Cosgrave Papers, Costello to Cosgrave 19 December 1973; NAIDT 2005/7/346; Taoiseach to Rev Father W. Hogan 27 Feb. 1974; Cabinet decision 19 February 1974; Ferriter, *Occasions of Sin*, 420-1

Opposition was stronger in rural areas, among older age groups and in farming communities. Support was considerably stronger among those who were not Catholics and representatives of various non-Catholic denominations provided public support for a change in the law.<sup>70</sup> Fianna Fáil opposed the legislation, imposing the party whip. The government permitted a free vote, but Minister for Posts and Telegraphs, Conor Cruise O'Brien, warned the Taoiseach that divisions on the issue would undermine confidence in the government.<sup>71</sup>

His fears were realised when the Taoiseach, the Minister for Education and five other Fine Gael TDs voted against the government's legislation ensuring its defeat. One British diplomat condescendingly wrote to London:

By acting more like a loyal Catholic peasant than the Prime Minister of a Government which claims to be secular, Mr Cosgrave has flown in the face of colleagues who had hoped, by passing the Bill, to add some real substance to the removal from the Constitution of the special position of the Catholic Church.

This report failed to fully appreciate the complex nature of the decision. Cruise O'Brien defended Cosgrave on the grounds that if he had revealed his position in advance many other TDs might have voted against the legislation.<sup>72</sup> It also failed to understand the continuing robust identification with Catholic moral values on the part of leading politicians. Cosgrave was prepared to put the stability of his government in jeopardy because of his religious beliefs. What is more significant is the number of practising Catholics who voted in favour of changing the law despite intensive

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<sup>70</sup> Market Research Bureau of Ireland, 'Religious Practice and Attitudes Towards Divorce and Contraception among Irish Adults' *Social Studies* 3: 3 (1974), 276-85

<sup>71</sup> NAI: Cosgrave Papers 1194/44; Cruise O'Brien to Cosgrave 14 Feb. 1974; Cruise O'Brien to Cosgrave, 19 Feb. 1974

<sup>72</sup> The National Archives United Kingdom, Kew (TNAUKK): FCO 87/296 Kenneth C. Thom to G. W. Harding 23 July 1974; UCDA: O'Brien Papers, P82/196 (1) O'Brien to Bruce Arnold, 23 July 1974; Dr Garret FitzGerald confirmed O'Brien's view in an interview 2 Nov. 2007



lobbying from anti-contraceptive activists in their constituencies. Furthermore, a majority of Fine Gael and Labour TDs continued to support reform in the area. However, Fianna Fáil refused to consider any compromise during the life of the coalition government.<sup>73</sup>

Consequently, the main obstacle to reform was Fianna Fáil and its conservative electorate. Members of the party were often fearful of clerical criticism. However, a more important obstacle was principled opposition to legalisation on moral grounds. The Supreme Court decision in the McGee case effectively undermined the existing regulatory regime and contraceptives were widely available.<sup>74</sup> The Taoiseach Jack Lynch informed correspondents that legislation was necessary to restrict access to contraceptives so that young unmarried people could not obtain them.<sup>75</sup> The policy choices available to Fianna Fáil were not significantly different from those they unanimously opposed in 1974. Nor had public opinion changed appreciably between 1974 and 1977. Approximately 43 per cent supported access to contraceptives for marrieds only, but fully a third continued to oppose legalisation.<sup>76</sup> Lynch insisted that the court's decision could not be set aside and legislation was necessary to regulate an unsatisfactory and 'permissive' situation.<sup>77</sup> Support also came from an unlikely source when the Catholic Hierarchy acknowledged that 'the present legal situation is unsatisfactory' and 'minimum amending legislation was required'. Though the

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<sup>73</sup> UCDA: FF/parliamentary party minutes 22 January 1975; 19 Jan. 1977; NAI: Cosgrave Papers, 1194/42 Corish to Cosgrave, 10 Feb. 1977

<sup>74</sup> Rosita Sweetman, *On Our Backs: Sexual Attitudes in a Changing Ireland* (London: Pan, 1979), 155-58; Linda Connolly and Tina O'Toole, *Documenting Irish Feminisms: The Second Wave* (Dublin: The Woodfield Press, 2005), 59-68

<sup>75</sup> NAIDT: 2008/148/129 Jack Lynch to Sister Mary Veronica, 5 April 1978; NAIDT: 2008/148/220 Maureen Fehily, to Lynch 10 May 1978 who argued that legislation on contraceptives would lead inexorably to abortion; Lynch to Fehily 12 May 1978;

<sup>76</sup> MRBI Poll for *Magill*, December 1977, 27.

<sup>77</sup> 2008/148/220 Lynch to Mrs Breda Mulcahy, 5 June 1978; Lynch to F. J. O'Meara 22 Aug. 1978

Bishops had not changed their opposition to contraception, they were not prepared to challenge the constitutional basis of the court's decision.<sup>78</sup>

In an important change, responsibility for the issue was transferred from Justice to the Department of Health.<sup>79</sup> The new Minister Charles J. Haughey identified family planning as a health issue, while emphasising that family planning services could be supplied without 'providing facilities for certain ways of preventing births'. Policy however remained focused on control and regulation rather than health considerations. Sensitive to the conservative mood in his party, Haughey rejected a situation which, 'would mean that there would be no control on the sales of condoms to the public', arguing that this would be politically unacceptable. He proposed that 'the restriction of the supply of all forms of contraceptives to pharmacists and health boards would limit the availability of these devices and would be desirable on general grounds of public morality'. From the outset, Haughey set himself against a liberal policy, seeking to restrict availability and limit access.<sup>80</sup>

Though conservative, Haughey was committed to legislation. He showed little patience with traditionalist Catholic interest groups who demanded a return to the status quo ante. His meeting with the Irish Family Planning Association was far more positive. While the IFPA wanted a liberal regime, the Minister welcomed their input and discussed alternatives with them.<sup>81</sup> His strategy was to consult widely before

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<sup>78</sup> Statement by the Irish Episcopal Conference, 15 March 1978 copy in DH: FP 8/19/1075.

<sup>79</sup> Department of Health (DH) FP300/5/8 Volume 2: Family planning: Miscellaneous papers; The Department of Health has retained these files unless otherwise noted in the text. I am grateful to the Minister and the staff of the department for identifying these files and making them available to me.

<sup>80</sup> NAIDT: 2008/148/217, Department of Health memorandum 'Family Planning and Contraception' 13 Oct. 1977; PDDE, Vol. 3000, cc. 161-64, 12 Oct. 1977; NAIDT: 2008/148/217 Health (Family Planning) (Amendment) Bill 1985.

<sup>81</sup> DH: FP8/21/1047 Minutes of Meeting with Irish Family League 21 July 1978; Minutes of meeting with Irish Family Planning Association, 24 April 1978

introducing legislation. By way of contrast, there is no record that the Department of Justice engaged in consultation when it formulated contraceptive policy. He received conditional support for change from the Church of Ireland, while the Presbyterian and Methodist churches also recommended change. The Irish Chief Rabbi advanced an even more liberal position on contraception and abortion. The Irish Council of Churches advocated change on pluralist grounds.<sup>82</sup>

The Irish Medical Association provided support for change but told the Minister that doctors, 'would not accept the role as arbiters of moral conscience'.<sup>83</sup> The Irish Nurses Organisation however wanted very restrictive legislation, urging the Minister to pursue an active policy of support for family planning methods acceptable to the Catholic Church. Haughey informed one delegation that, 'his general approach would be that natural methods should have at least as much prominence as artificial methods and he was prepared to assist financially.'<sup>84</sup> Haughey also met representatives of the Health Boards to discuss the thorny question of their future role in the area of family planning. There was no common ground among the boards and though all were prepared to provide some form of family planning not all of them were in favour of including contraceptives in that remit. While most were cautious, two boards favoured providing a comprehensive service that would include contraceptives.<sup>85</sup>

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<sup>82</sup> DH: FP8/21/1047: Meeting with Church of Ireland, 29 May 1978; Meeting with Methodist Church, 17 April 1978; Meeting with Presbyterian Church, 17 April 1978. The *Irish Times* 6 April 1978 reporting statement by Reverend William Arlow, secretary of the Irish Council of Churches. DH: FP8/7/1033 Meeting with Jewish Representative Council of Ireland, 27 June 1978.

<sup>83</sup> DH: FP300/5/8 vol., 2 IMA to Brendan Corish 16 May 1977; Charles Haughey meeting with IMA 26 January 1978; a majority of IMA members supported change, but a vocal minority opposed change on principle.

<sup>84</sup> DH: FP8/1047 meeting with Professor Bonnar and National Association for the Ovulation Method Ireland, 27 June 1978

<sup>85</sup> DH: FP8/21/1047 Meeting with Health Board representatives 26 June 1978

## The Bishops and the Minister Agree

The main obstacle to legislation remained the Catholic Hierarchy. Haughey recognised that any legislation had to disarm opposition within his own party and prevent an open breach with the Bishops. The Bishops issued another statement in March 1978, which maintained their principled opposition to contraception. They questioned whether contraception should be a 'normal part of the health services' as no health problem was involved. However, the Bishops added a significant clarification, 'We do not hold that the moral laws of the Church, merely because they are the laws of the Church, should be enforced by the State'. Some officials considered that this involved a change of tactics, but it was an important one. Politically, the sentence provided a defence for politicians who feared public criticism by the church if they voted in favour of change.<sup>86</sup>

The Catholic Hierarchy recognised that the government would legislate, while maintaining that there was no widespread demand for change. They insisted that legislation should be kept to 'a minimum and above all of a restrictive kind'. The Bishops asked politicians who were Catholic to consider 'whether a change in the present legal position with regard to contraceptives can be expected to improve the present position, or on the contrary worsen it'. Yet, Bishop Cahal Daly told Haughey, 'It is not within the competence of the Bishops to decide whether there should be legislation or what it should contain'. Nevertheless, the Bishops emphasised the need to privilege 'natural family planning' and provide financial support for this method. Health Boards should not provide a comprehensive contraceptive service as this would legitimise usage in 'provincial areas, where there has been no demand for them in public opinion'. The Bishop's sought assurances that IUDs would not be available and that advertising and sterilisation would be strictly controlled. They expressed concern that the legislation would undermine the official support provided for the family in Article 41 of the Constitution. The Bishops were equally concerned that a clear distinction be drawn in the legislation between married and unmarried persons, acknowledging that 'the social consequences of contraception within

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<sup>86</sup> DH: FP 8/19/1075 brief for meeting with representatives of Hierarchy, 2 June 1978 (no date but likely May 1978); *Irish Press*, 5 April 1978

marriage are at least less immediate and less obvious than its consequences outside of marriage and for young people'.<sup>87</sup>

Haughey might be forgiven for concluding that the Bishops gave him relatively little room to manoeuvre though he told them that he had read their statements with 'great care and respect'. He assured them that legislation would not ease the existing 'general condemnation of abortion contained in the present law'. He quickly conceded that 'apart from moral issues, it is my conviction that natural methods are far preferable from the point of view of the individual and the individual's health than artificial methods'. Haughey likewise was impressed by the Bishops' position on advertising and would prohibit advertising in public or through the post. However, the major stumbling block was how restrictive the legislation would be. The Minister recognised that restricting access to married couples might be best but that any legislation might be unenforceable, 'I am not sure that, from your point of view, a provision on this aspect of the matter which encouraged deceit by purveyors or purchasers of contraceptives might not find acceptance'. He added that his mind was not made up and he would listen carefully to the suggestions made in the discussion.

Dr Daly reiterated that the Bishops were concerned with the social consequences of legislation on the 'moral environment'. Their emphasis was on the restrictive nature of the outlets available for contraceptives and Dr Daly wanted all personnel involved in family planning to be trained in natural methods. The Bishops argued that natural family planning was suitable for married couples and those in long term relationships, but not for young people and those involved in casual contacts. When asked by the Minister if it would be preferable for a woman who had decided to pursue 'a certain lifestyle' to have access to contraceptives and avoid having an abortion if she became pregnant, Dr Daly replied that they were opposed in principle to single people having access to contraceptives. He insisted that restrictions were necessary for symbolic reasons, 'the incorporation of restrictions in legislation is not pointless. It

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<sup>87</sup> DH: FP 8/19/1075 'Meeting with Hierarchy re Family Planning' 2 June 1978. The members of the Hierarchy were Most Rev. Dr Cahal Daly, Bishop of Ardagh and Clanmacnois Longford; Most Rev Dr Patrick Lennon, Bishop of Kildare and Leighlin, Carlow; Most Rev. Dr Dermot O'Mahony, Auxiliary Bishop and Chancellor, Dublin; Dr Kevin McNamara, Bishop of Kerry.

indicates the legislative intent and the State's commitment'. The Bishops rejected Haughey's suggestion that an age limit be imposed rather than restricting access to married couples. This remained the main point of disagreement between them. They were critical of the Irish Family Planning Association suggesting that its views were at variance with those of the majority of Irish people whether Catholic or Protestant. The Bishops left Haughey and his staff in little doubt that only minimalist legislation to give effect to the Supreme Court decision would be acceptable to them.<sup>88</sup>

By August 1978 Haughey was confident that he could legislate successfully and subsequently circulated a memorandum.<sup>89</sup> Haughey told his colleagues that his proposals reflected the majority view among those consulted that 'any legislation to be introduced should provide for a more restrictive situation in relation to the availability of contraceptives than that which exists at present'. Ferriter has suggested that Haughey was not 'in the pocket of the Bishops' and while this is persuasive it does not do justice to the complexity of the situation. Haughey actively adopted the Bishops' position and the legislation closely reflected their position.<sup>90</sup> He addressed their concerns in relation to the young and unmarried, advertising and on prescribing condoms. He also provided state finance for research and training in natural family planning. In only one case was Haughey unable to include a recommendation from the Bishops. While an early draft restricted access, 'primarily to married couples'; married was subsequently later replaced by the term 'bona fide' couples. Haughey explained to critics that the inclusion of the term marriage in the

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<sup>88</sup> DH: FP 8/19/1075 'Meeting with Hierarchy re Family Planning' 2 June 1978.

<sup>89</sup>The original draft of this document was completed in August 1978, DH: FP 300/5/8 volume 2 'Family Planning and Contraception' August 1978; NAIDT. S18602B, Department of Health memorandum 'Family Planning and Contraception' 24 October 1978; DH: FP 300/5/8 volume 2, 'Family Planning Miscellaneous Papers Impending FP Legislation'; note of telephone conversations with Taoiseach's office 23 October 1978

<sup>90</sup> Ferriter, *Occasion of Sin*, 423.

legislation raised a 'difficult legal problem' that could not be easily addressed. The use of 'bona-fide' was an effort to resolve this difficulty.<sup>91</sup>

Haughey successfully piloted the legislation through the Dáil. However, there was considerable unease within Fianna Fáil. The Minister for Agriculture, Jim Gibbons, threatened to resign when the legislation was discussed in cabinet. The Taoiseach agreed to permit Gibbons and two other deputies, to abstain on the legislation. Lynch 'decided not to insist that he should vote for the bill', an unprecedented decision for such a tightly disciplined party.<sup>92</sup> Politically, Haughey probably got the balance right and successfully opposed attempts to amend the legislation. He maintained that his commitment to natural methods was based on the recognition that 'a very large sector, probably a majority wanted natural family planning'. In notes prepared for a parliamentary response to Dr Noël Browne, the most persistent critic of the legislation, he maintained 'it was necessary to oppose Dr Browne's amendments to this section. It is because of the importance of this provision for all of those who feel they must rely on natural methods of family planning that it is imperative to retain the relevant section'.<sup>93</sup>

Nor were these commitments cosmetic. Haughey continued to maintain the importance of natural family planning after becoming Taoiseach in 1979. The Irish delegation to the World Health Assembly in Geneva in 1980 provided strong support

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<sup>91</sup> NAIDT: 2008/148/217, DH memorandum 'Family Planning and Contraception' 24 Oct. 1978, the cabinet approved the legislation 12 December 1978 G.C. 15/112 'Health (Family Planning) Bill, 1978. DH FP 300/5/24 for correspondence in respect of amendments; INO to Minister 27 Feb. 1979

<sup>92</sup> NAIDT: 2008/148/217, note by Lynch 4<sup>th</sup> May 1979; TNAUKK: FCO87/833, 17 May 1979, L. B. Smith to London reporting on meetings with Frank Dunlop and Chris Glennon; UCDA: P176/449 Fianna Fáil Parliamentary Party Minutes 9 May 1979.

<sup>93</sup> DH: F300/5/21 note prepared for Minister on report. See also DH: CH1/INA/O 491352 Committee stage amendments; John Horgan, *Noel Browne: Passionate Outsider* (Dublin: Gill and Macmillan, 2000), 270-2.

for natural methods.<sup>94</sup> Despite this, the Department of Health retained a good working relationship with the IFPA notwithstanding clerical hostility.<sup>95</sup> The legislation came into operation on 1<sup>st</sup> November 1980. Officials noted that ‘the demand from pharmacists for contraceptives was greatly in excess of the requirements they had indicated some six weeks before the Act was brought into operation’.<sup>96</sup>

## Conclusion

Though contraceptives were legalised in Ireland in 1979, this was not a turning point in respect of change on moral issues. In a comparative European context, Ireland changed least when measured in terms of progressive policy making or permissive attitudes between the 1960s and early 1990s. I argue that the policy options available in Ireland remained conservative in respect of moral and constitutional issues despite this legislation. There is little support in government or in the Department of Health for policies that empower the young or unmarried in developing a sexuality based on individual need rather than reproduction. While sexual behaviour changed during the 1960s and 1970s, this is not recognised in legislation until the 1990s. What did change was that the traditional consensus on moral questions broke down and these issues became politically controversial.<sup>97</sup>

The legislation is best explained as a conservative attempt to contain the unwelcome consequences of a Supreme Court decision which could not be overturned. Whyte

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<sup>94</sup> DH: FP300/5/2 Taoiseach’s office to Artane Ladies club 2 September 1980

<sup>95</sup> DH: FP8/19/1075 O’Mahony to departmental secretary 22 Feb. 1980; reply 6 March 1980

<sup>96</sup> NAIDT: 2008/148/217 note for Taoiseach 12 Dec. 1980.

<sup>97</sup> *Magill*, 1:3, (December 1977), 27; Michael P. Hornsby-Smith, ‘Social and Religious Transformation in Ireland: A Case of Secularisation?’ in J. H. Goldthorpe and C. T. Whelan (Eds.), *The Development of Industrial Society in Ireland* (Oxford University Press, 1992), 265-90; Moira J. Maguire, ‘The Changing Face of Catholic Ireland: Conservatism and Liberalism in the Ann Lovett and Kerry Babies Scandals’, *Feminist Studies*, 27: 2 (2001), 335-58



concluded that the issue was resolved 'without a confrontation between church and state'.<sup>98</sup> While this is true, Whyte misses its significance. The records of negotiations between Haughey and the Hierarchy confirm that he conceded every demand made by the Bishops. The only exception to this was the proposal to restrict availability to married couples, but this was due to legal and constitutional constraints rather than disagreement with the Bishops. Moreover, while Haughey consulted widely, the legislation only included suggestions from individuals and groups that shared the Bishops' position. The Hierarchy proved to be far more aggressive in confronting successive governments during the 1980s when their position was not taken into account. The Hierarchy's legitimacy remained intact into the 1990s and the Catholic Church continued to exercise power and influence to maintain its denominational position.<sup>99</sup>

This controversy also revealed a new division in Irish politics. Fianna Fáil now occupied the conservative end of the spectrum and its supporters provided crucial opposition to liberal reform throughout the 1980s. Liberals were concentrated in the Labour Party and in other small left wing parties. Fine Gael straddled the centre ground and its supporters divided fairly equally between liberalism and conservatism. This political division on moral and constitutional issues had not existed in 1966. This conservative majority was composed of Fianna Fáil supporters, the urban working class, rural inhabitants and women, dominating debates on moral issues throughout the 1980s. The legislation generated a Catholic grass-roots movement to oppose further liberalisation and to defend traditional Catholic values. The organisers of this movement were motivated by a fear that parliament or the courts would defy majority opinion on moral issues.<sup>100</sup> Their greatest success was the ratification of an anti-abortion constitutional amendment in 1983, and the defeat of a proposal to remove

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<sup>98</sup> Whyte, *Church and State*, 416

<sup>99</sup> Girvin, 'Church and State', 84-90

<sup>100</sup> Tom Hesketh, *The Second Partitioning of Ireland: The Abortion Referendum of 1983* (Dublin: Brandsma Books, 1990); Emily O'Reilly, *Masterminds of the Right*, (Dublin: Attic Press, 1988); NAIDT: 2013/100/747; 2013/100/559; 2013/100/720 trace the pressure exercised by the Pro Life Amendment Campaign on successive governments to introduce an anti-abortion amendment.

the constitutional prohibition on divorce in 1986. In both cases two thirds of those who voted supported the conservative option.<sup>101</sup> This group maintained the superiority of Catholic values over liberal and pluralist ones. The latter were dismissed as unrepresentative if not foreign. Cultural defence was central to this campaign and their ideology continued to reflect what Paşeta has described as ‘a form of citizenship in which active endorsement of, and adherence to, Catholic doctrine was implied’.<sup>102</sup>

However, the conservative majority was not a monolith. In certain circumstances a moderate liberal majority could be mobilised. Consensus was achieved on reforming the legal position of children born outside of marriage. A Fine Gael-Labour coalition government amended the Haughey bill in 1985 in the face of fierce opposition from Fianna Fáil, the Catholic Church and lay activists. In contrast to Haughey, Barry Desmond the Minister for Health did not consult with the Bishops when drawing up the legislation.<sup>103</sup> A case can be made that this is the first turning point in respect of moral issues and sexuality, but it was an isolated one. Liberal influence remained weak on issues such as abortion, divorce and homosexuality. It would take another Supreme Court decision in the ‘X’ case in 1992 to provide the political means to challenge the conservative majority on moral issues.

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<sup>101</sup> Girvin, ‘Church and State’, 84-88

<sup>102</sup> Paşeta, ‘Censorship and Its Critics in the Irish Free State’, 196; Halikiopoulou, ‘The Changing Dynamics of Religion and National Identity’

<sup>103</sup> NAIDT: 2008/148/217 Department of Health memorandum on amending the legislation on contraception, 21 Sept. 1984 and correspondence; Desmond, *Finally and in Conclusion*, 141-2; 237-49; Data Section, *Irish Political Studies* 1 (1986), 142 Hug, *The Politics of Sexual Morality*, 116-21