The Irish Review of Community Economic Development Law and Policy
THE IRISH REVIEW OF COMMUNITY ECONOMIC DEVELOPMENT LAW AND POLICY

The Irish Review of Community Economic Development Law and Policy is an online journal, published four times a year by the Northside Community Law & Mediation Centre, in Coolock, Dublin. The journal seeks to offer a platform for interaction that encourages greater scholarly and academic collaboration in the areas of social policy, law and community development, promoting the practice of CED law and policy in Ireland and learn about these initiatives in other countries.

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Address
Northside Civic Centre, Coolock,
Dublin 17, Republic of Ireland

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# The Irish Review of Community Economic Development Law and Policy

## Volume 1  Issue 3  Index

<table>
<thead>
<tr>
<th>Editorials</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EDITORIAL</strong></td>
<td>4</td>
</tr>
<tr>
<td>Colin Daly &amp; Maria Antonieta Nestor</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PROMOTING WORKER-OWNED COOPERATIVES AS A CED EMPOWERMENT STRATEGY: A CASE STUDY OF COLORS AND LAWYERING IN SUPPORT OF PARTICIPATORY DECISION-MAKING AND MEANINGFUL SOCIAL CHANGE</strong></td>
<td>6</td>
</tr>
<tr>
<td>Carmen Huertas-Noble, Associate Professor of Law, City University of New York, United States</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>COMMUNITY PARTICIPATION IN NATIONAL DRUGS STRATEGY</strong></td>
<td>28</td>
</tr>
<tr>
<td>Dr. Mary Ellen McCann, Lecturer, UCD School of Applied Social Science, University College Dublin, Ireland</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FINANCING SOCIAL VALUE AND COMMUNITY ECONOMIC DEVELOPMENT - ‘THE POTENTIAL AND PITFALLS OF UTILISING SOCIAL IMPACT BONDS IN IRELAND’</strong></td>
<td>42</td>
</tr>
<tr>
<td>Stephen Kirwan, Senior Sophister LLB Candidate and Chair Trinity Free Legal Advice Center, Trinity College Dublin, Ireland</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ADDRESSING FAILURES OF THE COMMON FISHERIES POLICY: HOW PRINCIPLES OF DEVOLVED COMMUNITY-BASED GOVERNANCE MAY IMPROVE THE SUSTAINABILITY OF IRISH FISHERIES</strong></td>
<td>53</td>
</tr>
<tr>
<td>Niall Farrell, Benjamin Breen, Stephen Hynes and Michael Cuddy, Socio-Economic Marine Research Unit, J.E. Cairnes School of Business and Economics, NUI Galway, Ireland</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NEW SKILLS FOR NEW JOBS? CHALLENGES IN ACCESSING THE LABOUR MARKET FOR MARGINALISED COMMUNITIES IN NORTH DUBLIN</strong></td>
<td>75</td>
</tr>
<tr>
<td>Dr. Matthias Borscheid, SIMCV, Local Development &amp; Education Manager and Odran Reid, BA(Mod) H.DipEd. MSc Spatial Planning, MIED MIPI SIMVC, Strategy Development Manager, Northside Partnership, Dublin, Ireland</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Articles</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BOOK REVIEW: POLITICAL CORRUPTION IN IRELAND 1922-2010: A CROOKED HARP? BY DR. ELAINE BYRNE</strong></td>
<td>98</td>
</tr>
<tr>
<td>Reviewed by Maria Cox, Law and Political Science Student, Trinity College Dublin, Ireland</td>
<td></td>
</tr>
</tbody>
</table>
EDITORIAL

Colin Daly & Maria Antonieta Nestor
Editors at Northside Community Law & Mediation Centre.
Email: editor@nclc.ie

Community investment and participation requires not only policies but also the implementation of laws to achieve its potential. Community investment and participation is also a broad area that can be seen through different perspectives. This issue therefore seeks to offer an insight into the many shades of community and the different types of investment and participation we mean when we talk about community economic development (CED) law and policy.

The word “community” may be defined by a geographical focus, by the locality of where people are as well as what people think the community is. In relation to investment and participation, we also may define these terms in different ways, depending on our experiences and background. Therefore, if we are to speak about community investment and participation as part of CED, as part of a multi-faceted approach towards tackling issues of poverty and disempowerment within communities, we must also define what we mean by community investment and participation, putting aside our pre-conceived ideas as to their definitions. Otherwise, instead of removing barriers impeding the promotion of CED, we might be helping to maintain them.

Thus, we start with an article by Carmen Huertas-Noble, where she talks about empowerment driven CED and how lawyers can contribute to its implementation. By offering a case of a worker-owned cooperative called Colors, she provides us with an example of empowerment driven CED lawyering. In particular, she notes that by using a collaborative approach the client is involved in every stage of the process and not only in the final decision. Now, six years after its creation, Colors is still going strong.¹

In the next article, Dr. Mary Ellen McCann talks about the importance of ensuring that community participation takes place not only on paper but also in reality, as this also affects the way community empowerment is perceived and acted upon. By seeking to learn about the role of community representatives in relation to the drugs task policy, Dr. McCann indicates that if their role can contribute towards the long term change of communities affected by drugs then the creation of certain standards in relation to community engagement is also important. These standards are not just important for the task drug force but they can also help towards the advancement of CED law and CED lawyering in Ireland.

As a way of advancing community investment and participation within CED law and policy, the next article written by Stephen Kirwan focuses on social enterprise finance in Ireland, suggesting the use of an innovative financing tool called Special Impact Bonds (SIBs).

¹ For more information about Colors, including its location go to: http://www.colors-newyork.com
Kirwan submits that if SIBs were to be used in Ireland they could help towards the enhancement of social conditions in a more sustainable manner, thus aiding in the furthering CED. SIBs, for example, as part of CED law could enhance the current assets of communities.

When enhancing local communities and the policies used for their economic development it is also worth remembering that these are also affected by the changes to EU law. Our next article written by Niall Farrell, Benjamin Breen, Stephen Hynes and Michael Cuddy thus reminds us of that while at the same time reminding us about community empowerment and how by devolving governance to local communities (in this case the management of community-based fisheries) the sustainability of Irish fisheries can be improved. As such, the devolution of governance can also aid towards the development of CED law and policies.

Our last article moves back to the local where Dr. Matthias Borscheid and Odran Reid tells us about the structural challenges facing people from marginalised communities in accessing the labour market. By using a case study from Dublin they illustrate the barriers low-skilled local people face when entering the labour market and how a local development company, the Northside Partnership, is trying to tackle this by providing a multi-stakeholder and area based response, which links national policies to the local.

Finally, Angelina Cox's review of the book Political Corruption in Ireland, 1922-2010: A Crooked Harp? by Elaine A. Byrne, reminds us of the threat posed by political corruption to programmes or policies directed towards benefitting the community.

We want to thank the authors and all those involved in this issue for their contributions and suggestions as to how CED law and policy can be expanded in Ireland.

Le Meas,

The Editors
Colin Daly and Maria Antonieta Nestor
Empowerment driven CED lawyering, in a transactional context, is an emerging approach to progressive lawyering that fosters the collective action and active democratic participation of low-income and working-class people to reshape our social, economic, and political system.

This Article examines three main approaches to CED and argues for a CED project and lawyering approach that is empowerment focused and not limited to a geographic locality. It provides a concrete example of an empowerment driven approach that adopts an expansive definition of community through a case study of Colors, a worker-owned cooperative. Worker-owned cooperatives are ideal empowerment driven CED projects because they alter conventional wealth and power dynamics by enabling low-income working people to exercise democratic control over the formation and day-to-day governance of collective enterprises - challenging capitalism’s assumption that enterprises must be privately owned and autocratically managed.

In addition, promoting worker-owned cooperatives and participatory decision-making creates opportunities for collaborative lawyering that can further empower communities. The case study carefully explores how lawyers can best support this empowerment driven CED model and identifies the challenges and opportunities lawyers face in applying it - chief among them, the need for lawyers to consciously create participatory decision-making processes that give clients a meaningful opportunity to take collective ownership of their decision-making, as well as the need for thoughtful collaboration among lawyers and activists to support such a labor- and time-intensive counseling process. The Article concludes by deriving lawyering lessons in supporting this strategy.
Introduction

A growing number of legal scholars and practitioners view lawyering for community economic development (“CED”) as an opportunity to collaborate with and empower clients and communities. Not all CED lawyering serves these purposes, but there are projects and lawyering approaches that bring it closer to this ideal. Through a case study of work I did as a social justice lawyer and clinician, this Article explores how CED projects and CED lawyering can serve as an effective client and community empowerment approach. The Article identifies strategies and tactics that support clients’ and communities’ ownership and control of solutions to problems they face — solutions that not only benefit them, but also bring about systemic change to benefit other similarly situated people and communities. It argues that the success of such strategies and tactics depends heavily, although not exclusively, on a client’s approach to development, which in turn shapes both the nature of specific CED projects and the nature of CED lawyering.

Part I.A. of the Article examines three broad approaches to CED and argues for an approach that consciously emphasizes empowerment. Part I.B. urges the adoption of a broad definition of community that is not limited to a geographic locality. Part I.C. explores the creation of worker-owned cooperatives in general, as an illustrative example of this empowerment-focused and non-geographically bounded approach to CED. By exploring the creation of Colors, a worker-owned cooperative restaurant in Manhattan formed by the Restaurant Opportunities Center of New York (ROC-NY), Part II provides a concrete example of this approach as a promising model of CED that communities should advance and build upon. The case study addresses how lawyers can best support this CED model and identifies the

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2 See Cummings, CED as Progressive Politics, supra note 1, at 407-09 (critiquing apolitical free market-approach to CED and calling for new model that reconnects CED to its activist roots and prioritizes economic justice); Shah, supra note 1, at 217-22 (critiquing some forms of CED as counterproductive to empowerment, including projects employing market-based strategies and CED lawyering for highly technical and sophisticated projects).

3 See text infra accompanying notes 39-42 for the definition of empowerment used in this Article, as well as for a general critique of the term.

4 To be sure, a lawyer’s orientation to CED also plays a significant role in helping to ensure that his or her counseling choices support and do not undermine a client’s empowerment goals. But in the absence of a client who shares empowerment goals, a lawyer becomes much more limited in his or her collaborative counseling choices. Consequently, I tend to seek out clients who share a vision of CED as an empowerment strategy. While I also represent service organizations, I actively seek out organizing clients because I believe there are not enough lawyers willing and able to adopt a collaborative counseling approach that supports the empowerment process goals of organizing clients.

challenges and opportunities lawyers face in applying it. These challenges and opportunities include the need for lawyers to consciously create participatory decision-making processes that give clients a meaningful opportunity to take collective ownership of their decision-making, as well as the need for collaboration among lawyers and activists to support such a labor- and time-intensive counseling process. Finally, Part II.D. derives lawyering lessons in supporting this strategy with the aim of informing the future work of practitioners interested in using CED as an empowerment strategy.

I. Approaches to CED

A. Adopting a CED Approach that Empowers Communities

Though commentators offer multiple definitions of CED, analysts have identified three main approaches that are distinguishable by whether they primarily emphasize “economics,” “development,” or “community.” The three approaches are: 1) the economic profit-driven approach (“cEd”), which primarily emphasizes economic growth (measured in the aggregate, rather than by the distribution of its benefits), 2) the institutional development approach (“ceD”), which primarily emphasizes the development of community-based organizations and non-profits, and 3) the community empowerment approach (“Ced”), which primarily emphasizes increasing the role of marginalized stakeholders as decision-makers and beneficiaries in a community’s development processes.\(^6\) Each approach’s distinctive primary emphasis (economics, development, or community) is visually reflected in its abbreviation by capitalizing either the letter E, D, or C.

Understanding these three main approaches provides deeper insight into the uneven track record of CED as an empowerment strategy. While the same activity can be conducted under each approach, the distinct primary emphasis of each approach leads to a different way of balancing multiple and sometimes competing interests. These different balances result in very different outcomes for low-income communities. As elaborated below, a community-empowerment approach, coupled with an institutional development approach, has the most potential to serve as a transformative strategy that restructures wealth and power and thus effects systemic change.

Under the economic profit-driven approach (cEd), development is pursued in a way that privileges the values and interests of typically externally-based, private developers. These developers tend to prioritize increasing the monetary value of land and maximizing their own profits over the values and interests of residents, who are typically more concerned with a parcel’s use value (e.g., its provision of affordable housing or green or other community-enhancing spaces).\(^7\) The overemphasis on profit maximization of private developers and local government officials under this approach, when carried out in communities that have been historically under-capitalized and under-developed, has often destabilized such communities by directly or indirectly displacing low-income residents and the community

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organizations, churches, cultural institutions, and small businesses that serve and employ them.\(^8\) The development of “big box” stores, sports stadiums, and luxury housing in historically underserved communities are prime examples of development projects under this approach.

The institutional development approach (ceD) counterbalances the emphasis on aggregate economic growth and private developers’ profit maximization with an emphasis on short- and long-term stability through building community-based institutions that initiate development. A typical strategy, under this model, is to establish not-for-profit community entities, such as community development corporations (“CDCs”), that fill gaps in services and implement their own development projects - most commonly affordable housing, but sometimes also commercial or other enterprises. A common critique of CDCs is that in their housing or commercial development role, they involve only local elites (often through membership on their boards of directors) and they depend so heavily on outside corporate, government and foundation funding that they are severely limited in the options they can pursue.\(^9\) CDCs are often vulnerable to the same market pressures as traditional developers, which can lead them to impose values and strategies that undermine the fullest empowerment of community residents.\(^10\)

Like the institutional development (ceD) approach, the community empowerment (Ced) approach emphasizes creating community institutions. But community-empowerment Ced also explicitly seeks to redistribute economic and political power and to promote systemic change.\(^11\) This redistribution is achieved by developing grassroots leaders and by fostering broad-based, community participation in planning, decision-making and governance processes. It is also achieved by creating more democratic forms of ownership and enterprise governance. As one proponent of the community empowerment approach has noted, broad-based participation in neighborhood organizations increases community members’ “confidence, efficacy, power, identification with the community, interaction, mutual aid, leadership development and problem solving capacity.”\(^12\) Enabling such participation increases residents’ control and ensures that local control is diffused throughout the community, rather than limited to a (less representative) board of directors of a CDC. Community empowerment Ced’s core goal is to couple individual efficacy with collective empowerment, by creating institutional processes and forms that enable communities as a whole to benefit in the both the short and long term.

All three CED approaches bring about material improvements, such as new businesses, housing, service institutions and jobs, but they do so with very different impacts on low-income communities. Economic-profit-driven cEd provides material improvements such as housing, but often in a way that does not directly or meaningfully benefit low-income communities and can harm residents by intensifying gentrification. Housing development under cEd is typically luxury housing or nominally “affordable housing” that isn’t quite affordable to current residents. The institutional-
development CED approach provides material improvements, such as service organizations and community centers that more often benefit low-income residents. However, these improvements are often difficult to sustain, given the need for continuous outside funding, and typically do not address the underlying reality that while low-income people often have little control or influence over the conditions and development processes negatively impacting their lives, they do have the power to potentially alter these dynamics. The community empowerment Ced approach, however, provides for material improvements in a way that empowers individuals and contributes to the creation and sustenance of community-controlled institutions. These institutions are more likely to be sustained by low-income communities and in a way that advances a more fundamental restructuring of wealth and power. This is the CED that this Article promotes: CED as an empowerment strategy.

B. Beyond Geography: Moving CED from a Predominantly Placed-Based Definition of Community to a People-Based Definition

The meaning of community in CED has historically been place based. This geographic focus was a logical starting point, given the origins of CED as a response to urban renewal programs. These renewal programs, aimed at restoring and improving the physical and service infrastructure of urban neighborhoods, were supposed to benefit local residents, but instead came to be known as urban or Negro removal programs. As William Simon observes, “The early stages of CED reacted to urban policies of the 60s and 70s, which neglected residential neighborhoods for the benefit of downtowns or squeezed out their residents to promote development for incoming higher income groups.” Simon further explains that this led to “a tendency to view community as [a physical] enclave against the outside world, trying to protect itself from expropriation.” This threat of expropriation initially meant that residents who remained and chose to fight to reclaim their neighborhoods initially focused on their physical environment. These residents

13 Service organizations are often governed by elites and are dependent on outside funding they must continue to receive in order to provide services. This dependence often results in the leadership of these organizations not wanting to upset the status quo and therefore limiting protest activities. See James DeFilippis, Community Control and Development: The Long View, in THE COMMUNITY DEVELOPMENT READER 28, 32 (James DeFilippis & Susan Saegart eds. 2008). See also Cummings, CED as Progressive Lawyering, supra note 1, at 454.

14 It is important to note that larger systemic forces create communities that lack these skills and powers. Here, however, I focus on individuals in communities because I believe communities need to empower themselves, including by working in concert with others. In the CED context, developers and government officials are not going to voluntarily hand over control or influence. In his seminal piece, Stephen Wexler writes: “Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together.” Stephen Wexler, Practicing Law for Poor People, 79 YALE L.J. 1049, 1053 (1970). See also Piomelli, supra note 12, at 1400 (“it is through effective connection and joint action with others that low-income and working class people and people of color can best protect themselves and achieve their goals.”). Notwithstanding, this does not relieve government officials of their responsibilities to their constituencies. Bill Quigley notes that “Some well-intentioned persons may ask: Why do people need to gain power over their own lives? Why can’t we just help give them what they need?” Quigley, supra note 1, at 476. As Joel Handler has explained, even if we were to provide more funds for social programs, enact better laws, and provide many more dedicated lawyers to help them, powerless people still need to work on the imbalance of power in our society or they will, by definition, remain powerless and trapped. See Joel Handler, Community Care for the Frail Elderly: A Theory of Empowerment, 50 OHIO ST. L.J. 541, 557 (1989). Granting codes of legal rights and protection to the powerless is not enough.


16 Simon, supra note 8, at 1823. See also Roger A. Clay & Susan R Jones, A Brief History of Community Economic Development, 18 J. Affordable Housing & Commun. Dev. L. 257 (2009); Cummings, CED as Progressive Lawyering, supra note 1, at 399-447(exploring historical development of CED); Brian Glick & Matthew J. Rossman, Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 107 (1997) (explaining that CED was also response to decline of U.S. manufacturing base in many cities during that time).
realized that they needed to anchor themselves in a geographic community by advocating for the preservation and provision of additional affordable housing, often by forming nonprofits to pursue this agenda.\textsuperscript{18} Indeed, much of the early work of community organizations, mainly in the form of nonprofit CDCs, focused on affordable housing and its development.\textsuperscript{19}

As nonprofits helped residents become more anchored in their neighborhoods, they expanded their services to include additional financial and social services, such as providing low-interest loans, child care and health care services. In time, nonprofits also expanded their definition of community to explicitly include communities of identity and purpose. For example, nonprofits choose to serve ethnic communities, such as African American, Latino and Asian American communities,\textsuperscript{20} as well as communities of purpose,\textsuperscript{21} such as low-wage workers fighting for better working conditions.

The expanding definition of community, and its new articulation within CED, is a natural progression of the expanding and sharpened focus of nonprofits. When CED was a neighborhood response to failed local markets and urban renewal programs, localness was a key characteristic of its place-based focus.\textsuperscript{22} Today, localness or place need not be synonymous with community.\textsuperscript{23} Localness is one form of community, but it is not the only form. Many nonprofits have historically focused on ethnicity. These groups however, were also neighborhood based.\textsuperscript{24} The two forms of community were nested and not necessarily seen as distinct. For example, many nonprofits represented at the Urban Justice Center and Lincoln Square Legal Services were formed by local residents who initially sought to make improvements in their immediate neighborhood.

\textsuperscript{18} See Huertas-Noble et al., supra note 5, at 648.

\textsuperscript{19} The National Congress for Community Economic Development documented the magnitude of CDCs’ affordable housing development in two major studies. See NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT, AGAINST ALL ODDS: THE ACHIEVEMENTS OF COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS (1989); NATIONAL CONGRESS FOR COMMUNITY ECONOMIC DEVELOPMENT, TYING IT ALL TOGETHER: THE COMPREHENSIVE ACHIEVEMENTS OF COMMUNITY-BASED DEVELOPMENT ORGANIZATIONS (1995).

\textsuperscript{20} One example of communities of identity has been what some have called ethnic-based CDCs or ethnic-based nonprofits. See Shomon Shamsuddin, Have Community, Will Travel, 152 SHELTERFORCE: J. AFFORDABLE HOUSING & COMMUNITYBUILDING (Winter 2007), available at http://www.shelterforce.org/article/235/have_community-will-travel/ (“Ethnic-based nonprofits are different than traditional nonprofits because they employ a broader definition of community, choosing to serve immigrants of a specific national or ancestral origin, rather than by geographic neighborhood.”). Shamsuddin highlights Chhaya, a nonprofit that focuses on the housing and community development needs of South Asians and uses this broader, people-based definition of community. Id. The founder of Chhaya explains that “[b]ecause the community is so spread out, there is no single neighborhood base.” Id.

\textsuperscript{21} Judith Garber, Defining Feminist Community: Place, Choice, and the Urban Politics of Difference, in GENDER IN URBAN RESEARCH 24, 42 (Judith Garber & Robyne Turner eds. 1995) (discussing communities of purpose “where shared situations foster local political action”).

\textsuperscript{22} See Clay & Jones, supra note 16, at 257, quoting Scott L. Cummings, Global Local Linkages in the Community Development Field, in PROGRESSIVE LAWYERING, GLOBALIZATION AND MARKETS: RETHINKING IDEOLOGY AND STRATEGY (Clare Dalton ed., 2007) (“CED has been commonly described as a quintessentially local project, one in which communities reconstruct dysfunctional markets as a way of reconstituting social relations and building political strength.”).

\textsuperscript{23} See Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, Conversations on “Community Lawyering”: The Newest (Oldest) Wave in Clinical Legal Education, 28 WASH. U. J.L. & POL’Y 359 (2008) (“community lawyering, while finding a ‘home’ in a geographically significant place, is not confined or defined by that space”).

\textsuperscript{24} An example from San Francisco is the Chinatown Community Development Center, which has been around for more than 25 years and has combined housing development, community organizing, and neighborhood planning initiatives and advocacy. See http://www.chinatowncommunitydevelopmentcenter.org/pages/main.php?pageid=8&pagecategory=2 (last visited Sept. 12, 2010).
These residents, however, also expressed a desire to eventually expand, recognizing shared problems by similar geographic communities elsewhere, communities consisting mainly of people of color, people who are poor and people who work for low-wages. Many of these clients also articulated a people-based definition of community.

In addition to a people-based definition focused on communities of identity, scholars and activists have increasingly articulated definitions based on communities of purpose. These definitions understand community as a group of people who share a set of experiences and come together to foster political action, from local to global in scope. These scholars and activists also envision community “as a space for contesting the social costs of capitalism to working class and marginalized people.” ROC-NY and its membership base, as described more fully below, meet both a people-based and purpose-based definition of community. Low-wage, mainly immigrant restaurant workers constitute the community that ROC-NY organizes and serves. This community shares experiences of being exploited and discriminated against by owners and managers in the restaurant industry who fail to pay minimum wage and overtime and engage in other forms of autocratic and abusive behavior. ROC-NY provides spaces for this community to come together to contest this exploitation and to foster political action to change these conditions. As part of its multi-prong strategy, ROC-NY created the worker-owned cooperative, Colors, as one such space.

25 See Scott L. Cummings, Recentralization: Community Economic Development and the Case for Regionalism, 8 J. SMALL & EMERGING BUS. L. 131, 140-141 (discussing community as both chosen and imposed).

26 While CED should allow for a people-based definition of community, the interaction between place and people remains significant. See James DeFilippis & Susan Saegert, Communities Develop: The Question is How, in THE COMMUNITY DEVELOPMENT READER, supra note 13, at 1.4 (“People who share a space together [are likely to] build a common set of experiences, that, when accumulated over time and in different parts of life... form much of the basis of people’s support networks in their daily lives.”). In addition, place is important because, as Judith Garber points out, “an African American community in rural Georgia can be politically and culturally miles away from an impoverished African American community in urban St. Louis.” Garber, supra note 21, at 299. My aim is not to deny that place may be significant and influence culture and politics, but to acknowledge that “one’s sense of identity [and community] might well encompass people far beyond the neighborhood or city limits.” Id. at 295. I seek, in short, to create room for a people-based definition of community and to argue that two the definitions can co-exist.


28 DeFilippis & Saegert, supra note 26, at 2. As DeFilippis and Saegert note, people can and do form communities by virtue of facing common sets of issues in their daily lives. See id. at 5. These broader definitions of community can also counter some of the initial criticisms of CED being too local.

For example, from observing ROC-NY and listening to its members’ public statements when I worked at the Urban Justice Center, I learned that although ROC-NY is located in Manhattan, one of the five boroughs of New York City, it is concerned about restaurant workers citywide and does outreach into other boroughs to ensure that it reaches people in their neighborhoods. While some may point out that citywide organizations are local, the founders of ROC-NY also created ROC-United (“ROC-U”) to address their issues nationally. ROC-NY, like many other groups, realized there are limits to local reform and thus a need to build a movement that can shape national policy. Nonetheless, appreciating the importance of presence and the logistics of carrying out campaigns, ROC-U realizes that one national organization housed in one state is not enough to sustain strong ties in each of the different states to which it will expand. Thus ROC-U is setting up additional ROCs in each of those states - not because these other workers are not part of the same community, but because local interaction remains important to holding national organizations accountable and ensuring that the nuances of place are taken into account. This accountability function makes localness or a local presence important. In addition, localness is helpful in coordinating collective action. For me, this is the importance of localness in CED.
C. Worker-owned Cooperatives as Illustrative of a New CED Model that Expands the Definition of Community and Focuses on Community Empowerment

1. Worker-owned Cooperatives as a Form of Job Creation that Advances a More Fundamental Restructuring of Wealth and Power

Worker-owned cooperatives create a space for democratizing the workplace and contesting capitalism’s claim to be the only effective model of ownership, control, and day-to-day enterprise governance. The distinguishing characteristic of a worker-owned cooperative is its allocation of governance and profit-sharing rights. Unlike traditional business arrangements, worker-owned cooperatives provide for governance rights that are not tied to capital investment, but are based instead on the democratic principle of one-person-one-vote.

The democratic principle of one-person-one-vote makes a cooperative form of worker ownership the most empowering in terms of control over one’s working environment. In terms of empowerment through profit-sharing and increasing wealth, cooperatives may not always trump other forms or worker ownership, such as ownership through various employee stock options, because wealth creation is highly dependent on a business’s profit margin. For immigrant and marginalized workers, however, a cooperative structure does usually result in increased income. A worker-owned cooperative is less likely to exploit its workers by not paying minimum wage and overtime, an upsettingly too common experience for low-wage, immigrant workers employed by more traditional businesses.

29 See Huertas-Noble et al., supra note 5, at 648 (highlighting work of Green Worker Cooperatives, which creates and incubates worker-owned cooperatives as alternative to capitalist model of profit-sharing and governance rights). As elaborated below, the cooperative structure calls for workers to be owners based on their labor and for democratic governance.


For readers unfamiliar with corporate structures and distinctions between different forms of worker-ownership (how workers own and what they receive in return for their ownership), it is important to recall that ownership implies two fundamental rights: governance rights and profit-sharing rights. Various ownership forms allocate these rights differently. For example, while Employee Stock Ownership Plans (“ESOPs”) provide a mechanism for workers to share in a company’s profits, ESOPs do not generally provide for democratic governance. Governance rights in an ESOP generally remain connected to capital investment. Cooperatives, however, provide for profit-sharing and democratic governance.

31 See Ellerman & Pitegoff, supra note 30. Notably, some worker cooperatives that have non-worker members (e.g. members who are outside investors) create weighted voting structures to give outside investors weighted votes on limited matters that have a substantial financial impact. Limiting weighted voting to a very narrow category of financial matters protects the outside investors’ financial interest while also maintaining democratic governance.

32 Generally, worker-owned cooperatives provide living-wage jobs and benefits for their workers-owners. See Jessica Gordon Nembhard, Principles and Strategies for Reconstruction: Models of African American Community-Based Cooperative Economic Development, 12 HARv. J. AFR. AM. PUB. POL’Y 39 (2006). As Jessica Gordon Nembhard notes: “cooperatives have operated as a form of successful business ownership for centuries, some more democratically run than others, following a set of principles that include one person one vote, open membership, shared profits, continuous education, and concern for the community.” Id. at 44.

33 Segments of the restaurant industry in New York City are notorious for not paying immigrant workers minimum wage or overtime and treating its workers as if they were disposable. For example, despite years of service, many workers who find themselves ill are simply let go. In addition, many immigrant restaurant workers do not have medical insurance, a serious deprivation exacerbated by the prevalence of unsafe conditions that make worker injuries commonplace in the industry.
This, in fact, is partly why some nonprofits, especially those that focus on community organizing, have helped to create worker-owned cooperative businesses as part of their missions to advance social and economic justice. These nonprofits, which emphasize community organizing, prefer the cooperative form because it not only empowers worker-owners, but also contributes to a larger movement for economic justice.

2. Worker-owned Cooperatives as a CED Empowerment Strategy: Empowering Workers and Larger Segments of Communities

Worker-owned cooperatives can foster two essential goals of empowerment-centered Ced: 1) promoting individual efficacy through meaningful job creation and 2) promoting collective empowerment by keeping jobs, income and profits within the community and by serving as a space for community organizing that enables cooperative members to participate in the larger economic justice movement. In this way, a worker-owned cooperative can empower not only its members, a laudable achievement in and of itself, but also larger segments of communities. Promoting worker cooperatives may be "viewed not as an end in itself, but rather a [vehicle] for mobilizing community members around issues of economic justice." As Patricia Wilson has described, this mobilization "creates a feeling of belonging and interconnectedness, which in turn produces commitment and cooperation... [which constitutes] the raw energy for sustained CED [and] the greatest resource at the community's disposition."

Although the value and use of the term "empowerment" has been questioned, this Article reclaims the term, defining empowerment as a collective, participatory process that redistributes power and wealth and enables communities and their individual members to gain more control over the forces that affect their lives. The term has been diminished by depoliticizing and reducing its meaning to individual efficacy. While individual efficacy is valuable, and needed for collective empowerment, increasing individual efficacy alone will not create systemic change. Because power is only realized through struggle, mobilizing people to create power for themselves is essential. Thus, empowerment must be linked to the redistribution of power and to community organizing for social change.

The link between empowerment and community organizing is important because "within community organizing, power is posited as operating not only at the individual level, but by influencing economic, social, educational, legal and political systems, which in turn affect individuals." Empowerment is a process that enables people to join together to fashion solutions to the problems that they face - solutions that not only benefit them, but bring about

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34 It should be noted, however, that the typical arrangement is for the nonprofit to set up a business and retain majority control that is slowly handed over as workers gain managerial skills and buy out the nonprofit. See Huertas-Noble et al., supra note 5, at 651.

35 See Cummings, Developing Cooperatives, supra note 1, at 190.

36 Similar to impact litigation, empowerment-centered Ced seeks to have a multiplier effect by benefiting a large number of clients or people. This multiplier, however, becomes difficult to measure. As Daniel Shah points out, "community empowerment is a long-term process rather than a measurable event." Shah, supra note 1, at 250.

37 See Cummings, Developing Cooperatives, supra note 1, at 211.


39 See, e.g., Ascanio Piomelli, Appreciating Collaborative Lawyering, 6 CUN. L REV 427, 472 n.218.

40 See id. arguing term has been co-opted by conservative politicians who have changed meaning to libertarian notions of individual self-help. See also Paul W. Speer & Joseph Hughey, Community Organizing: An Ecological Route to Empowerment & Power, 23 AM. J. COMMUNITY PSYCHOL. 729, 745-746 (1995) (arguing that definition of empowerment that only speaks to individual efficacy avoids necessary linkage to social change).

41 Id. at 746.
systemic change that benefits other similarly situated people and communities. It includes enhancing individual efficacy, but moves beyond it to effect systemic change and to produce collective mobilization that benefits larger segments of the community in both the short and long run.\(^{42}\)

In bringing people together to fashion their own solutions to problems that they face, a participatory decision-making process is essential to furthering long-term empowerment. Most scholars agree that a participatory decision-making process is "important to any collective endeavor in which a significant interdependence of task is essential to achieving and maintaining the group's goals."\(^{43}\) Beyond its instrumental value, however, participatory decision-making also has the potential to create a "collective ability to analyze and act upon complex social problems [that] can be more powerful than the aggregate of each individual's capacities for analysis and action."\(^{44}\) By increasing the likelihood of obtaining sustainable agreements that result from informed and well reasoned decisions, a participatory decision making process not only adds value to the quality of the process, but also to the quality of the outcome.\(^{45}\) Such a process strengthens groups internally and allows them to be more influential externally.

Because a participatory process is linked to the goal of promoting CED as an empowerment strategy (and thus of redistributing power), this Article focuses not only on the end product of CED (material improvement) but also on the process (democratic participation and leadership development). Indeed under the community empowerment approach, the process is a valuable end in and of itself.\(^{46}\) Thus, CED lawyers and community groups should set up democratic decision-making processes and invest in community education, when needed, to enable community members to meaningfully participate in both the planning and implementation of development projects.\(^{47}\) To be sure, democratic decision-making is time consuming and can even delay a project, but it is essential to empowerment.

While CED lawyers could choose to support any project that creates jobs, they can more directly facilitate empowerment by collaborating with community organizations to create living-wage jobs.\(^{48}\) They can also choose to collaborate

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\(^{42}\) See id.

\(^{43}\) See Michael Diamond & Aaron O'Toole, Leaders, Followers, and Free Riders: The Community Lawyer's Dilemma When Representing Non-Democratic Client Organizations, 31 FORDHAM URB. L.J. 481, 518 (2004) (explaining that lawyers should support democratic decision-making by cooperative client, not because it protects members' individual autonomy, which is additional benefit, but because participatory process is instrumental to client's substantive goal of effective cooperative ownership). Diamond and O'Toole question whether decision-making must always be democratic and argue through case examples that democratic client organizations should not necessarily be privileged over non-democratic client organizations. Nonetheless, they agree that in the context of worker cooperatives, participatory decision-making is key.


\(^{45}\) See SAM KANER WITH LENNY LIND, CATHERINE TOLDI, SARAH FISK & DUANE BERGER, FACILITATOR'S GUIDE TO PARTICIPATORY DECISION-MAKING 29 (1996).

\(^{46}\) For a warning against elevating process over outcome, see Diamond & O'Toole, supra note 43, at 517-21). They may perhaps be correct that process should not always be elevated over outcome, but in an empowerment-centered approach to CED and CED lawyering, an earnest effort should be made to ensure a participatory process, as a significant outcome in and of itself.

\(^{47}\) See Shah, supra note 1, at 234-37 (discussing problems with token community participation).

\(^{48}\) CED lawyers can also support the creation of living-wage jobs in non cooperative businesses, especially given the difficulty of raising start-up capital for cooperatives; but cooperatives bring with them the significant added value of democratic governance rights. In addition, when approaching CED lawyering from the prospective of a poverty lawyer, the goal should be empowering the poor. See Anthony V. Alfieri, The Antinomies of Poverty Law and a Theory of Dialogic Empowerment, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 665 (1987-88) ("Empowering the poor should be the political object of poverty law."); see also Alvarez, supra note 1, at 1269. In the empowerment-centered Ced context, clients are groups or entities who may not be poor, but their membership often includes people who are poor or who work for low-wages and/or groups who work to empower them.
with, and not just work on behalf of, communities they intend to serve or organize.\footnote{See text supra accompanying notes 39-42. Working \textit{on behalf} is valuable, but working with is more transformative, as an extensive literature explores, under labels such as “collaborative,” “rebellious” or “democratic” lawyering. \textit{See}, e.g., \textit{GERALD P. LOPEZ. REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE} (1992); Piomelli, supra note 12; Symposium, Race, Economic Justice, and Community Lawyering in the New Century, 95 CALIF. L. REV. 1821 (2007); White, Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice, 1 CLIN. L. REV. 157 (1994); White, supra note 44. See also works cited in Piomelli, supra note 12, at 1383-85, n.1.} In particular, promoting worker-owned cooperatives and participatory decision-making as a CED empowerment strategy creates opportunities for collaborative lawyering that can further empower communities. Such collaborations create greater space for lawyers to promote and advocate for this approach to CED in a client-centered framework, because empowerment is part of the client’s goals.

II. Case Study of an Empowerment-Centered CED Strategy: ROC-NY’s Promotion of \textit{Colors} and Lawyers’ Role in Supporting a Participatory Decision-Making Process in its Formation

A. ROC-NY and its Goals in Forming \textit{Colors}

ROC-NY is a worker center that “works to build a base of power among non-union restaurant workers and win justice for those who work at exploitative and abusive workplaces.”\footnote{See Restaurant Opportunities Center of New York, \url{http://www.rocny.org/what-we-do/workplace-justice} (last visited Sept. 12, 2010). For extended discussions of ROC-NY, see Ashar, supra note 27; Eli Naduris-Weissman, \textit{The Worker Center Movement and Traditional Labor Law: A Contextual Analysis}, 30 BERKELEY J. EMP. & LAB. L. 232 (2009). For an address by one of ROC-NY’s co-founders, see Saru Jayaraman, \textit{Symposium Speech: Making Movement: Communities of Color and New Models of Organizing Labor}, 16 BERKELEY LA RAZA L.J. 177 (2005).} ROC-NY’s work is, in part, a community response to widespread abuses that take place at high-end, profitable NYC restaurants. Despite their capacity to provide living wage jobs, these restaurants pay poverty-level wages and exploit immigrant and low-wage workers by violating minimum wage and overtime laws.\footnote{See id. at 15 (findings of Restaurant Industry Coalition survey).} These abuses are exacerbated by poor working conditions that contribute to high rates of workplace injuries and negative health consequences such as lacerations and chronic back problems for workers.\footnote{See id. at 15 (findings of Restaurant Industry Coalition survey).} These injuries and health consequences occur in the absence of benefits such as medical insurance and paid sick time, contributing to perceptions that the industry views its workers as disposable, callously firing workers with years of service when they become ill or unable to work.\footnote{See id. at 42.}

In forming the worker-owned cooperative restaurant, \textit{Colors}, ROC-NY sought to create a model that provides better working conditions for workers and opportunity for workers to earn a living wage and gain equity. Its goal was to begin to transform the industry. ROC-NY wanted to provide a worker-ownership model that would also mobilize and empower its members to show its concern for community through direct action and participation in the larger movement for economic justice for restaurant workers.

ROC-NY’s mission is to improve the working conditions of restaurant workers in NYC, particularly those workers who are most vulnerable to exploitation and economic marginalization. ROC-NY integrates organizing, research,
policy and legal strategies to win improvements for restaurant workers. These improvements range from helping individual workers when their rights have been violated to pursuing strategies, such as worker beneficial legislation and the restaurant cooperative, to create systemic changes in the industry. For example, in addition to helping individual workers obtain back wages from restaurants who have failed to pay minimum wage or overtime, ROC-NY ensures that structural protections are implemented at those restaurants for future workers’ individual and collective empowerment.

Notably, ROC-NY also uses organizing as a tool to promote social justice by bringing restaurant workers together to alter the power relationship between restaurants that exploit their workers and workers who work hard but find themselves marginalized because of their economic and immigrant status. ROC-NY’s members participate in every level of the organization’s decision-making processes and campaigns and play a pivotal role in ROC-NY’s activities, including forming the restaurant cooperative.

ROC-NY chose to form Colors as a worker-owned cooperative restaurant that operates democratically, with the worker-owners having majority control of the Board of Directors. All worker-owners receive a living wage and an equal share of the worker-owners’ profits. No worker-owner can be fired over the objection of a majority of the other worker-owners. Colors is ergonomically designed to prevent common restaurant workplace injuries and is used as a space to train other restaurant workers in the City. Worker-owners also participate in ROC-NY activities. Thus, Colors is a model of business development that furthers an empowerment strategy. It promotes individual efficacy by increasing restaurant workers’ incomes and by providing them day-to-day and strategic governance rights that translate into significant control over their work lives. Colors also provides for collective empowerment by providing:

- A safe space for training other restaurant workers and thus increasing those workers’ opportunities for advancement at other restaurants;
- An insider voice in the restaurant industry, as its membership in the Restaurant Industry Trade Group gives it access to timely information regarding industry trends and policies, as well as a voice at the table; and
- A contribution to the larger struggle for economic justice for all restaurant workers by requiring that its worker-owners participate in ROC-NY activities that promote the rights of all restaurant workers.

54 See Restaurant Opportunities Center of New York, supra note 50 (“Through a combination of worker organizing and empowerment, litigation, and public pressure, ROC-NY wins back unpaid wages and discrimination claims for workers as well as important changes in the industry, such as vacations, paid sick days, mandated breaks, and more. In the last six years, we have won nine campaigns against abusive restaurants, totaling over $4.5 million in discrimination and unpaid wages.”).

55 Members were included in virtually every stage of the process, from meeting with potential equity investors, including Good Italian Food in Italy, to meeting with the lawyers, choosing a name, a chef, a menu, etc.

56 There is also value to wanting the cooperative to directly benefit others and not just a few “lucky ones.” See Tulloss, supra note 6, at 10 (discussing community’s reaction to development plan perceived to benefit a few minority-owned businesses, but not larger community).

B. Forming the Legal Team

For legal support in forming the worker-owned cooperative, ROC-NY originally engaged the Community Development Project (CDP) of the Urban Justice Center, a non-profit law firm committed to implementing innovative lawyering strategies. In CDP’s first meeting with ROC-NY regarding the cooperative, the client made clear that it wanted a participatory process and that its Board, its two Co-Directors, and members of its Cooperative Committee would be actively involved in the development process. Realizing the scale of the project, both in terms of the substantive legal tasks the lawyers would have to perform and the extent of the counseling process they would need to facilitate, the attorneys in CDP approached the Fordham CED Clinic, a transactional clinic that represents groups fighting for social justice in low-income and low-wage communities, to serve as co-counsel on the project. CDP lawyers decided to heavily invest in this project to support ROC-NY as an organizing group, based on their belief that lawyers who want to serve and empower marginalized communities should put their skills to the task of helping people organize themselves. Fordham agreed to co-counsel and suggested bringing in additional corporate and real estate counsel. CDP and Fordham then arranged for the legal team, the co-directors of ROC-NY, and a few of ROC-NY’s Co-op Committee members to meet with several large New York City law firms to select the additional co-counsel. This vetting of private firms with the client’s members was an important part of the client’s and lawyers’ empowerment strategy. This vetting gave the client a choice, closer to that of a paying client, and ensured that its counsel would not only be technically competent, but also culturally competent. For example, while all the firms were for the most part gracious hosts, one seriously offended the group. One of its associates mentioned that his firm would have to review the USA PATRIOT Act to ensure that representing a non-profit whose membership might include “illegal aliens” was not a violation of the Act. The reference to undocumented people as “illegal aliens,” revealed a lack of cross-cultural competency on the part of that attorney. While perhaps technically accurate in terms of statutory language, no human is illegal and alien has a negative connotation that is dehumanizing.

58 The Urban Justice Center (“UJC”) started as a single legal clinic at a shelter in East Harlem; today it is made up of nine independent projects which serve low-income individuals, families and communities throughout New York City. See http://www.urbanjustice.org. As I learned as an attorney there, its founder, Raymond Brescia, launched the Project in 2001. CDP provides a wide range of legal, technical and research-based assistance to grass-roots groups. CDP’s definition of CED is shaped by client need in order to promote CED as community-controlled, bottom-up practice. It is also guided by the principle that grass-roots groups made up of local residents serve as invaluable agents for social change. See Raymond H. Brescia, Robin Golden & Robert A. Solomon, Who’s in Charge Anyway? A Proposal for Community-Based Legal Services, 25 FORDHAM URB. L.J. 831, 840 (1998) (arguing for need to shift from individualized legal service provision model to community-based model to become “positive force for structural change”). See also Projects: Community Development, http://www.urbanjustice.org/ujc/projects/community.html?id=nzijr6FS (last visited Sept. 12, 2010).

59 All Co-op Committee members were ROC-NY members

60 Professor Brian Glick, who has over 20 years of CED experience, started the Fordham CED Clinic in 2000. See Brian Glick Faculty Page, http://law.fordham.edu/faculty/1097.htm (last visited Sept. 12, 2010). The clinic helps established nonprofits sustain effective organizations, build institutions such as worker-owned enterprises and support neighborhood efforts to shape development, limit gentrification and win community benefits agreements. The clinic also helps local residents form nonprofits to provide needed services and opportunities in their communities. The legal work of the clinic includes supervising students in counseling clients, advocating and negotiating on behalf of clients and drafting and presenting legal documents and community education materials. See generally Fordham Clinical Legal Education, http://law.fordham.edu/clinical-legal-education/clinics.htm (last visited Sept. 12, 2010).

61 See Wexler, supra note 14, at 1053.

A cross-culturally competent attorney would have been aware the term is offensive to immigrants and others and would have avoided using it. Thus, the legal team and client did not choose to work with that firm. They selected instead another law firm, Cadwalader Wickersham & Taft LLP.63

While the client and legal team would have preferred to not have experienced the “illegal alien” statement, the ability to “shop” for different co-counsel empowered the ROC-NY members. Community-based groups rarely have meaningful choice in selecting pro bono counsel. The ability to choose pro bono co-counsel meant that the group did not have to be subjected to a client-attorney relationship that would reinforce negative power dynamics. Having access to culturally competent lawyers helps guard against this reinforcement of negative power dynamics.

C. Legal Tasks Involved in Forming Colors

Forming Colors took approximately three years. As one would suspect, there were many technically complex lawyering tasks involved in representing ROC-NY throughout the process. These tasks included:

- Researching different models of worker-owned cooperatives, including their legal structure and governance provisions;
- Counseling the client64 on the type of entity to form, i.e., whether to form a Corporation, a Limited Liability Company or a Cooperative under the New York Cooperative Statute;65
- Forming two Limited Liability Companies (LLCs), 417 Lafayette and ROC-NY Worker Owner Restaurant (“RWOR”), and drafting detailed operating agreements for each;
- Structuring the relationship between the not-for-profit (ROC-NY) and the cooperative (417 Lafayette and RWOR), including what governance and financial role the not-for-profit would have in the cooperative and the nature of its ongoing relationship with the cooperative;
- Drafting employment contracts, such as the chef’s contract, for executive positions;
- Negotiating with potential outside lenders and investors, including the small business administration and Good Italian Food;66
- Negotiating and drafting a commercial lease and a construction contract;
- Drafting loan agreements and board resolutions; and
- Counseling the board and the cooperative committee regarding the decisions connected to these technical tasks.

63 Cadwalader is a prominent financial services law firm whose clients include Fortune 500 companies, other corporations, financial institutions, government entities and charitable organizations. See Cadwalader, http://www.cadwalader.com/view-about-cadwalader.php?page=1 (last visited Sept. 12, 2010). The firm has a stated commitment to providing its pro bono clients the same level of commitment and expertise it provides its private clients. See id. Its areas of expertise include tax, corporate and real estate law. See id.

64 The lawyers took direction from the ROC-NY Board and at times from ROC-NY’s Co-op Committee and/or its co-directors (when the Board delegated its decision-making power to them). The issue of who speaks for the client has been the subject of an interesting scholarly debate. See, e.g., Michael Diamond, Community Lawyering: Revisiting the Old Neighborhood, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Stephen Ellman, Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups, 78 VA. L. REV. 1103, 1128 (1992); William H. Simon, Whom (or What) Does the Organization’s Lawyer Represent?: An Anatomy of Intraclient Conflict, 91 CAL. L. REV. 57, 59 (2003).

65 See N.Y. Bus. CORP. LAW § 101 et seq. (McKinney 2010); N.Y. LTD. LIAB. CO. LAW § 101 et seq. (McKinney 2010); N.Y. COOp. CORP. LAw § 80 (McKinney 2010).

66 Good Italian Food (GIF) is a consortium of food cooperatives from Northern Italy that invested in Colors. See Stefania Marcone, Good Italian Food Partners in Colors, Mar.22, 2006, http://www.italianmade.com/trade/release.cfm?artID=226
While the technical legal work was intellectually stimulating and engaging for the legal team, and essential to creating legal structures that would assist in the ultimate goal of empowering workers, this Article focuses instead on the collaborative counseling process used to determine Colors’ governance structure. This collaborative counseling process, more fully described and analyzed below, was central to the workers’ empowerment during the cooperative formation process. It serves as a powerful illustration of how lawyering in support of worker-owned cooperatives and participatory decision-making can achieve and add value to empowerment goals.

D. The Collaborative Counseling Approach to Determining and Memorializing the Restaurant’s Governance Provisions

A collaborative counseling approach is one that engages the client not only as the ultimate decision-maker, but as a shared decision-maker in every phase of the process that leads up to the client’s ultimate decision. Such a collaborative counseling approach requires lawyer and client to collaboratively identify: the decisions that need to be made, the people empowered to make those decisions and the process for engaging decision-makers in making and evaluating those decisions. This includes involving the client in the generation of strategies and the development of options to choose from. Thus, in preparing to counsel the client regarding Colors’ governance structure, the legal team remained in dialogue with the client at every stage of the counseling process. The legal team consulted with the client about how they should seek advice from the client throughout the process, who would speak for the client and give direction to the legal team, and what types of decisions the client wanted the lawyers to engage them on.

1. Planning the Collaborative Counseling Approach for Colors

One of the first steps in the counseling process was to identify what decisions the client needed, should, and/or wanted to make regarding the governance structure. The client and legal team were generally familiar with cooperatives in India, Spain and Italy and construction cooperatives in the U.S., but none were quite sure how a cooperative structure would work for a large, high-end restaurant in New York. Thus, the lawyers and client jointly decided that the first step would be to research different cooperatives with a focus on restaurant cooperatives. The goal was to benefit from people’s experience and ascertain whether the cooperatives identified had any particular advice, in the form of lessons learned, based on their experiences. The research on different models served as a starting point and a

67 See text infra accompanying notes 68-89. This Article focuses on the start-up process and does not cover ongoing operational issues, which I plan to address in a subsequent article in the context of working with Colors and other cooperatives.

68 See Ascanio Piomelli, *Foucault’s Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 446-50 (lending support for concept of engaging clients throughout every phase of counseling and noting that in collaborative lawyering model, “lawyers and clients are encouraged to work together as partners to decide strategy, to implement it, and to assess its effectiveness.”).

69 While this client-centered approach is not unique to progressive lawyering, client-centeredness does take on an added dimension, a collective dimension, in transactional lawyering on behalf of organizing groups. The reality of the organizing group being composed of many activist members, who individually and collectively need to be meaningfully included as full partners in the decision making, translates into a need to reject an individualistic framing of client (in the transactional context, as an individual entity with one point-person) and an acceptance of working with the collective in decision-making processes. *See generally* Piomelli, *supra* note 12, at 1399-1401 (exploring individualistic nature of client-centeredness and the law and need to “swim against these individual cultural and professional currents”).


71 There were only a few restaurant cooperatives and they were much smaller businesses.
frame of reference for questions the lawyers should ask, how the client might think about answering those questions and what to incorporate into Colors’ governance structure. For this task, the ROC-NY Board, composed of ROC-NY members who were restaurant workers, decided that the legal team would conduct the models research.

While conducting the models research, the legal team did not just go away and come back with the results. The team, instead, consulted with the client regarding the questions it was planning on asking the cooperatives. Listing all the questions it thought the client might ask if they were conducting the surveys, the legal team sought feedback, additions and deletions to topics or issues. Here, the lawyers wanted to make sure that ROC-NY members were given the option and opportunity to be engaged at important stages. Once the legal team finished the research, it then went back to the ROC-NY Board to discuss creating a participatory decision-making process. This discussion included identifying who would have the power to make decisions involved in forming the cooperative, who would direct the legal team at various stages in the counseling process, and how those decisions would be made. At first, the decision was to meet weekly with Cooperative Committee members - ROC-NY members who could potentially become worker-owners - to identify questions and generate proposals on which the Co-op Committee would ultimately vote.

2. Meetings with Co-op Committee Members to Generate Proposals Regarding Governance: Process Lessons Learned in Collaborating with Clients

The Fordham law students and CDP lawyers jointly facilitated weekly meetings with Co-op Committee members at ROC-NY over the course of four months. While the legal team intended a collaborative process, a number of factors contributed to lawyers and law students initially dominating these meetings. First, very few Co-op Committee members attended these meetings, despite efforts to create accessible meeting times. Low attendance was not surprising, given that people had full-time jobs and other responsibilities. However, the low turnout also unfortunately meant that at times more lawyers and law students than committee members attended, which contributed to many conversations occurring mainly among lawyers and students. The legal team, caught up in the excitement of the project, overlooked this imbalance. It was planning a new, innovative structure and having some of the substantive conversations for the first time. In addition, because the project was complex, the legal team may have instinctively focused more on content than on how it would have the conversation.

This initial experience reminded the lawyers of two important lessons. First, even the best intentioned lawyer needs to work at remaining cognizant of traditional power imbalances between client and lawyer and the likelihood that lawyer voices, unless lawyers are rigorously mindful, are likely to dominate. Second, all lawyering communication must be deliberate, even initial brainstorming with a client early in the counseling process. Deliberate communication requires planning and structuring to ensure that lawyers communicate as effectively as possible in providing and obtaining information. In obtaining information, it is important for lawyers to learn and plan to meaning fully listen, rather than predominantly speak.

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72 While certainly not a conscious choice, perhaps this over-abundance of legal team members was a little self-interested, as we all, lawyers and students, wanted to be part of the process.

73 See Lucie White, To Learn and Teach: Lessons from Driefontein on Lawyering and Power, 1988 Wis. L. REV. 699, 739-43 (providing example of lawyer who while sensitive to power dynamics between himself and his client, struggled with exercising his own power). As Lucie White notes, the lawyer viewed his role as helping his clients - a group of Black South African villagers fighting the Apartheid regime’s plans to destroy and relocate their village - to develop their own power, yet “the lawyer would be the first to admit how much easier it is to articulate such aspirations than to live them out.” Id. Notwithstanding, she also notes that while the lawyer did not always live up to his aspirations, he did consistently look to these aspirations to give him direction in his lawyering. Id.
Recognizing that lawyer-dominated meetings would not accomplish empowerment goals, the legal team took steps to self-correct. To amplify the members’ voices at subsequent meetings, the lawyers and organizers structured the meetings to ensure that the client’s members had more space to speak. Legal team members curbed their own excitement and intellectual curiosity to play out different scenarios in the meetings and instead did that ahead of time and thus came to client meetings with more process structure, including a meeting facilitation plan. Additionally, to ensure fuller participation, the lawyers employed facilitation skills that created space and drew people out. The legal team reiterated at meetings that its role was to facilitate and learn from the members’ expertise and to translate that into a legal document. At these meetings, the legal team asked questions listened to those who volunteered their thoughts and then deliberately asked others for additional thoughts, often going around the room for each person’s reactions and questions. The lawyers and students used this structured approach to foster and maximize active worker participation and empowerment.

Going around the room also played an equalizing role among the members. In groups where all feel empowered to speak, open discussion can be effective, creating space for those who want to contribute; however, it can also reinforce inequity in groups where not everyone feels empowered to speak. If members did not raise certain considerations, lawyers or students asked follow up questions. It quickly became apparent, in facilitating meetings, that if legal team members allowed clients to identify issues and topics, rather than lecturing on the issues, the clients often raised many of the same issues the lawyers wanted to discuss. Giving clients the space to speak enhances the individual leadership skills of group members, while also enhancing a group’s decision-making and problem-solving skills.

Ultimately, ROC-NY members who attended the weekly meetings contributed valuable information about both the industry and what they wanted to see done differently. In the end, their participation enabled the legal team to process and reflect upon the information and more fully develop and analyze the advantages and disadvantages of the various governance options.

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74 Quigley, supra note 1, at 479.
75 I do not think our initial dominance in the brainstorming occurred because we thought we had more to offer in the conversation than our clients. We actually knew and shared with them at the first meeting that we needed to learn from them about the restaurant industry and how to shape the operating agreement, because they were the experts. Whenever one puts law students, lawyers and professors in a room, however, there is a danger of falling into theoretical conversations outside the purpose of the meeting. Had our clients been corporate clients, I believe they would have been less patient and forgiving of us.
76 Attempting to be client-centered, we tried to brainstorm simultaneously with the Coop Committee members. We realized, however, that an unstructured conversation was not going to work, particularly when there were so many of us and so few of them. Even if we went around the room, giving each participant a chance to speak, there were still more student and lawyer voices.
77 See KANER ET AL., supra note 45, at 56-57 (explaining that while open discussion can be effective, it usually translates into whoever wants to speak will speak and thus can actually reinforce inequity.).
78 This also provides an opportunity for clients to recognize their own analytical ability. See Ellman, supra note 63, at 1141-45 (warning lawyers of usurping leadership roles or depriving people of opportunities to develop that leadership).
b. Deciding to Meet for a Full Day: Balancing Competing Interests of Maximizing Democracy & Efficiency

Even though the weekly meetings were restructured to improve participation, turnout remained low and inconsistent. To address the low turnout and to ensure greater member participation and representation, the ROC-NY Board, in consultation with the Co-op Committee, decided to hold a full day meeting on a Saturday in Queens at the house of one of ROC-NY’s co-directors to make decisions about structure. As the project moved to critical decision-making stages, the decision-making process needed to be changed to become more efficient. Recognizing the importance of creating a decision-making process that was both democratic (maximizing participation) and efficient (ensuring that the project would move forward and come to fruition), the law students were asked to develop a process that would balance these two goals. Creating this balance raised several questions, such as: When is representative democracy, as opposed to direct democracy, the best route to take? How do you avoid making people feel constrained by a structured process? When should deliberation end on any given decision? These and other questions were explored with the Board and Co-op Committee.

Ultimately, before the full-day meeting, the Board and Co-op Committee decided to form a representative Working Group consisting of ROC-NY Co-op Committee members and ROC-NY board members to make decisions at the meeting. Representative democracy was chosen to address scheduling difficulties and external deadline pressures. Representatives were elected, not just self-selected, to help ensure legitimacy. The Co-op Committee members of the Working Group were elected by the Co-op Committee and the ROC-NY Board members elected by the ROC-NY Board. To be more inclusive, the meeting, however, was open to any Co-op Committee member or Board member who wanted to attend.

The legal team generated proposals developed with the Co-op Committee members, followed by a separate day of recap and voting. This process proved very beneficial. Before the full-day meeting, the lawyers were able to provide the Working Group with an outline of the plan for the meeting, as well as the suggested proposals in writing. Providing written information beforehand gave the Working Group more time to absorb the information and allowed the proposals and pros and cons to be presented in a more time efficient yet interactive way.

c. Meeting Facilitation Plan: Paying Attention to the Process as Well as the Content Covered at the Full-Day Meeting

Paying attention not just to the innovative content of the entities and forms being created, but also to the quality of the decision-making process, actively furthered the goal of empowerment. Having the governance proposals and considerations developed from within the group, with guidance and support from the lawyers, allowed for group ownership of the process. Group ownership of the process created more buy-in and acceptance of the decisions and outcome.

The CDP lawyers and the Co-op Committee organizer co-facilitated the full day meeting. The organizer initiated

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79 See id. at 1145-46 (explaining importance of democratic decision-making). Cf. Diamond & O’Toole, supra note 43, at 518 (questioning whether democratic processes are always needed, but acknowledging that in co-op context, democratic structures make sense, given ongoing nature of relationship between worker-owners).

80 The students did not participate because the meeting occurred in the summer and they had summer work conflicts.
the meeting and reviewed the decision-making process. This was critical to establishing common ground among the decision-makers. The lawyers emphasized that most of the options presented were based on the input they had received from the Co-op Committee members in earlier meetings. Stressing that many options and considerations were generated by Coop Committee members gave those members credit for their ideas. It acknowledged the importance of their contribution and demonstrated faith in their decision-making capacity.

To maximize the efficacy of the meeting, we decided to present on the easier decisions first - easier in the sense of the likelihood of gaining consensus or a majority vote - and to “park” issues that might prove difficult to resolve quickly. This “parking lot” idea was suggested by the ROC-NY Coop Organizer and was an effective alternative to using the phrase, “let’s table these decisions.” The parking lot concept was more accessible and better resonated with the client’s members. The legal team used flip chart paper to present each question and to obtain and record the participants’ ideas about what to consider in answering those questions. Using flip chart paper, a simple tool, created a more interactive process that led to greater participation. Using the flip chart paper to record peoples’ comments also served to validate each person’s contribution. In addition, it gave people a place to focus their attention and to see and keep track of their proposals and ideas. This helped the group to integrate its individual members’ ideas. While using flip chart paper to facilitate group decision-making and to validate everyone’s ideas is common to training and teaching, it is not as common in client-attorney meetings. Lawyers for organizational clients, however, can benefit greatly from using flip chart paper when facilitating group decision-making.

d. Client Decisions as Examples of “Client Knows Best” and Lawyers Learning from the Client

One of the key discussions and decisions that took place at the full-day meeting was how worker-owner representatives would be chosen to sit on the cooperative’s board of directors. One member suggested that because a power imbalance exists in the restaurant industry by job category, work teams should be organized by job category with each team electing a representative from their group. The member was referring to the racial and salary divide between the “front of the house” (i.e., the waiters, waitresses, and bartenders, all better paid and disproportionately White) and the “back of the house” kitchen staff, disproportionately comprised of people of color and paid much less.

A Board member from each job category would help to balance the power between the traditionally more powerful front and the traditionally less powerful back of the house. Some suggested at-large elections instead, reasoning that they would all be worker-owners, so team representation was unnecessary. Others insisted that providing structural protection was better than aspiring toward balance or leaving it to chance. In the end, they decided to go with director positions connected to the work teams and agreed that at-large elections could be disempowering for people who traditionally operated at the margins in the restaurant industry. After the full-day meeting, the legal

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81 The legal team covered the following topics at the full day meeting: the powers of the worker owners, the function of work teams, decision-making processes for governance of the restaurant, requirements for becoming and staying a member, how profits would be distributed and the composition of the board.
82 See KANER ET AL., supra note 45, at 86 (using flip chart paper helps create more interaction and strengthens full participation).
83 Id.
84 Id.
85 ROC-NY had recently conducted a study showing widespread discrimination in the industry that systemically provided less opportunity for advancement for people of color than their White counterparts. See Behind the Kitchen Door, supra note 51.
86 Perhaps not surprising or dispositive, those advocating for representation by work teams were those who held traditionally less powerful positions and those advocating for at-large elections were those who held traditionally more powerful positions.
team memorialized the decisions made, which then became the guiding principles for the legal team to draft the operating agreement. The legal team then checked in with the Working Group to make sure it captured all the decisions correctly. The ROC-NY Board ultimately approved all the proposals.

e. Ensuring Client Understanding of Complex Structures and the Role of Community Education in Sustaining Meaningful Participation

After the full-day meeting, the legal team decided to create a two-tier LLC structure for the restaurant and needed to explain this structure to the ROC-NY Board and the Co-op Committee.

Two LLCs would be created, one called 417 Lafayette and one called the ROC-NY Worker Owner Restaurant (RWOR). 417 Lafayette would own and operate Colors (the restaurant) and would have three members: RWOR, ROC-NY and Good Italian Food (GIF). RWOR would be the LLC created to allow the worker-owners to collectively participate in the joint ownership of Colors. RWOR would have a majority of the seats on the board of directors of 417 Lafayette and thus be able to make day-to-day governance decisions. The worker-owners would start out eligible to receive 20% of the restaurant’s profits, a share that could eventually grow to 51% or more as they incrementally bought out GIF. The legal team needed to communicate dense language and concepts in an understandable way. It decided that a visual aid in the form of a chart would help in communicating the information. The legal team’s first chart, reproduced below, did not, however, prove helpful to the members.

Chart 1:
Consequently, the legal team re-explained the concept over the course of several meetings and experimented with different approaches. Every time the team presented, it also asked if there were ways it could make its presentation clearer. The legal team viewed this approach as essential to ensuring that each member clearly understood the structures and his or her role within them. Each member needed to understand the structural arrangement in order to meaningfully participate in the decision-making and to ultimately exercise her or his powers when the restaurant opened. Eventually the legal team developed the following chart, which ultimately proved successful in communicating the complex structures.

\[ \text{Chart 2:} \]

In the end, the legal team memorialized all the governance decisions in the RWOR Operating Agreement. They then created a guide to the Operating Agreement, explaining how RWOR interacts with 417 Lafayette, and translated it into two other languages. The legal team went over the guide with the Co-op Committee several times. It also went over the guide with the worker-owners at the time of the restaurant’s opening. Since completing the operating agreements for both LLCs, the legal team has also shared the documents with other cooperatives and their lawyers.

87 Occasionally, lawyers take the position that sometimes people do not have the individual capacity to understand complicated information. While one can imagine a scenario in which this might be true, lawyers should not leap to that conclusion too quickly. Instead they should instead query whether they explained the information well enough, and whether, if explained differently, they would be more successful. Our adoption of this approach allowed us to work well with all the Board and Co-op Committee members, not just those with formal education.

88 The legal team was able to recruit student translators.

Conclusion

As the case study of Colors illustrates, CED projects are complex and implicate a range of substantive legal knowledge, such as corporate governance, real estate, employment, and tax laws. The complexity of technical legal work itself often necessitates a team of lawyers to work on a project. The community empowerment approach and the collaborative counseling approach to CED add to the need for a large and diverse team, to ensure that the technical legal matters do not crowd out the vital attention that must be paid to empowerment and meaningful participatory decision-making. The collaborative counseling approach described in Part II is a labor- and time-intensive process. It insists on supporting participatory decision-making and on providing community education (when, and as often as, needed) to ensure meaningful participation and decision-making throughout the development of a CED project.

Ensuring meaningful participation means engaging the client - understood not simply as an entity, but also as a group of individual community members - in every phase of the decision-making process. This includes: 1) collaboratively identifying the legal tasks and decisions the client needs to, should or wants to make, 2) employing planning and meeting facilitation skills that encourage active participation to maximize individual and group participation and 3) ensuring that all stakeholders understand the content and concepts necessary for informed decision-making.

The example of Colors also illustrates the vitality of a community-empowerment approach to CED that builds on an expansive, non-geographically bounded, understanding of a community of identity and purpose. This approach effects systemic change by creating forms and processes that alter conventional wealth and power dynamics by enabling low-income working people to exercise democratic control over the formation and day-to-day governance of collective enterprises - challenging capitalism’s assumption that enterprises must be privately owned and autocratically managed. This empowerment-driven approach to CED lawyering is another manifestation of an emerging approach to progressive lawyering that emphasizes fostering the collective action and active democratic participation of low-income and working-class people, immigrants, people of color, and other marginalized groups in governing their living and working conditions and in reshaping our collective social, economic, and political system.
COMMUNITY PARTICIPATION IN IRISH NATIONAL DRUGS STRATEGY

Dr. Mary Ellen McCann
Lecturer, UCD School of Applied Social Science, University College Dublin, Ireland
Email: mary.mccann@ucd.ie

Abstract

The Community and Voluntary sector has a long and valued tradition of meeting social needs in Ireland. Community involvement in Irish National Drugs Strategy was formally recommended in 1996, when new structures were established at local and national level to respond to serious drug problems. Within Europe, there is acknowledgement that the information, knowledge, and direct experience of civil society needs to be fed into the European Commission, and the institutions. It has been claimed that Ireland leads the way in Europe in terms of involving the community and voluntary sectors and in allocating dedicated resources towards the development of local plans. Local community representatives have participated in Local Drugs Task Forces since 1997. The attempt being made in Dublin was to bring about significant change, not only in individual drug use, but in the environmental conditions which were involved.

A decade later, this research aimed to learn more about what the community representatives are actually doing on the drugs task forces, and consider if the roles they are carrying out have the possibility to contribute to long term change in community drug problems. The researcher has a background as a practitioner in community drugs work. The research was carried out through collaboration with University College Dublin, CityWide Drugs Crisis Campaign, a regional networking body with the mandate to support community involvement in the drugs initiative, and the National Drug Strategy Team.

A profile of the representatives was built through a survey questionnaire. Focus groups were held with representatives. The researcher then presented these findings to a national conference for all the representatives. Results show large variations in how people are recruited for the task forces, how they are prepared for their role, what they understand that role to be, and in the structures for feeding back to any local constituency.

Keywords:
Drugs, community, civil society, participation, task forces, standards.
Introduction:

A community dimension to drugs policy is evident in the policies of several countries and has become a focus of EU drug action plans (EU Drugs Action Plan 2009 – 2012).

In Ireland, community participation has been a central plank of national drug strategy since 1996. In 1997, following the success of local area partnership structures, Local Drug Task Forces (LDTFs) were put in place, with the central involvement of the communities most affected by serious drug problems. In 2001, the task force model was replicated throughout the country, and Regional Drugs Task Forces (RDTFs) were implemented, with a similar mandate to involve the communities most affected. This paper considers what that participation looks like, how it is experienced, by those who are named as community representatives on the drugs task forces, over a decade after they were initiated. The paper presents the results of a research project undertaken through a collaborative process, between UCD, the CityWide Drugs Crisis Campaign, and the then National Drugs Strategy Team (NDST). The views presented here, however, are those of the author alone, and do not claim to represent the views of the group. The research aimed to learn more about what the community representatives (also referred to in this paper as “reps”) actually do on the task forces, and consider if the roles they are carrying out have the possibility to contribute to long term change in community drug problems. The research was interested in the experiences of the community representatives. The findings of the project show that there is no one universal experience of being a community representative on these structures. The findings are used to discuss issues around aspirations and realities of this strategy. The research identifies the need for some standardisation in practice in community engagement and involvement.

Methodology:

The project adopted a collaborative process. The researcher from the School of Applied Social Science in UCD worked with the CityWide Drugs Crisis Campaign, and with the then National Drugs Strategy Team. The UCD researcher was interested in the contribution the representation could make to long term change in community drug problems; the CityWide Drugs Crisis Campaign wanted to begin a process of review which would lead to the community representatives being ready to make a submission to the forthcoming review of the National Drugs Strategy; the National Drug Strategy Team were interested to consider what further supports the community representatives might need. The plan for the research was decided together among these three groups. The original plan also included someone who was a community rep on a task force; whilst it proved difficult for this rep to attend the meetings in person during that particular period she did keep in touch with the project, and was consulted as the project proceeded.

The first step was to draw up a profile of the reps – how many were there? What age groups did they fall into? What was the gender balance? How long had they served on the task force? These were the questions of relevance for a short postal survey which was carried out. The CityWide data base was used to distribute the survey, and they collected the returns. 104 responses were received, out of a total number of 140 representatives. This high response rate (74% of the cohort) was due to the networking skills of the staff of CityWide, and to the consistent way they followed up the postal questionnaire. A profile of the representatives taken from this survey is presented.
The qualitative part of the research took place in conjunction with training which was being planned for the reps, so that the best possible use could be made of time. Thirteen people from the Dublin region took part in two focus groups. Seven LDTFs in the Dublin region were represented. Community reps from the RDTFs took part in a discussion of the key questions as part of cluster meetings held outside the Dublin region. These discussions were summarised, and themes identified. The key question asked in the focus groups and cluster meetings were:

1. How did you come to be on the task force? (Were you elected, invited, etc).
2. How do you feedback to the community?
3. What do you actually do on the task force?
4. What are the issues of concern for you in your role as community rep?
5. What do you like about being a community rep?

The researcher then presented these findings to a national conference for all the representatives, which was well attended by reps from around the country.

Community participation in health:

Community participation in the drugs field mirrors the primary health care arena to put participation at the centre of strategies in efforts to change the epidemiology of a widespread problem (WHO 1978; 1986). Changing ideas about poverty, health and development, along with concerns about population growth and disillusion within the medical care model, influenced the thinking of some sections of the medical profession, who were supported by social scientists (Walt 1990:3-16).

Community Health Workers (CHWs) were used in different ways, with some being utilised in direct service delivery, relieving professionals of routine, rudimentary treatment or prevention actions. However, others laid emphasis less on service delivery, and more on determinants of health, organising the community to tackle these. In this role, CHWs were seen as agents of change (Werner 1981). Building on community development ideas, ‘medical’ care increasingly became ‘health’ care.

The World Health Organisation, of which Ireland is a member, in the Declaration of Alma-Ata,1978, clearly states:

“The people have the right and duty to participate individually and collectively in the planning and implementation of their health care” (Article IV).

The Ottawa Charter in 1986 subsequently established community participation as a key component of health promotion, and international experiences in the use of participatory approaches have demonstrated their value in achieving programme objectives, as a research strategy and as an education process (Health Development Agency 2000). Whilst the concept of community participation in primary health care has been used, in many ways, principally by the developing countries of the world, it equally recognises the importance in developed countries where primary care needs cannot be met by regular services, because of special conditions, social, economic and environmental. It was found to be a relevant concept in rural Ireland, where services struggle with these conditions (Quirke, Sinclair and Kevany 1994).
These are the conditions which existed when Dublin communities themselves began to organise around the drugs issue. There was a dearth of services, with rising numbers of young drug users, concentrated in areas with existing social and economic problems, and a lack of response from the government (Cullen, 1990; Dean et al 1985; McCann 1991; O’Kelly et al 1988).

A central, fundamental role is outlined by WHO for communities, through the identification of needs, the decisions taken to meet those needs, and the planning and implementation of responses. However, the theory behind the principle has been difficult to put into practice (Rifkin 2009).

**Community and Voluntary sector involvement in care in Ireland:**

The Community and Voluntary sector has a long and valued tradition of meeting social needs in Ireland (Government of Ireland 2000:68). These sectors have played a ‘key role’ in Irish National Drug Strategy (Government of Ireland 2009:86). From the 1980s in Ireland, “community” was presented as a progressive approach to care for a range of groups in the population, and a positive alternative to residential care (National Economic and Social Council, 1987). This approach often involves a dual focus, individual intervention and community intervention, and is very challenging (McCann 2006). Area based approaches to many issues were adopted leading to the growth of a plethora of local interventions (Duggan 1998:65). Local partnership companies, set up initially under the Programme for Economic Progress (PESP) 1991 – 1994 as bottom up approaches to unemployment, had at their core community development principles and practice. These structures were subsequently used to design local drugs task forces in the Dublin region.

In 2000 the relationship between the state and the community and voluntary sector(s) was formally outlined. A White Paper Supporting Voluntary Activity, set out the framework for a relationship with the vision of promoting active citizenship, equality of opportunity, respect for individual freedom in the pursuit of social goals, and strengthening social dialogue (Government of Ireland 2000:63-65). Through this, the government aimed to provide a more cohesive framework of support and encouragement for the sector and give formal recognition to the partnership ethos that informs much of the working relationship between the two sectors, while recognising the differences between them. However, there have been difficulties in the implementation (Harvey 2004:40). The National and Social Economic Council (NESC) envisaged a key role for the sector in working with the State to build social and related services up to European norms (NESC 2005). Harvey (2012) reported that by the beginning of the 21st century, Ireland had a “well-established voluntary and community sector, fulfilling an important role in the provision of social and related services; a developed concept of its role in civil society; and recognition by the state of its importance. Between them, Ireland fitted well in the mainstream of contemporary European thinking of a modern, enlightened, progressive, democratic state.” (p10)

Since 1996, successive national drug strategy documents in Ireland have been grounded in an analysis which accepts the link between problem drug use and socio-economic disadvantage (Government of Ireland 1996; 2001; 2009). The physical neighbourhood and its socio-economic situation in Dublin provided the backdrop for the emergence of heroin, within the general context of broader processes of urban restructuring (Punch 2005:760). Problems related to heroin use were recognised as being predominantly confined to socially and economically disadvantaged areas in Dublin (Government of Ireland 1996). However, it is now evident that this is a problem for all areas in the country (Government of Ireland 2009).
Local Drug Task Forces were established in Dublin (with one in Cork) in 1997. These initiatives were developed against a background of considerable public unrest, and the murder of a prominent journalist. Frustrated with years of lack of response to the problem, people took to the streets and marched in protest. These structures are intersectoral, interdepartmental, and include representation from the voluntary sector, and the communities most affected. The role which is expected of community members was outlined thus:

*The role of the community members will be to bring to the work of the LDTF an in-depth knowledge and experience of the drug problem in their area; assist the development of policies/services based on a perspective gained from this experience and, where relevant, work with local organisations involved in the drugs issue; and assist the LDTF in consulting and informing the local community on its drug strategy.* (National Drug Strategy Team, 2002: p17)

**Community participation in National Drugs Strategy:**

The first LDTFs built on the community responses which had developed in Dublin since the early 1980s (see for example, Ballymun Youth Action Project 2011). It has been claimed that Ireland leads the way in Europe in terms of involving the community and voluntary sectors and in allocating dedicated resources towards the development of local plans (Government of Ireland 2009:38). Local community representatives have participated in Local Drugs Task Forces since 1997. Literature shows clearly that the attempt being made in Dublin was to bring about significant change, not only in individual drug use, but in the environmental conditions which were seen as contributing to community drug problems (McCann 1991; Butler 2002; Murphy-Lawless 2002). The communities most affected sought to go beyond individualism, and “consistently argued for a social and economic response that would address the underlying causes of serious and life-threatening drug addiction.” (King 2003:64).

A decade later, this research aimed to learn more about what the community representatives are actually doing on the drugs task forces, and consider if the roles they are carrying out have the possibility to contribute to long term change in community drug problems. The researcher has a background as a practitioner in community drugs work. The research was carried out through collaboration with University College Dublin, CityWide Drugs Crisis Campaign, a regional networking body with the mandate to support community involvement in the drugs initiative, and the National Drug Strategy Team.

**Overall Aim:**

The research aims to learn more about what the community reps are actually doing on the drugs task forces, and consider if the roles they are carrying out have the possibility to contribute to long term change in community drug problems.

**Objectives:**

- To accurately capture what it’s been like to serve as a community rep on the drugs task forces, from the perspectives of the reps themselves.
- To begin the process of preparation for the end of the current NDS, and the introduction of the next strategy.
- Citywide will learn more about what supports the reps need, and be able to make submissions using the findings.
- The community reps will develop a plan for making submissions into the review.
Profile of the respondents:

Of the 104 respondents, 46 were male, and 58 were female. They were predominantly in the 40+ age ranges, with only one woman being under 30.

Table 1: Age profile

<table>
<thead>
<tr>
<th>Group</th>
<th>M</th>
<th>F</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-29</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>30-39</td>
<td>3</td>
<td>11</td>
<td>14</td>
</tr>
<tr>
<td>40-49</td>
<td>8</td>
<td>15</td>
<td>23</td>
</tr>
<tr>
<td>50-59</td>
<td>19</td>
<td>22</td>
<td>41</td>
</tr>
<tr>
<td>60-69</td>
<td>15</td>
<td>8</td>
<td>23</td>
</tr>
<tr>
<td>70+</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>46</td>
<td>58</td>
<td>104</td>
</tr>
</tbody>
</table>

It is interesting to note that the gender difference in the under 50s, and over 60s. However, there had been a fairly even gender balance in recruitments to the roles in the previous 3 years (see Table 2).

The length of time the respondents had served on the task forces was of interest, since it was known that many of those who were involved had in fact been part of the community action which had led to the establishment of the bodies in 1997. The profile clearly shows this; thirty four people had served 7-10 years, with an additional 24 serving 4-7 years (Table 2). However, in the previous three years, forty six people had taken up this role on the task forces.

Table 2: Length of time on Taskforce

<table>
<thead>
<tr>
<th>Less than 1 year</th>
<th>11</th>
<th>(M: 5, F: 6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3 Years</td>
<td>35</td>
<td>(M:16, F: 19)</td>
</tr>
<tr>
<td>4-7 Years</td>
<td>24</td>
<td>(M:6, F: 18)</td>
</tr>
<tr>
<td>7-10 Years</td>
<td>34</td>
<td>(M:19, F: 15)</td>
</tr>
</tbody>
</table>
Q1. How did people get on the task forces?

This was the first question in the focus group discussions. In 2001, it was recommended that the reps should be elected on to Task Forces by the local community and should serve for a defined period (Government of Ireland 2001:89). However, for community reps in this study, this varied – some were elected through a community network structure, some were invited, some were nominated, and some went as part of their job. Of those who were invited, there were various reasons why they had been invited – they were involved in other community groups, mainly. They were usually invited by the co-ordinator of the task force. One of the reps reported that she was invited, but had to do an interview, and get two references. In the RDTFs, the reps had been elected through the Community Development Boards. The use of these structures was problematic in some areas, and was intended as an interim measure while the development of community networks was supported (CityWide 2011:9).

Q2. How do you feedback to the community?

The experience of this group was that often there are no structures for this. Some people were unclear about who their constituency actually is. It often appeared that feedback was left up to the individual reps. This was difficult for those who had been invited on to the task force, and who perhaps had no obvious group to feedback to.

There were, however, examples of good, well functioning systems for feedback. For example, reps in one LDTF area reported being elected from a community forum, and being required to report back to that forum at the monthly meetings. They also fed back to a service users group in a local agency. Another reported regular meetings among the community reps themselves, with the support of a development worker from the LDTF.

For the reps in the RDTFs, while the community fora elected the reps, they weren’t experienced as really working satisfactorily in terms of support and feedback. These fora have a very wide-ranging brief on issues, and knowledge of or interest in the drugs issue was at times limited. Very little discussion of the drugs issue took place, making it difficult for community reps to carry out their role. Reps recognised that of course the drugs issue is linked to a whole range of other issues of concern to the community, but still felt the need for the support of a more focused network. It was suggested that the community reps need to have a forum that has more focus on and interest in the drugs issue. This could be a subcommittee of the existing community forum or it could be a community drugs network separate from the community forum, depending on how you can best get to the people who have most interest in the drugs issue. Once again, examples were given of regions where work was going on with regard to networks around the drugs issue.

Q3. What do you actually do on the task force?

The immediate reaction to this question in both of the Dublin focus groups held was “go to meetings”! Going to meetings takes the largest chunk of time, and was the first thing these reps thought of. Related to this was “read documents”. Reading the papers in preparation for meetings was reported as being a prominent job in their role on the task force. They also reported the drawing up of plans as time consuming, and these “may not even get funded” in the end. Other areas mentioned were “informing ourselves, learning”, “dealing with emergencies”, “attending and organising local meetings”, “feeding issues on the ground into the task force”, “bringing new ideas to the table”, “supporting another local person on the task force”, “bring in the value of prevention work”, “bring in wider thinking, for example Quality of Life and Community Safety”.

Participants in one of the focus groups were asked to plot these activities on a pie chart, which they agreed would accurately represent how their time spent on task force activities was divided up. The pie chart from this group was then used with other groups, and also in the presentation to the conference. There was unanimous agreement that this representation was an accurate picture of what they did on the task force. With such a chunk of the participation taking place at meetings, it would seem important that these meetings are constructive and that community reps experience them as contributing to change in community drug problems.

What do you do on the task force?

- meetings
- misc
- raising awareness
- reading

Q4. What are the issues of concern for you in your role as a community rep?

The lack of information and induction arose as a concern from those who came on to the task forces once they had been established for a period. People reported not having any preparation for taking part, and not understanding how the task forces worked. In the cluster meetings outside of Dublin, some people reported having never seen the drugs task force handbook for example, and some people didn’t even know there was one! Some reported that the statutory representatives could come across as intimidating, using unfamiliar language, and seeming to discuss things among themselves. They can have an “attitude of knowing more”. Connected to this was the experience that the community voice was not being valued or listened to. An example was given of reps who had consistently raised the issue of local heroin use at the meetings, which had not been taken seriously. In time, the numbers who had used heroin increased in local services, and then attention was paid to it. Those who had been on the task forces since the early days noted a change in this. In the beginning, they said, the community voice was very important, and they felt that they were being listened to. However, this had changed over the years. The task forces now felt more like “management meetings” with increased bureaucracy, where the meetings were a mere formality, and that there was no sense of urgency. This replicates concern raised in 2005, at a conference of the LDTF chairs and co-ordinators network (Drugnet 16, 2005).
There was a consensus that complacency seemed to have crept in, since the crisis in 1996. People reported that not enough time was spent on discussing local drugs issues, and that more time was spent drawing up plans which may not even get funded. This led to frustration within the groups. When we consider the point made above, about the amount of time that is spent at meetings, this frustration can be well understood.

Connected to this, people reported that often the documents they were expected to read for the meetings contained language, professional jargon, which they did not understand. This sometimes led to them not participating in the discussions, and feeling stupid.

There was also a concern about the lobbying and advocacy role – there was awareness among these groups of reps that it was important to continue to lobby about related local issues, and to advocate on behalf of the community. It was also noted that the statutory representation had, in many cases, changed over the years. In the early years, those who participated from the statutory side were people who could make decisions. In later years, the representation came from lower levels, who had to go back to senior management in order to be able to agree things. This led, it was felt, to a lack of follow-up action on issues - the reps felt that RDTFs were not decision-making bodies, that they could raise issues and talk about them, but there did not seem to be much follow-up. If a statutory rep said that they couldn't do anything about the particular issue that seemed to be the end of it. But community reps posed the question - is it not the role of Task Force for all the reps at the table to try and find solutions together? This didn't seem to happen on some of the task forces. The focus of the Task Forces was seen as having narrowed to one of responsibility for spending and monitoring their own budgets, but the broader role in tackling issues had not been developed.

This concern reveals that the early awareness of the connection between social and environmental determinants of community drug problems is still quite high among those who represent the areas worst affected by such problems. As with the other questions discussed, the experience varied depending on the length of time people had been involved, and also from task force to task force. People shared that experience, thus offering ways to solve some of these problems. For example, one task force had made a decision to put local drugs issues first on the agenda for each meeting, so that this discussion would have time, and not be rushed at the end of a meeting, if addressed at all. Another had made a decision that regular meetings would be set aside for local issues to be discussed fully with no other items on the agenda.

Other issues of concern related to the difficulties at local community level. The issue of intimidation at local level was raised in consultations about the new national drugs strategy, and developing a framework to develop an appropriate response has been included as an action under the National Drugs Strategy (interim) 2009 – 2016 (Action 5). This highlighted the very difficult task that is being asked of local people when they are expected to participate in local structures. The participants in this research discussed this during the focus groups, and the conference.

Finally, in the sessions, we asked people what they enjoyed about being part of the task forces (Q5). With the level of concerns, perhaps we could expect that this role is too onerous, and one which few would want to take up. However, the reps reported very positive experiences also of being involved. They liked to feel part of the community, hopefully being helpful to people, and contributing something. They cared about the community, and wanted to be part of changing things. Reps reported that being involved was a learning experience, and they liked that. They felt that they could give something back to the community.
Discussion:

The questions which arise from these experiences have been noted elsewhere (McIntyre D 2003). One of the main problems is how to build an effective framework for community engagement, with agreed guidelines and common practice. That there is such a need seems obvious from this piece of research alone, without any other evidence. Such a need has been identified elsewhere, and there are guidelines which could be followed (Scottish Community Development Centre). National Standards for Community Engagement have been used in Scotland, and have been evaluated positively (Clear Plan UK 2008). While recognising the difficulties of achieving effective engagement, this evaluation found, among other things, that “The National Standards for Community Engagement have been most effective in providing a common language and consistent understanding of the nature of effective community engagement practice across a range of professional disciplines.” (p23) Rifkin discusses three reasons which make this kind of engagement difficult:

1. People hear what they want to hear
2. People hear better that in which they have experience
3. People do not behave in the way we think they should (2009:34).

Substituting 'health professionals' for 'people' in points 1 and 2, and 'community members' in the third, can bring, she claims, insights. Health professionals, she points out, have been trained in their own schools. Similarly, in drugs task forces, we could say that the statutory agents involved have been trained in their own fields, which see problem drug use within a paradigm of individual pathology. Such traditionally trained professionals hear that in which they have experience, and of which they have some understanding, i.e. issues concerning service provision.

Community members, therefore, are seen as being involved to support actions determined by ‘experts’ (McCann 1998). They are often “seen but not heard” in spite of thirty years of visibility in the work (Ballymun Youth Action Project 2011). Rifkin concludes that perhaps we should listen to the community members, rather than try to fit their contributions into frameworks which we understand.

Participation has been described in neighbourhood regeneration as “Stairway to heaven or road to nowhere” (Burton 2003). Despite the many difficulties in putting this into practice, it is currently considered very valuable, indeed crucial, for improving the prevalence rates of drug use across Europe. Evidence in Dublin shows that the early experience of local drugs task force reps in Dublin was indeed that it was effective — all the sectors engaged, key decision makers were at the table, and the local voice was valued and listened to. However, with time this has deteriorated. Perhaps this is a natural cycle in the life of such structures, that what happens in times when problems are experienced as urgent, and when political will backs the process, begins to wane when it seems as though some progress is being made. In recent local development structures in Ireland, the concept of social partnership is not so important (Humphreys 2011:44). Indeed, opportunities for dialogue and joint problem solving between policy makers and communities have been reduced and partnership principles undermined (CityWide 2012:3).

However, the situation for communities in Dublin, and throughout Ireland, in relation to problem drug use is still extremely difficult (Loughran & McCann 2006; CityWide 2012; NDS 2009). Community drugs projects are now witnessing intergenerational patterns of drug use (Ballymun Youth Action Project 2011).

Communities, predominantly those in the most deprived areas of the country, still experience painful levels of drug related deaths of younger generations (HRB 2011). It is at the local level that these consequences are felt most severely. Perhaps this explains why local activists persist, in spite of the changed national climate. People remain:

“Confident that our coming together as an alliance will help strengthen the voice of the NGO drug sector and will locate the drugs issue squarely back on the political agenda” (McCabe 2012).

Drug problems have not gone away; local people recognise this, and appreciate the continued urgency and crisis. A space has opened up which, perhaps, will call for more political activity of the type engaged in over three decades - at the emergence of these problems in the 1980s, and again in the 1990s, and indeed again in the early 2000s. People may take to the streets again. However, the networks have also called for the introduction of national standards for engagement which could be used to “monitor and measure its [community engagement] quality and effectiveness (CityWide 2012:20). This could be extremely valuable, and could perhaps provide frameworks for other local development initiatives to adopt.

The EU dimension:

Within Europe, there is acknowledgement that the information, knowledge, and direct experience of civil society needs to be fed into the Commission, and the institutions “It is time to put the people of Europe at the centre of policy in this field and to get Europe’s citizens more involved” (EU Drugs Action Plan 2009 – 2012: C326/8).

Why this emphasis? What are the aspirations of this involvement? Obviously, it is hoped that such a strategy will lead to effective change, even to a change in the epidemiology of such an entrenched problem. “Clearly the EU needs to do more to reduce the impact of health, social, developmental, and economic problems caused by drug use.” A gap is recognised at European level between public policy and public behaviour “that no society can afford to ignore”. (EU Drugs Action Plan 2009 – 2012). Indicators of the success of this strategy are identified as “Civil society takes part in national dialogue”; and “Input received from Civil Society.” (EU Drugs Action Plan 2009 – 2012:C326/8).

So, the involvement of ‘civil society’, it is hoped, will help considerably to close this gap.

It has been noted that the recommendations to involve civil society in national drug policies should be strengthened as these consultations exist in very few countries only. Where they do exist, it is not known what the experience with them is (Civil Society Forum on Drugs in the European Union Final Report May 2008).

The current EU action plan (Objective 4) exhorts national governments to involve civil society at all appropriate levels of drugs policy, in accordance with national practices (EU Drugs Action Plan 2009 – 2012). Ireland proudly proclaims that its “strong history” can contribute to Europe in this area. (NDS 2009-2016:38). However, this “strong history” is being weakened by the continued contraction of the community and voluntary sector through governmental decisions, which are “associated with an extinction of social policy agencies, a diminished public service, the removal of champions for both social policy and the voluntary and community sector within the policy cycle and a loss of voice for the voluntary and community sector within decision making, with the prospect of the removal of its constitutional role.” (Harvey 2012:43). Indeed, early indications of the effectiveness of the EU Civil Society Forum on Drugs are that it is replicating previous experience, albeit early days for this new structure, with those at the table being those who can make a “big noise” rather than the ordinary citizens of Europe (House of Lords 2012:17).
Conclusion:

Community Drug Problems cross many boundaries – legal, economic, medical, psychological, social, pharmaceutical. The drugs issue is often referred to as a ‘cross cutting issue’ (see for example Government of Ireland 1996). Acknowledgement of a community dimension in drugs policy is not enough to promote significant change.

This dimension does, as in primary health care, greatly assist in the delivery of services, and in reaching people who otherwise would not be reached. This is of course valuable. However, to change the epidemiology of drug use, and to close this “gap between public policy and public behaviour” (EU Drugs Action Plan 2009 – 2012) it is obvious that serious consideration needs to be given as to how to achieve this.

The findings of this research clearly point to the need to put in place some quality standards for community engagement. “So that community reps across the country have clarity and consistency in relation to a) their own role; b) the role of the community rep in the partnership process; and c) how community reps engage with the wider community.” (CityWide 2008). Such standards for community engagement would also be of great assistance to CED law and lawyering as it develops in Ireland. As has been pointed out in this journal previously (Nestor 2011), the role of the law and the legal profession in the process of community development and empowerment seems absent from the range of literature available. Yet the law holds a dominant position in response to drugs issues internationally, and the legal profession is very centrally involved in practice with drugs issues.

Partnership between government and affected communities has been weakened by the current drugs strategy, with opportunities for dialogue and joint problem solving between policymakers and communities being reduced and partnership principles undermined (CityWide 2012). The dominance of individual pathology oriented theory in drugs, coupled with the severe contraction of the sector nationally, may be hampering the integration and application of community concepts in the field. CED is also concerned with this dual focus. The tensions which exist in such dialogue, which have the potential to contribute to a new more all encompassing paradigm, may instead serve as justification for reducing the opportunities for the community voice to be heard within drugs policy and practice. This failure may be contributing to community frustration with what is increasingly being seen as tokenistic acceptance of community rhetoric in responses, without any significant improvement in the quality of life at local level.
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FINANCING SOCIAL VALUE AND COMMUNITY ECONOMIC DEVELOPMENT- ‘THE POTENTIAL AND PITFALLS OF UTILISING SOCIAL IMPACT BONDS IN IRELAND’

Stephen Kirwan*
Senior Sophister LLB Candidate and Chair Trinity Free Legal Advice Center, Trinity College Dublin, Ireland
Email: stkirwan@tcd.ie

Abstract
This piece attempts to examine a new form of financing social economic enterprises known as ‘Social Impact Bonds’ (herein referred to as SIBs). SIBs seek to offer an innovative financing solution to those in the non-profit communities by unlocking new sources of private financial backing and channelling these funds to deliver measurable social gain in a community context. This involves a commitment by the public sector to pay private investors for a concrete improvement in social outcomes that are pre-determined on a contractual basis. This brief article will seek to explore what is meant by a SIB and how it has the potential to be applied in an Irish context. It will then explore the application of SIBs in the United Kingdom and look at the possible pitfalls associated with the implementation model in terms of Community Economic Development (CED) in Ireland.

Keywords:

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Introduction:

In an Irish context, philanthropic funding has been a key component in developing ‘community capital’ through the establishment of personal endowment funds and the provision of much needed revenue to a huge network of charities, NGOs and voluntary community based projects. Data provided by ndf-Synergy in 2009 suggests that the total reported income of non-profit companies in the Irish Nonprofits Database in 2012 was €5.75bn with the majority of supplemental income coming in the form of government and philanthropic grants worth an estimated €2bn.

Despite the importance of this type of intervention for both the community and local economy, a report entitled ‘Philanthropy in the Republic of Ireland’ prepared by the McKinsey Company estimate that public and private philanthropic funding for community led social projects has almost halved since its peak in 2007. Thus at a time when public finances are under severe pressure and philanthropic funding is on the wane, there is a vital need for different vehicles for incentivising private investment in vitally important community based services. As Sinead Pentony, lead economist at Irish think-tank TASC, has pointed out:

“The problem is that investment tends to be equated with upgrading and improving our physical infrastructure - such as better roads, school buildings, health centres, and energy and communications infrastructure. Investment in human capital is also essential because economic growth in the 21st century is likely to be built on the exploitation of new knowledge and technology.”

Thus it can be noted that while capital investment in physical and human capital is essential for a sustainable and job-rich recovery, it is important that investment which is specifically designated for better social outcomes also forms part of the mix of investment in order to protect and overhaul the current operation of frontline and community based services which are starting to disappear.

This call for a comprehensive approach is modelled in part on the overlapping premises of “Community Economic Development” (CED) and “Social Entrepreneurship” (SE). CED encourages the use of local resources in a way that enhances economic opportunities while improving social conditions and empowerment of communities in a sustainable way. This is not just limited to poverty programmes, nor is it synonymous with industrial recruitment but is as Maria Nestor suggests “directed towards the improvement of the socio-economic infrastructure and personal development of those communities”.

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1 Investment funds set up by an institution in which regular withdrawals from the investment capital are used for ongoing operations.
4 Sinead Pentony, Social Impact Bonds-Thinking Outside the Box, (TASC, 2011).
The Fine Gael/Labour coalition has also attached as a condition of the Programme for Government a commitment to research and to prioritise any exploration into the operation of social entrepreneurship projects by pledging to support the development of a new social economy that seeks to drive private investment into social outcomes at scale. The Programme for Government (2011 to 2016) makes explicit reference to the potential utilisation of a new financial investment model known as the Social Impact Bond (or SIB). This is pledged in relation to social housing, anti-social behaviour prevention and community enfranchisement programmes. Recent references in the Dáil to SIBs by the Minister for Public Expenditure Brendan Howlin in response to queries from Dáil deputies has provided a cautious optimism to those involved in the community sector but also aroused a degree of curiosity. The Irish Government seeks to follow the UK’s lead in implementing SIBs and the lead has already been followed by the USA, where President Obama recently announced a $100m fund for ‘pay for success’ bonds. Other countries, notably Australia, are also exploring the potential for SIBs.

What are Social Impact Bonds?

In early 2008, in response to ideas from the City Leader’s Group and Social Finance, the Young Foundation coined the term ‘Social Impact Bonds’ (SIBs) and published a short paper with that title setting out thinking on a new generation of financial tools to support investment in social solutions. SIBs are thus a new vehicle which attempt to unlock new sources of private finance and channel them into delivering measurable social gain in a community context. This involves a commitment by the public sector to pay private investors for a concrete improvement in social outcomes that are pre-determined on a contractual basis. According to Michael Moynagh, SIBs were originally conceived as bonds. Bonds normally operate as investments which mature on a specified date and pay a fixed rate of return. However as they developed, it has become clear that SIBs look more like an equity investment as it is an essential element that investors be paid on the basis of outcomes actually achieved with returns depending on how the programme financed by the fund performs.

Social Impact Bonds, like other forms of outcomes-based contract, align public sector funding with improved social outcomes—the amount that the public sector pays for a service is determined by the social value (the extent to which outcomes have improved). If social outcomes are not improved, the public sector is not required to pay. Outcomes-based contracts therefore have the potential to generate considerable improvements in the cost-effectiveness of public spending. The financial returns investors receive are dependent on the level of improvement in pre-determined outcomes and is thus based, insofar as possible, on objective measurement and standardisation.
Loder, Mulgan, Reeder & Shelupanov suggests that three potential models of financing appear to be available:

**Local Authority SIB**

In this first model, a local authority borrows on existing markets for a package of investment in a social impact programme and receives a series of payments in the future from national government if particular milestones are achieved which act to lower the overall costs for the national government in the implementation of costly initiatives. For example, an authority would borrow money for an intensive programme of work with potential young offenders, and would be paid by government according to the numbers who achieved educational qualifications relative to an agreed baseline of similar local authorities. The repayments represent a proportion of the lifetime savings to national government. The payments from government would enable the original loan to be repaid.

Models of this kind are relatively easy to design and implement, involving relatively few transaction costs, though they do require clear protocols on design, establishment of baselines, success measures and so on. The capital costs will generally be low and the model’s relative simplicity, clear responsibility and accountability seem particularly advantageous. However, this model is likely to suit highly performing authorities with experience of sophisticated funding mechanisms.

**Commissioning SIB**

The second model aims to directly incentivise a service provider or group of providers to take responsibility for delivering a particular social goal. Contractors would raise their own capital either through social investment sources or on the market. The contractor could be a consortium of NGOs, providing a mix of counselling, job placement and treatment services available in a chosen area, with one as the lead contractor. The government would pay on achievement of designated outcomes, allowing capital to be repaid. This would raise some important issues around risk transfer as well as the potential limitations and problems associated with privatisation of strategic state functions such as the establishment of private prisons. There is also an accountability danger particularly with respect to a local authority’s statutory responsibility for vulnerable children and adults.

**The CED model**

A third alternative focuses on third sector action to achieve outcomes in a “half-way” house approach based on a more traditional understanding of Community Economic Development. This can be referred to as the “Third Sector” model; a community based social enterprise involves an amalgam of public and private investors who share the financial burden for non-achievement of social outcomes. Third sector social impact bonds potentially enable various interventions which would not otherwise take place to be financed, achieving savings and better outcomes for the public sector, coupled with the potential safer investment for private stakeholders. Several fields have been proposed for bonds of this kind including: investment in programmes to combat youth or young adult offending, and health prevention and improvement.

18 Loader, Mulgan, Reeder & Shelupanov op cit; at 6-10.
19 Ibid; at 6-7.
22 Ibid; at 9-10.
24 Moynagh, *op cit*: at Chapter 1-4.
This Keynesian prototype, based on public intervention into traditionally market-driven areas, gradually opens up the space for a more sophisticated and mature market for social interventions, paralleling the evolution of markets for carbon and sulphur reduction, and development of commissioning for outcomes in fields like welfare to work as discussed below.\textsuperscript{25}

**Theoretical support for SIBs:**

Theoretically a programme that has good outcomes, for example reducing demand for the expensive services, should be matched by reducing supply that results in cost savings or ideally by reinvesting savings made elsewhere in other services. Both incentives and innovation would appear to depend on evidence of effectiveness, rather than a guess based on conventional wisdom or populist discourse. As payments depend upon a proof of efficacy, SIBs can only succeed if they generate high quality evidence along the way. Thus SIBs will help to promote an evidence based culture in social provision and could potentially provide a catalyst for CED which would appear to provide solutions to projects funded by those with a vested financial interest in the project’s sustainable success. As investment is directly linked to vested interest in profit, this would appear to raise the prospect of introducing the concept of evidence based policy in shaping the operation of community-based incentives.

The SIB model appears to premise itself on the libertarian notion of the free-market which suggests that private sector discipline enables the most effective organisations to thrive and grow.\textsuperscript{26} In effect this is a suggestion that only organisations that provide services to users at a price that they value will thrive.\textsuperscript{27} In cross-applying this logic to the idea of an effective social economy, the guiding rationale behind the operation of SIBs is that socially-driven spending must reflect the value rather than the cost of commissioned services.\textsuperscript{28}

Direct commissioning for social outcomes is not a new idea, as these have been used in welfare to work programmes in the United States, where providers are rewarded for success in achieving job outcomes for clients.\textsuperscript{29} There has also been a wealth of experience on how to commission for outcomes rather than solely for outputs and activities have been successful provided that proper oversight, planning and regulation has been adhered to in the sphere of capital expenditure. Advance Market Commitments (AMCs), which aim to incentivise Research and Development projects, have been successfully utilised to encourage the development of vaccines for diseases in developing countries. A variation of this has proved to be extremely successful in fighting a number of disease epidemics.\textsuperscript{30} Tax Increment Financing (TIF) also works on a similar basis. Redevelopment money spent on a disadvantaged area will often produce little direct income, but will have a beneficial effect on local taxes.\textsuperscript{31} Examples include the capital investment in roads, schools, or public transport. Under a TIF agreement, any increase in tax revenue for a given


\textsuperscript{26} Friedrich Hayek, *The Pure Theory of Capital* (University of Chicago Press, 1941).

\textsuperscript{27} Ibid.

\textsuperscript{28} Moynagh *op cit* at Chapter 2.

\textsuperscript{29} David Armstrong, *Welfare to Work in the United States: New York’s Experience of the Prime Provider Model,* (2009, Department of Work and Pensions) This model has been widely criticised. The danger lies in the benchmarks of “success” which value low wage jobs over any which may require more expensive training. This feature of this type of rewards system could pose a danger for an SIB system.

\textsuperscript{30} Report on Co-Ordinated Strategy to Accelerate the Development of Vaccines for Infectious Diseases (US Congress 2009).

area is directed to repayment of the original investment - promoting areas that would not usually be targets for commercial development.\textsuperscript{32}

The “Clean Development Mechanism” developed under the Kyoto Protocol which underlies the rationale of the “cap and trade” system for carbon credits, has allowed for a channelling investment to reduce emissions on a global basis, effectively linking carbon emission credits to environmental outcomes.\textsuperscript{33} This is another example of social enterprise which is completely based on the idea of commissioning for outcome solutions. Overall SIBs attempt to deliver a tangible social value and cost savings to the public sector. Thus the cornerstone concept for incentivising investment is based on a mixture of social and financial return, or effectively promoting “financial returns for social gains”.\textsuperscript{34} SIBs are premised on a model of risk-based transfer from the public sector to financial investors. Financial investors receive returns which are based on the social and financial success of such investment. Linking payouts to outcomes is attractive to governments as it limits upfront exposure to capital expenditure on innovative yet risk-laden social projects with profits being allocated solely on the basis of success.

**The Peterborough Case Study:**

In September 2010 the first SIB pilot was undertaken in the town of Peterborough in the United Kingdom.\textsuperscript{35} This involved a contract between the Ministry of Justice, the Big Lottery and an influential investor group known as Social Finance (herein referred to as the group) to reduce recidivism rates for a cohort of 3,000 men coming out of Peterborough Prison after a short sentence. According to the investors, recidivism was selected as the focus for the first Social Impact Bond as it was believed it had the highest probability of success based on a number of positive investment factors. The area of male recidivism in Peterborough appeared to be one in which there was a poor social outcomes with rates of re-offending after short-term prison sentences standing at 60% within the first five years and rising to as high as 90% for males under the age of 21.\textsuperscript{36} The estimated cost of recidivism across United Kingdom has recently been calculated at £60 billion.\textsuperscript{37}

The group also suggested that the vacuum in the public service delivery in post-prison services due to the projected cost added to the belief of investors that targeted interventions in this area could potentially deliver significant cost-savings to the government in a relatively short timeframe. The belief was that this could amount overall to a quick return on investment given the overwhelming evidence which suggested that such interventions had the potential to work. A robust measurement of outcome was also possible given that recidivism rates amongst prisoners selected to partake in the scheme could be measured against a national database of prisoners with a similar profile, with the potential of payment returns being directly aligned with outcomes.

The approach taken currently by the group appears to focus on engaging and serving ex-prisoners in mentoring those approaching release and those recently released. The St Giles Trust has been running a successful programme\textsuperscript{38}

\textsuperscript{34} Moynagh *op cit* at Chapter 1.
\textsuperscript{35} Bolton and Saville *op cit*.
\textsuperscript{36} *Through the Prison Gate: A Joint Thematic Review of HM Inspectorates of Prisons and Probation* (London, HMRC 2001) at 73, 82 and 90.
\textsuperscript{38} *Ibid* at 14.
training prisoners to act as advisors to their fellow inmates, while the Prince’s Trust has been piloting a programme to have young prisoners mentored by those who have successfully rehabilitated themselves. Both the mentor and mentee benefit, creating a network of support grounded in the community while creating a long-term economic benefit for investors and the state.

Mentoring has been the subject of research in Ireland. Existing research shows up to an 11% improvement in the decline of re-offending rates, with better results from those programmes that engaged in more intensive and frequent contact with the mentee. Because this is a ‘cheap’ scheme, even the lower end of the impact range shows significant savings to the public purse of £1,000 to £3,000, per person avoiding re-incarceration showing that this idea is well suited to SIBs. In the Peterborough project a 10% reduction in recidivism results in an annualised return of 7.5%. The return to investors is a fixed rate for the agreed outcomes, but is capped at 13.3% thus effectively limiting investor return. If a reduction is less than the agreed level of 7.5%, then there is no pay-out to investors and the investment is written off and all the risk becomes transferred off to the government to investors.

SIBs, or ‘Pay for Success Bonds’, have also found their way onto the United States legislative agenda when in 2011 $100 million was dedicated from the Federal budget to states and cities who wish to try out the concept. Governor Deval Patrick of Massachusetts and Mayor of New York City Michael Bloomberg have publicly committed to utilising the scheme to help encourage schemes to prevent chronic homelessness and recidivism amongst young offenders.

**Implementing CED model: The Potential for Primary Healthcare**

As suggested in the above analysis it seems that the “Third Sector/CED model” would be the model best suited to the current Irish situation given the vast amount of public owned resources readily available through the National Assets Management Agency.

*The Infrastructure and Capital Investment 2012-2016: Medium Term Exchequer Framework* as developed in conjunction with the current Irish Programme for Government suggested that health capital spending will be a priority objective as well as spending on health care innovations, with special mention reserved for primary health

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40 Jonathan Culleton and Fergus Hogan "Re-Integration and Life After Prison- An Evaluation Study of the You’re Equal Project" (Centre of Social and Family Research, 2008).
42 Clann Credo, *op cit*; Appendix E at 9.
43 *Ibid* at 9.
44 *Ibid* at Appendix B and E.
47 *The Infrastructure and Capital Investment 2012-2016: Medium Term Exchequer Framework* (Department of Public Expenditure and Reform, 2011).
48 Programme for Government *op cit* at 13.
care centres. In a Dail Statement\textsuperscript{49} Minister for Children Roisin Shorthall reconfirmed this detailed commitment:

\begin{quote}
“To the development of Primary Care Teams and Primary Care Centres as priority under the Programme for Government. The aim is to provide up to 95\% of health and social care in local communities. This will be achieved by increasing activity in the primary care setting and redirecting services away from acute hospitals to the community. The Health Service Executive has reported that 366 Primary Care Teams were operating by the end of March 2011 and providing services for over 2.9 million people.”\textsuperscript{50}
\end{quote}

Despite this commitment the Capital Investment in Health Report of the Department of Health Overview and Priorities notes in particular that:

\begin{quote}
“The existing approach to the construction of primary care centres which is outlined by the report (HSE Capital Investment Plan 2011-2016) will need to rely largely on the facilities being privately financed with the HSE leasing space for its directly employed staff subject to certain conditions, particularly in relation to the co-location of GPs. As a result, the existing HSE capital plan provides only a very small amount of funding for primary care centres.”\textsuperscript{51}
\end{quote}

SIBs could help significantly in incentivising the delivery of such healthcare. Farrell, McAvoy and Wilde\textsuperscript{52} suggest that comprehensive and equitable primary health care is vital to supporting healthy lives and to the identification and care of health problems as they arise within the community.\textsuperscript{53} Access to primary healthcare also has the potential to reduce the need for more costly acute hospital care in the longer term. Farrell, McAvoy and Wilde also contend that when people become ill, access to equitable and appropriate care and treatment from specialist or hospital services becomes fundamental.\textsuperscript{54}

This is acutely evident with the HSE response to Type 2 diabetes. Diabetes Action estimates for example that the HSE currently expend €239m on treating diabetic patients.\textsuperscript{55} Between 2005 and 2009, it is calculated that 1,579 people with diabetes underwent a below-knee amputation and nearly 6,000 people with diabetes developed a foot ulcer requiring in-patient treatment.\textsuperscript{56} Within the United Kingdom where the diabetes problem is arguably more acute,\textsuperscript{57} discussions are now taking place with the National Health Service (NHS) to develop ‘Health Impact Contracts’, which are similar in nature to SIBs.\textsuperscript{58} Investors under this scheme are effectively asked to fund a specialist diabetes podiatrist, who would visit the in-patients in community-based clinics in the hope of providing education for better

\textsuperscript{49} http://debates.oireachtas.ie/dail/2011/05/31/00028.asp (Last accessed 21st March 2012).
\textsuperscript{50} Ibid; at 720.
\textsuperscript{51} Capital Investment in Health Report of the Department of Health Overview and Priorities (Department of Health 2011).
\textsuperscript{52} Farrell, McAvoy and Wilde, Tackling Health Inequalities: An All-Ireland Approach to Social Determinants (Combat Poverty Agency, 2008).
\textsuperscript{53} Ibid; at 2.
\textsuperscript{54} Ibid; at 4.
\textsuperscript{55} Eilish O’Regan, Screening call as 1,500 diabetes sufferers lose limbs ‘needlessly’, Irish Independent September 13\textsuperscript{th} 2010.
\textsuperscript{56} Ibid.
\textsuperscript{57} Diabetes Beware the Silent Assassin, (Diabetes UK, 2008).
\textsuperscript{58} National Diabetes Support Team, Diabetes in the NHS: Commissioning and Providing Specialist Services (London, NHS, 2007).
foot management. The number of amputations in the target group would be measured against the national average with a portion of the savings payable to investors.\textsuperscript{59}

Diabetes Action estimates that adopting a scheme of this type could reduce the cost of treating diabetic foot conditions by as much as 50pc and potentially save the HSE €115m over five years provided effective intervention could be maintained.\textsuperscript{60} This appears to be a realistic target based on the figures available from similar projects initiated in Ipswich where total amputation rates fell consecutively for the next five years with savings on bed days alone amassing to four times the costs of the team.\textsuperscript{61} Investors would also have a chance to take a more limited risk-intervention without the fear of significant initial capital outlay. Developments here would also benefit the CED movement as investment in community-centred projects not only enhances the health and employment prospects of the community workforce but also improves social conditions in a more sustainable way.

**Criticism:**

For all the apparent positivity surrounding the potential introduction of SIBs, it would be folly not to point out the hazard of using such a model as a panacea of problem solving for the cash starved community development sector. As Andrew Palmer notes, the problem for any form of financial innovation comes when it “lacks an off button”.\textsuperscript{62} He goes on to suggest that when initial success occurs, markets can be perceived as having an increased amount of untapped potential. This can often cause the market to artificially deepen, which often accelerates the rate of uptake of programmes such as the SIBs developing beyond the capacity of the back office and the regulators to keep up. With the use of a cap system coupled by limited state interventionism this problem may be circumvented.

In a 2011 paper for the National Bureau of Economic Research, both Lerner and Tufano, who are from Harvard Business School, also argued that there appears to be problems associated with this type of “S-curve” pattern.\textsuperscript{63} In basic terms it can be suggested that the earliest adopters of an innovation are the most knowledgeable and so a widely adopted product is more likely to have lots of users with an inadequate grasp of the product’s risks. This can be a big problem when things turn out to be less safe than expected and an effective saturation point, if not regulated, can lead to a large scale loss of investment funds. Thus if innovations are inappropriately applied and are treated as a panacea for all social and economic issues of the community the risk of investors over-exposing themselves may add complexity in the prospect of plumping up profit margins rather than solve problems.

Palmer suggests that the Social Impact Bond also appear to share a striking to interest-rate swaps, which are used to bet on and hedge against future changes in interest rates, as an example of a huge, well-functioning and useful innovation of the modern financial era.\textsuperscript{64} This is also the same risk-transfer logic which appeared to underpin the now infamous credit-default swaps, which have been widely blamed as the cause of the current global financial crisis. This problem could easily be exacerbated if a system regulating the uptake of the SIB scheme is not based on a

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\textsuperscript{59} Moynagh op cit; at 14.

\textsuperscript{60} O'Regan op cit;

\textsuperscript{61} National Diabetes Support Team, *op cit*; at 16.

\textsuperscript{62} Andrew Palmer, “Playing With Fire” The Economist (25th February 2012).


\textsuperscript{64} Palmer, *op cit*;
rigorous system of measurement and standard pay-out mechanism. This is a particularly difficult challenge given the nebulous nature of calculation first in measuring the short and long term social value of an investment but also as to what level of re-numeration should apply in each individual context.

One could criticise the whole approach of projects such as the prisoner rehabilitation scheme in Peterborough as it may target prisoners who might have succeeded without intervention in the project. This is also a classic criticism of Tax Increment Finance projects where state action was unnecessary to stimulate investment that could have occurred anyway. In order to make investment a meaningful endeavour it would require the designation of a control group of prisoners in a similar situation who receive no mentoring services. While in theory this is plausible, empirically it would lead to the counter-intuitive situation in which ad-hoc or basic rehabilitation services would have to be removed in order to create some sort of empirically satisfactory environment.

This also raises serious questions as to the potential risk-effect to the general citizenry. Is it possible to know for example that communities will receive the best services possible through privately commissioned but government-reimbursed model? Or does the model simply provide more incentive to the private investors to demand that the services be delivered as cheaply as possible, without adequate monitoring for quality? There are also questionable policy implications for allowing unaccountable private actors to effectively socially engineer outcomes which may or may not actually be in the interest of the community. This is a well-run argument which has been used in opposing the private contracting of government services.\(^{65}\)

It is also unclear as to the extent to which the current government is committed to developing SIBs in practise. There has been no clear indication as to whether SIBs will indeed be utilised or whether a proportion of capital funding will even be set aside to support such an ambitious and innovative model of social financing. Given the current state of uncertainty regarding Irish finances it is also unclear whether the government would be willing currently to provide any sort of guarantee for investors. Despite the commendable merit attaching to the development of such projects the immediacy of return on other capital projects such as the construction of the National Children's Hospital which appears more tangible, immediate and electorally popular.\(^{66}\)

A number of alternative innovative financing models have been overlooked in examining the potential utilisation of SIBs. A pertinent example is embodied through the concept of 'contract for services' model which is commonly used in commercial outsourcing arrangements. Under a contract for services arrangement payment is made to a service provider and is, similar to SIBs, typically linked to a service level agreement which is measured against the achievement of key performance indicators. Like SIBs this provides a method of ensuring that service delivery outcomes can be fairly and objectively monitored as the payment of service fees are directly linked to the achievement of stated objectives and goals. However under the contract for services model, failure by the service provider to perform is penalised by percentage deductions in contract fees payable. The contract for services model could potentially offer a right to the State to terminate the contract early and would thus provide the State with the ability to utilise a regulatory safety valve in order to prevent an artificial economic bubble developing. Such a correction would appear to mitigate any loss which investors may potentially suffer, providing a greater incentive for investment from pension investment groups.


\(^{66}\) This is also in doubt. Harry Mc Gee, Projects Scrapped by €750 million capital cuts to be named, Irish Times, Thursday 10 November 2010 (http://www.irishtimes.com/newspaper/ireland/2011/1110/1224307310581.html) (Last accessed 11 April 2012).
Conclusion:

While in the abstract it might appear to be easy and indeed sensible to attempt to utilise a model innovative social finance, the problem of intangible benefits and the conundrum of complex transfer costs are surely exacerbated when taking social factors into a calculable formulaic assessment of benefit. However a well-regulated and a properly risk-assessed model could provide a cautious optimism for the future of Community Economic Development.

Irish fishing waters are currently governed as part of the Common Fisheries Policy of the European Union. Under this regime, policies of strict regulation are employed with the aim of providing both an ecologically sustainable resource and an economically sustainable industry. In this paper we examine how a lack of fishing community participation and involvement has mitigated the legitimacy of these measures by creating incentives for unsustainable behaviour amongst the fishing industry. We examine how principles of devolved community-based governance may address much of this unsustainable practice. It is proposed that the empowerment created may encourage sustainable practice amongst small-scale fishers, contributing towards the sustainability of both the resource and dependent local communities.

Keywords:
Common Fisheries Policy, Community-Focussed Rights-Based Management, Sustainable Rural Communities.

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1. Introduction

The marine waters of Ireland comprise an area of over 900,000km², equivalent to 10 times Ireland’s land area (Socio-Economic Marine Research Unit (SEMRU), 2011). Cawley et al. (2007) have estimated that a total of 4,987 individuals were employed in the Irish fishing fleet in 2006, whilst SEMRU (2011) estimated that a total of 5,351 full-time equivalent individuals were employed across the sea fisheries, aquaculture and seafood processing sectors in Ireland in 2007. It has been estimated that the total value of fish landings in the Irish fisheries sector in 2008 amounted to €214 million (Irish Sea Fisheries Protection Authority (SFPA), 2010). Further to this, secondary economic activity occurs through onshore processing activity, the supply of technical equipment to commercial fishers and the provision of associated service industries. SEMRU (2011) estimated that the sea fisheries, aquaculture and seafood processing sectors offered a combined contribution of €394 million (both directly and indirectly) to Irish Gross Domestic Product (GDP). Whilst this comprises but 0.2% of the €192,065 GDP total for 2007 (CSO, 2007), fishing activity is primarily undertaken in remote coastal areas where alternative industries and employment opportunities are scarce (Department of Agriculture, Food and the Marine, 2011). As such, fishing practices have a close relationship with the cultural, social and economic fabric of traditional Irish fishing communities (Macken-Walsh, 2012).

However, fisheries are an example of a biological common property resource; without any prohibitive regulations in place, it is difficult to exclude others from fishing. Along with this, fishing activity is a subtractive activity whereby the usage of one depletes the number of fishing opportunities available to others (Tietenberg and Lewis, 2012). When subtractive fishing activity is escalated to a sufficient extent, a phenomenon known as the ‘Tragedy of the Commons’ may occur. First proposed by Garrett Hardin in 1968, the ‘Tragedy of the Commons’ is a phrase used to describe the depletion of a common property resource through overexploitation and degradation. Such potential for overfishing has the potential to reduce stocks and threaten both the ecological and economic sustainability of the resource upon which this economic and socio-cultural activity depends. To avoid the ‘tragedy of the commons’ and ensure environmental and economic sustainability, an effective system of governance must be put in place. To this end, Irish fishing waters are currently governed as part of the European Union’s Common Fisheries Policy (CFP), according to Council Regulation (EEC) no 170/83 (EC, 2012a). The Common Fisheries Policy is a collaborative effort by all EU Member States to ensure the sustainable governance of EU fisheries (EC, 2012a). The Common Fisheries Policy tries to ensure sustainable fishing practice by setting allowable levels of catch (Total Allowable Catch (TAC)), limiting the number of days at sea (fishing effort), restricting the use of certain fishing gear (Technical Conservation Measures (TCM)) and reducing overcapacity in the EU fishing fleet (through fleet decommissioning) (EC, 2012a). Total Allowable Catch (TAC) levels are set for each EU fishing zone (Figure 1). The procedure for carrying this out is provided for by Council Regulation (EEC) no 170/83 of 25 January 1983 establishing a [European] Community system for the conservation and management of fishery resources. This document outlines the procedure for conserving fishing resources in Fisheries of the EU. According to this document, when a limit is to be placed on catch, this limit must be shared out amongst each Member State. This is carried out at an EU level. Each member state then has the responsibility to apportion that share amongst its fishers. The share allocated to each member state is done in a manner that ensures stability of shares relative to historical levels of catch. Specifically, Article 4 states that ‘the volume of the catches available to the [European] Community referred to in Article 3 shall be distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered’. Thus, the CFP must delineate an ecological necessity of restricting effort and does so by Member State.

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2 One Full-time Equivalent (FTE) is equal to the equivalent of one person working full-time for one year. A full-time worker is therefore counted as one FTE, while a part-time worker is measured in proportion to the hours worked. For example, a part-time worker employed for 20 hours a week where full-time work consists of 40 hours, is counted as 0.5 FTE (Eurostat, 2012).
Article 4 outlines the process by which this is carried out, which recognises each Member State’s tradition of fishing in a given region and apportions the Total Allowable Catch based on this\(^3\).

Figure 1: Fishing Areas in the EU illustrates the fishing zones within the EU. It should be noted that Council Regulation (EEC) No. 3760/92 establishing a Community system for fisheries and aquaculture states that the CFP extends to all fisheries of the EU, including those immediately adjacent to a nation’s shoreline (Coffey and Dwyer, 2000: p.3). Within the TAC set for each fishing zone a share is assigned to each nation’s fishing fleet. This is known as a quota. All fishing vessels within a nation are required to have a licence to fish according to this quota. However, restrictions exist for what vessels may fish in each area when fishing this quota. Under both Council Regulation (EEC) No.170/83 and Council Regulation (EC) No. 2371/02, it has been established that the area within the 12 nautical mile limit of coasts (about 22km), is reserved for local fishermen and small fishing boats from other European countries that have traditionally fished in these areas. From 12 to 200 nautical miles, access is open to all EU boats, with International waters beyond that. However, the EU fishing areas outlined in figure 1 may cross many of these boundaries and thus TACs are applicable to all fishing waters right up to the shoreline.

As such, the current TAC scheme limits the overall catch allowed per region, whilst the national quota scheme limits fishing effort by nation (EC, 2012a).

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\(^3\) It should be noted that although the CFP delineates fishing effort amongst member states, it does not affect the freedom of movement of fishers to catch a portion of a given Member State’s quota. To illustrate, Irish fishing vessels are licensed according to the Fisheries (Amendment) Act 2003, with the determinants for licencing as a member of the Irish fleet being predicated on whether a vessel “is wholly owned by a national of a Member State or a body corporate established under and subject to the law of a Member State and having its principal place of business in a Member State” (Fisheries (Amendment) Act, 2003 no. 23 pt2, s4’). This regulation is in accordance with EU freedom of movement legislation, as provided for by Article 45 of the Treaty on the Functioning of the European Union. Under this legislation, nationals of any EU Member State may apply for licensing as part of the Irish fleet. To understand this interaction, it is helpful to think of the quota allocation as a given country’s natural resource and labourers are free to move between Member States to harvest that resource.
The motivation for an EU-level system stems from the migratory nature of many fish species, whereby fish cross many political jurisdictions during their lifecycle. When this happens, governance at the national or sub-national fishing community level\(^4\) may be inadequate as sustainable practice in one jurisdiction may be undermined by unsustainable practice in another (Ebbin, 2004: p.253-254). In such circumstances, the local fishing community-level or the national-level does not match the international geographical scale of the migratory species in question (Berkes, 2006: p.8). An international, centralised system of governance such as the CFP is thus required. A centralised system of governance is not without its problems, however. It has been found that if local perceptions regarding resource availability and sustainability are at odds with those dictated at an international level, potential conflict may result (Berkes, 2006: p.8). In particular, the scaling up of social governance bodies to accommodate the larger scale of migratory species, although necessary, may result in weak vertical linkages between resource users (i.e. fishers) and

\(^4\) When referring to community-level in the context of fisheries governance, we refer to the sub-national, localised group of resource users. This community in a specific localised area shares the common use of a particular coastal fishery.
governance bodies (i.e. CFP). What may appear to fishers as a lack of acknowledgement of their right to be involved in the governance of the resource may lead to their attitudes about compliance becoming inconsistent with regulatory objectives (Berkes, 2006; Kuperan and Abdullah, 1994).

These problems may be overcome by greater involvement by local communities in fisheries management. Many fish species are non-migratory (i.e. they spend their entire lifecycle within national or sub-national fishing community boundaries) and thus many social systems are of comparable scale to the ecological system of the fishery. In such circumstances, it may allow for devolution of governance below EU level to the national or the sub-national fishing community level. Such devolution gives greater motivation for compliance and thus may foster more sustainable fishing practice (Kuperan and Abdullah, 1994). Although full devolution may not be possible in the circumstances of a migratory species (Berkes, 2006: p.8), scope exists for adoption of many of the principles of devolved governance. Such principles may include greater local participation in the setting of catch levels for migratory stock and/or local input into the means by which TAC levels are enforced. Such mechanisms may improve linkage between the setting of regulation and those bound by that regulation to improve accountability, compliance and sustainable fishing practice (Pomeroy, 1998). This incorporation of user participation in resource governance has resulted in a number of devolved community-focussed rights-based management regimes being developed (Pomeroy, 1998). Three types of community-focussed rights-based management regimes exist, differentiated according to the balance of power between local government and central institutions in the governance of the local fishery (Pomeroy, 1998).

It should be noted, however, that unsustainable fishing practice has also been motivated by the overcapacity of the EU fishing fleet (Cawley et al., 2007). The existence of ‘too many fishermen, chasing too few fish’ has presented further incentives to overfish out of economic necessity (Ritchie, 2003). Thus, dealing with overcapacity is a pre-requisite of effective future management of EU fisheries under any governance regime.

It is on foot of these factors that this paper will discuss how the current CFP has led to unsustainable practice by fishers of the EU. We discuss the incentives created by overcapacity but focus on how a lack of local community involvement and participation in the management of fishing stocks has contributed towards the unsustainable management of Irish fishing waters under the Common Fisheries Policy. We address the potential role that principles of community-focussed rights-based management may play in overcoming many of these deficiencies.

In what follows, section 2 reviews the concept of the fishery as a common property resource, detailing the importance of appropriate governance for sustainable management. Section 3 outlines the Common Fisheries Policy (CFP) and its deficiencies, motivating the need for a greater level of community participation for sustainable fisheries governance.

Section 4 reviews the current proposals for CFP reform, emphasising the importance of the new Transferrable Fishing Concession (TFC) scheme in reducing fleet size. Section 5 discusses how a greater emphasis on community participation through a community-focussed rights-based management regime may alleviate many of the problems of the CFP. Section 6 discusses the potential scope of application in an Irish fisheries context. Finally, a conclusion is offered in section 7.
The Fishery as a Common Property Resource

The term ‘Common Property Resource’ is a descriptive term. Ostrom et al. (1999: p.278) have defined a Common Property Resource as being a natural resource in which (i) exclusion of beneficiaries through physical and institutional means is especially costly and (ii) exploitation by one user reduces resource availability for others. Coastal fisheries are an example of a biological common property resource; even with prohibitive regulations in place, it is difficult to exclude others from fishing. Along with this, fishing activity is a subtractive activity where the fishing activity of one depletes the number of fishing opportunities available to others (Ostrom et al., 1999).

These characteristics have interesting implications for determining the level of fishing activity. Neoclassical economic theory asserts that a rational economic agent will seek to maximise the total present and future benefits from their actions, discounted to consider preference for present day benefit (Mankiw, 2008). Another central tenet of neoclassical economic theory is a rational economic agent, in this case a fisher, will harvest until the point at which the additional cost of consuming one extra unit (i.e. the marginal cost) is equal to the additional benefit (the marginal return) (Mankiw, 2008). In the context of a fishery, it is important to remember that the opportunity cost of all future foregone fish, now unavailable due to the removal of this fish from the ecosystem, is included in this marginal cost (Tietenberg and Lewis, 2012) and thus marginal costs are increasing. Again, this cost is discounted to consider the time preference of benefit. Assuming that the opportunity cost and thus overall marginal cost increases with the harvesting of each additional unit, it is at the point at which the cost of additional harvesting is greater than the benefit of that harvest that a fisher will stop fishing (Tietenberg and Lewis, 2012).

Hardin (1968) explains the incentives faced by a user of a common property resource in the context of open pasture. These concepts and the economic agents involved are easily interchangeable for those of a fishery. As such, the following discussion will present Hardin’s (1968) argument in the context of fisheries economics. Following neoclassical economic theory, a fisher will extract fish until the cost of extracting each additional fish is equal to the benefit accrued from the extraction of that additional fish. If the fishery was private, this total cost would be borne by the fisher alone and the optimal rate of fishing would be at the point where the benefit does not exceed the opportunity cost of fishing. Assuming that a rational economic agent takes the opportunity cost of overfishing into account under private ownership this level will be ecologically sustainable. Under conditions of an open access fishery the benefit of each fish caught is accrued to the fisher who caught the fish, with the subtractive opportunity cost of potential future fishing shared amongst the entire community to which the resource is common. Thus, the welfare maximising action of each fisher is to exploit the resource at the maximum rate possible. In the long run this may drive the stock levels so low that the stock’s ability to replenish itself is threatened. This illustrates the misalignment of individual and collective goals which must be corrected by effective legislation.

Thus, while it may seem counterintuitive for individuals to overexploit a resource from which they make their living, overexploitation of the resource may yield the greatest individual welfare in the presence of open access. When such incoherence exists between individual economic incentives and that which is optimal from a group or societal perspective, depletion of a common property resource through overexploitation arises. This is often referred to as the ‘Tragedy of the Commons’ (Hardin, 1968).

Two traditional solutions to the Tragedy of the Commons exist (Hardin, 1968; p.1245; Pomeroy and Berkes, 1997; p. 467). First, one may transfer the resources to private property, thereby overcoming the distortion of incentives just

5 Open access is the condition where access to the fishery (for the purpose of harvesting fish) is unrestricted; i.e., the right to catch fish is free and open to all. (OECD, 1998).
described. The users of the resource then become the owners and since the entire opportunity cost of foregone exploitation will only accrue to them, sustainable practice will arise. The second solution is to transfer the resources to institutional or governmental control. Such a system may be considered as a ‘command and control policy’ of top-down policy delivery (Symes, 1997). Under such a system, regulatory sanctions from a centralised national or international governing agency may address the misalignment of social and individual costs by imposing sanctions on those who participate in unsustainable activity. In theory, this increases individual costs to incorporate the portion of opportunity cost imposed on other users of the resource (i.e. it ‘internalises’ the opportunity cost imposed on others), thus ensuring that individual actions are in the interest of sustainability (Hardin 1968; Bajema 1991). However, each solution carries its own shortcomings, leading to a third hybrid form of governance known as community-focused, rights-based management. Such systems share traits of private ownership by restricting access to a limited cohort of users and allowing for increased participation by those users in management of the fishery (Pomeroy, 1995; Pomeroy, 2001). The greater participation achieved by these mechanisms has been found to sufficiently incentivise sustainable practice, as the fishers thus reap both the total opportunity cost from overexploitation and the benefit from conservation (Grafton et al., 2005). Alongside this, such a regime demonstrates traits of institutional governance as management is governed by an institutional body, as opposed to a single private owner (Pomeroy, 1995; Pomeroy, 2001).

Current management of Irish fisheries under the Common Fisheries Policy follows the institutional, top-down, ‘command and control’ structure of management. This will now be outlined. Particular emphasis is placed on how a lack of local community participation in governance decisions has resulted in many of the characteristics of the tragedy of the commons.

3. The Common Fisheries Policy: Background and Failure

The Common Fisheries Policy is an EU-level policy to regulate fishing waters of the EU by treating them as a common resource. In particular, this regime established a right to fish in another State’s waters, a common market for the purchase and sale of produce, and the provision of financial aid to develop the industry (Hatcher, 2000).

The CFP was first agreed to as a full package in 1983, under Council Regulation (EEC) No.170/83. Under the CFP, responsibility of stock conservation is shared by both the EU and the Member States where fishing activity is regulated. This is carried out by means of two primary measures; a TAC system to restrict the numbers of fish landed and technical conservation measures to ensure sustainable fishing practice (e.g. the establishment of closed areas, minimum fishing net mesh sizes, minimum fish sizes, by-catch rules) (Frost and Andersen, 2006)).

The setting of TAC levels must balance economic goals of each Member State within a level of catch that ensures the ecological sustainability of the resource as a whole. The bureaucratic process involved is described in Figure 2.

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6 Total Allowable Catch is set for each commercially caught species. A total quantity is decided, which is divided across each country’s national fishing fleet.

7 Member States can use supplementary measures in addition to these, as long as the commonly agreed EU measures are not violated (Coffey and Dwyer, 2000).
As Figure 2 illustrates, advice from scientific sources takes precedence in the preliminary stages when deciding TAC levels. This comes first from the scientific institutes of each Member State. This feeds into an EU-level scientific deliberation co-ordinated by the International Council for the Exploration of the Sea (ICES) and their Advisory Committee on Fishery Management (ACFM) who prepare scientific advice for the European Commission (EC). Although the scientific advice forms the basis of discussions that follow this stage, decisions are made by political councils and stakeholder groups including the Scientific, Technical and Economic Committee on Fisheries (STECF) and the European Parliament Fisheries Committee. Proposals are sent in turn to the Council of Ministers, made up of national ministers from member states, which has the final authority to negotiate and formulate fishery regulations (Daw and Gray, 2005). From this procedure, one can see that the role of scientific advice diminishes as the TAC process proceeds. This is further compounded by what is known as the Relative Stability Framework provided for by Council Regulation (EEC) No. 170/83 of 25 January 1983, which states that the allocation of quotas amongst Member States must not deviate too far from past shares of catch among Member States (EC, 1983). This calculation is in place to ensure ‘relative stability’ from one year to the next.

Thus, these mechanisms of political compromise result in a catch allocation which is somewhat detached from the initial scientific advice and is regarded as having failed to conserve the fisheries resources of the EU (Daw and Gray, 2005: p190). The reasons for this are numerous. As Daw and Gray (2005: p.190) have pointed out, the political responsibilities of Fisheries Ministers may result in a conflict of interest, whereby the short term welfare of their electorate can take precedence over sustainable exploitation of fish stocks. As a result, national self-interest and undeclared social objectives can sometimes be dominant influences in final TAC negotiations (Symes, 1997).
As the Rt. Hon John Gummer MP, former British Agricultural and Fisheries minister put it:

“If you are a fisheries minister you sit around the table arguing about fishermen [i.e. fishers], not about fish. You’re there to represent your fishermen [fishers]. You’re there to ensure that if there are ten fish you get your share and if possible a bit more. The arguments aren’t about conservation, unless of course you are arguing about another country” (Fishing News, 1998).

This trend has resulted in actual quotas being set in excess of that which has been scientifically advised. Karagiannakos (1996) has illustrated the occurrence of this trend throughout the 1980s and 1990s. Evidence also exists for the continuation of this trend past the 2002 CFP reform. Similarly, a study by Daw and Gray (2005) outlined one case in which concern over the status of North Sea cod led to a recommendation for a complete moratorium on all catching of cod. Despite this, the Commission proposed an 80% reduction in the cod TAC with the Council of Ministers eventually agreeing on only a 45% reduction in TAC in conjunction with effort limitations. Similar trends were found in subsequent yearly negotiations where many of the TAC levels agreed upon contradicted much of the advice offered by scientists.

Measures to overcome much of these problems have included the incorporation of stakeholders into the Council of Fisheries Ministers meetings through the creation Regional Advisory Councils (RACs). Established as part of the 2002 reform of the CFP (Council Decision 004/585/EC), RACs provide a mechanism to link stakeholders at the regional and local level to the level of the European Commission and Member States. The RACs are comprised of all members of the fisheries sector and relevant interest groups. Two thirds of RAC seats are allotted to representatives from the fisheries sector and one third to representatives of ‘other interests groups affected by the CFP’ (Linke et al., 2011). The most important and dominating actor of the one third group is environmental NGOs (Linke et al., 2011). At the head of the organisation is the General Assembly, appointed by general consensus of members, including representatives of EU and national organisations. It is the North Western Waters Regional Advisory Council (NWWRAC) which covers waters relevant to Irish fisheries. Approximately two thirds of the NWWRAC general assembly consists of members of the fisheries sector with CFP representatives making up one third. Ireland’s fisheries representatives come from the Irish Fish Producers’ Organisation, Irish Fishermen’s Organisation, Irish South and East Fish Producers Organisation Ltd, The Irish South and West Fish Producers Organisation, The Killybegs Fishermen’s Organisation, Irish Seal Sanctuary and Mna na Mara (NWWRAC, 2008). Although this is an effort to incorporate stakeholder involvement in the governance of the CFP, it does so without imposing the foregone opportunity cost of overfishing on the fishers who participate. As a result, recommendations offered by RACs have been less than satisfactory. Linke et al. (2011) note that there is often conflict between fishers’ representatives and ‘other interest groups.’ One example of this occurred with the Baltic Sea RAC (BSRAC), where Linke et al. (2011; p.136) state that environmental NGOs advocated a reduction in quota levels, whilst fishers’ representatives advocated an increase. Interestingly, each recommendation was based on the same data source. Such conflict may be due to a number of reasons. It may be the case that fishers have knowledge about the ecological constitution of the resource unavailable to others. If this were the case, greater integration of fishers’ knowledge in the setting of scientific TACs may be beneficial to sustainable regulation, as Daw and Gray (2005) discuss. If this is not the case, then it may be interpreted that fishers’ representatives offer their advice on political grounds.

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8 The European Commission draws the conclusion in its analysis of the previous reform in 2002 (COM (2009) 163 final) that despite making some progress there are still many problems unresolved. On the positive side the Commission lists better stakeholder involvement, phasing out direct capacity-enhancing subsidies and the introduction of long term management plans. On the negative side the Commission identifies a deep-rooted problem of overcapacity, imprecise policy objectives, a framework that does not give sufficient responsibility to the industry, lack of compliance and a decision making system that encourages a focus on short-term management.
Such advice may be motivated by the fact that fishers do not incur the full opportunity cost of unsustainable levels of catch and thus do not have an incentive to ensure sustainable fishing of the resource. In the event of either case holding true, one can see that RACs fail to incorporate stakeholders’ involvement to the full extent possible. As such, a greater degree of integration may offer either a more appropriate level of TAC or the internalisation of opportunity cost such that individual fishers advocate more sustainable fishing practices.

Alongside the slow and incomplete translation of science into policy (Daw and Gray, 2005), the CFP has also failed in a strict and uniform enforcement of its standards, resulting in further deviation of catch from the proposed sustainable level. Discarding⁹, misreporting¹⁰, slipping¹¹, illegal landing¹² and high grading¹³ are all common illegitimate fishing practices. There are a number of possible reasons for the existence of this activity. First, it may be argued that the top-down nature of governance established by the CFP is too distant from the activity of individual fishers and thus the opportunity cost for compliance with existing measures is not adequately internalised. This is discussed in more detail in section 5 and 6. Second, the lack of profitability of the EU fishing sector creates an economic necessity to act in an unsustainable manner. A paper by Ritchie (2003) shows fishers can have a heavy reliance on illegal landings out of economic necessity. Along with this, Boude et al. (2001) have reported that technical measures to avoid excessive catch of young fish have been frequently resisted and pushed back because commercial fishers simply cannot bear the cost these measures would impose upon them. Much of this lack of profitability in the EU’s fishing sector today is a result of over-capacity, a situation often referred to as “too many boats chasing too few fish” (Stone, 1997). This situation seems paradoxical, since fishing capital (boat, engines, gear, etc.) is not cheap and entering the industry would require fishers to have high expectations about future fishing revenues if they were to believe that they could clear these initial costs, let alone yield a profit. Given such dwindling fishing revenues, it seems economically irrational for fishers to invest in capital to the extent demonstrated by the overcapacity problems in EU fisheries today.

However, this outcome may be explained by the incentives created by CFP with regard to investment in fishing vessels. While conservation of fish stocks through the TAC system became the pillar of the CFP in the 1983 reform, substantial subsidisation and grant schemes supporting investment in capital, rather contradictorily, has been a common feature since this period (EC, 2009: COM(2009)163). The 2009 EC Green paper on CFP reform, COM(2009)163, has acknowledged such problems, stating that there should be more selective (if any) financial support for investment in new capital, concurrent with a decommissioning scheme. It has been found in this report that fleet size has been reduced by only 2% a year, on average (EC, 2009: COM(2009)163). However, this is broadly offset by technological progress in fishing efficiency (estimated at 2% to 3% a year). At the same time, there exists “heavy public financial support given to the fishing industry, one of the results being to artificially maintain excess fishing capacity” (EC, 2009: COM(2009)163). Viewed from this light, the investment decisions of fishers of the EU seem far less irrational. Instead it would seem that the current policy framework has provided fishers with incentives that do not allow for the social, economic and environmental goals of the CFP to be achieved.

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9 Discarded catch is defined as that portion of the total organic material of animal origin, which is thrown away (usually dead) or dumped at sea (Kelleher, 2005). In a mixed fishery, fishermen may catch fish which they do not have a quota for, and thus must discard. With a limit to the quantity of allowable fish landings, there is an economic incentive to discard small fish in favour of larger fish.

10 Misreporting involves entering a falsified account of where a particular catch has been caught.

11 Slipping of fish occurs when a catch contains the wrong mix, size, type or condition of fish. The net is never taken out of the water; it is simply opened to release the fish, the majority of which are already dead.

12 Illegal landing involves the landing of fish for which a vessel does not have a quota, or fish which may be underdeveloped.

13 Smaller less valuable fish are discarded in favour of larger more valuable fish, in order to stay within the allocated.
Thus it can be seen that not only has the CFP’s top-down system of governance created incentives of unsustainable fishing, it has created a resource characterised by overcapacity in fishing effort. Such overcapacity has escalated the problems presented by political incentives in the setting of TACs and unsustainable fishing practice. As such, any future governance system requires the alleviation of this overcapacity problem as a necessary pre-requisite. Proposals to remedy this incoherence have been suggested by recent reforms, which are discussed in section 4.

4. Current Proposals for CFP Reform

The EC Green Paper on the reform of the CFP highlights that CFP reforms initiated in 2002 have failed and that sustainable fisheries had neither been achieved from an environmental, economic or social standpoint (EC, 2009: COM(2009)163). More recently, the Commission’s 2011 proposal on the CFP (COM(2011)0425) has restated the following problems:

- Unacceptably high levels of discards
- Fleet overcapacity
- Lack of compliance
- Low profitability in many fleets
- Lack of reliable data to assess all stocks and fleets (misreporting)
- Substantial public financial support to fisheries that does not contribute to achieving the objectives of the CFP.
- Top-down micro-management at union level, lacking flexibility and adaptation to local and regional conditions
- Legislation and management are costly and extremely complex (EC, 2011)

As highlighted in section 9, the problem of fleet overcapacity is a pre-requisite for any sustainable regime of EU fisheries governance. Transferable Fishing Concessions (TFCs) are the current favoured measure to help address many of these problems (EC, 2012b). TFCs work by assigning fishers the right to harvest a fixed quantity of fish (either one or more species) each year. The vessel owners have the choice to either harvest that quantity of fish or sell the rights to do so to another party. TFCs are therefore simply user rights distributed by Member States and are a fixed percentage of the national quota for a specific fish stock. The intention of the TFC proposal is for Member States to allocate a certain percentage share of the national quotas to the small scale fishing fleet (EC, 2012b). This means that small fishers would not be assigned TFCs but larger vessels in the rest of the Irish fleet would use TFCs.

Identifying the correct method of TFC allocation is important, with current proposals stressing the need for stakeholder involvement in deciding how TFCs are allocated (EC, 2012b). For example, fishing practices that are more desirable from a social or environmental point of view should receive a higher TFC, all things being equal. To date, fisheries that have been managed using the TFC system have benefitted from substantial reductions in fleet capacity. This is down to the fact that vessel owners who receive a TFC can choose to sell it. Over time, this may result in a flow of capital out of the fishery. Member States such as Denmark, Estonia and Spain have all introduced TFCs in the past and seen noticeable reductions in fleet size (EC, 2012b). Such decreases in capacity have the potential to lead to increased profitability of the existent fleet, decreased incentive to engage in illegal fishing activities, decreased incentive to misreport catches and therefore more accurate data about fish stocks (Wallis, 1999).
While TFCs and other transferrable quota systems certainly have their merit, universal application to all fishers would appear to undermine the CFP’s goal of sustainability with respect to social systems as set out in Council Regulation (EC) No. 2371/02 of 20 December 2002. If TFCs were applied to all fishing vessel owners, regardless of the size of their vessels, many small-scale fishers may choose to sell off those rights. This would impact greatly on the social fabric of many coastal, fishing-orientated regions. It is for this reason that the 2011 proposals have omitted vessels less than 12 metres in length from the proposed TFC system (EC, 2012b). To put this in perspective, small scale fleet under 12 metres in length make up over 70% of the total fishing fleet across the EU (Macfadyen et al., 2011: p.14).

From an Irish perspective, the omission of small vessel owners in the TFC scheme gives no extra incentive for these fishers to exit the fishery and thus works towards preserving the local fishing communities that are dependent on the resource. It is conceivable also that if the overcapacity of the larger sized Irish fleet was brought into check, increased stock sizes resulting from less fishing effort could have a positive impact on the revenues of the smaller sized vessels of the coastal fleet. Thus, given the special treatment of small-scale fishers within the proposed TFC regime, there exists scope to preserve the participation of local fishing communities. This participation is important, with Macken-Walsh (2012) pointing out that considerable tacit knowledge of fishing resources are embodied within local fishing communities. Pomeroy and Berkes (1997: p. 467) note the contribution this knowledge may give, stating that greater local community involvement may facilitate a system of governance which avails of this social capital in a more effective manner. The potential benefits of such community involvement are discussed in the following sections.

5. Alternative approach: Community-Focussed Rights-Based Management Regimes

As section 2 has illustrated, a critical requirement for the success of a fisheries management regime is the internalisation of the opportunity cost for each fish caught, such that fishers will voluntarily co-operate with the regulations in place (Kuperan and Abdullah, 1994). It has been argued (Kuperan and Abdullah, 1994; Pomeroy, 1995; Daw and Gray, 2005) that improved integration of industry stakeholders in the setting of regulation may help align fishers and regulators objectives by alleviating many of the bureaucratic and practical complications discussed in section 3, such that the regulations in place are those which the fishers themselves are willing to comply with. Such user participation in the management of the fishery changes the relationship fishers have with the regulations in place; evidence tends to show that if fishers willingly accept the regulations as appropriate and consistent with their existing values, the regulatory agency will gain legitimacy with the fishers (Kuperan and Abdullah, 1994). Regulatory agencies that have high legitimacy with fishers face a much reduced problem of non-compliance with the regulations (Kuperan and Abdullah, 1994). Such thinking is motivated by a general understanding (Sissenwine and Symes, 2007; Raakjær 2009, Khalillian et al. 2010) that the current level of stakeholder influence and involvement on a regional basis is not sufficient and that such insufficient community participation may give rise to the incentives for unsustainable fishing activity discussed in section 3. With regard to the identified failures of the CFP discussed in section 3, the Commission suggests increased involvement and integration of stakeholders including fishers into the decision making processes (EC, 2009: COM(2009)163). Indeed, by explicitly attempting to preserve the numbers of small-scale fishers through the proposed TFC framework (EC, 2012b) the EU Commission is acknowledging the importance of preserving coastal communities dependent on fishing activity. These communities could also provide a focal point for an even greater degree of stakeholder participation in local fisheries governance to overcome many of the problems inherent in the current CFP.

Systems of regionalised community-focussed rights-based management exist to achieve such integration and stakeholder participation in fisheries management. Such systems allow aspects of resource governance to be carried out at the local level, devolving many of the responsibilities to local authorities, interest groups and the resource users
themselves. Alongside benefits of improved legitimacy already discussed, greater community involvement may lead to increased knowledge available for management decisions. This is obtained by increasing the representation of the community or stakeholders in the management process (Pomeroy, 1998). Participatory management approaches such as rights-based management regimes can also contribute to conflict resolution and to clarifying and stabilising the communication between the different groups involved which can, in turn, further encourage accountability and compliance among the participants (Alpizar, 2006).

A rights-based governance of a common property resource can be tailored to suit the needs of each specific fishery. In some cases, it may be desirable to have complete devolution of governance, whereby all management decisions are made at a local level. Such an approach may be desirable for a highly localised fishery system, whereby the target species do not migrate out of a given region and the fishing effort can be effectively governed at a devolved local level. Alternatively, there may be a desire for a greater level of community participation in either the setting of TAC levels or the means of enforcement with the extent of such participation falling short of full devolution. Such a system may be more suitable for a migratory fish stock. In such a system, increased community participation may help improve compliance by helping to build the legitimacy already discussed. This legitimacy is built whilst retaining the national/international institutions required for the governance of migratory species. Thus, one can see that there is a degree of choice available regarding the balance of power between local user groups and central government in a regionalised system of governance. This choice may characterised by three primary types of regionalised governance:

- Community-based Common Property Resource (CBCPR)
- Co-management
- Community-Based Co-Management (CBCM)

CBCPR involves complete devolution of exclusion and extraction rights to local authorities, interest groups and users. Originating from the operational principle of proximity or subsidiarity, it argues that those who are closest to the operations of a resource are best placed to manage it. It is based on social science and anthropological studies which suggest that user groups are effective in managing a resource through sophisticated systems of self-regulation and founded on sound empirical knowledge (Symes, 1997). The key to the success of these regimes is the ability of a community using a common resource to limit the access of outsiders and to self-regulate its own harvest with minimal or no involvement by national or international institutions. Common property management works through careful control of incentives. If members of a group are assured that future harvests would be theirs by right, they would have the economic incentive to self-regulate (Berkes, 2005). Fully devolved systems of governance operate within established national or international legislation (in the case of the CFP this may imply a fishing region’s TAC), but the allocation, distribution and/or enforcement of fishing rights is fully devolved to the local community (for a full discussion see Acheson, 1989). Such a system of fully devolved governance has been successfully implemented in the Maine Lobster Fishery (Acheson, 1989), whereby local fishers were responsible for enforcing sustainable practices. This involved informal self-regulation and the establishment of social norms in internalising the opportunity cost of overfishing on all users of the resource (Acheson, 1989).

Co-Management differs from CBCPR as government agencies play a role in governing the resource. Pomeroy (1998) defines co-management as a partnership arrangement in which government agencies, the community of local resource users, non-government organisations and other stakeholders (fish traders, boat owners, business people, etc.) share the responsibility and authority for the management of a fishery. Building on the theoretical foundations of CBCPR, co-management allows for a translation of traditional self-regulation to a modern industrialised world through the involvement of state agencies (Symes, 1997).
The extent of governmental involvement can vary, with Sen and Raakjaer-Nielsen (1996) outlining five broad roles. On a descending scale of involvement, the governmental role can be instructive, consultative, co-operative, advisory or informative. The level of involvement employed is chosen in accordance with country-specific and site specific conditions. However, despite the scale of involvement, governments usually play a major and active role (Pomeroy, 1998), especially if one considers this role relative to governmental participation under CBCPR. Amongst the considered roles, government participation in co-management often involves formalisation of community rights and enforcement mechanisms (something which may be enforced by informal community practice under CBCPR); devolvement of government power to legitimise the authority of local management regimes and addressing problems beyond the scope of community at regional or national level (Pomeroy, 1998). The primary difference between CBCPR and co-management is the role of government as viewed by resource users. Under CBCPR, government is seen as external to decision making and resource governance, brought into negotiation at a later stage if required. Under co-management, governmental bodies are internal to decision-making process, with governmental agencies involved early and equally in the decision making process (Pomeroy, 1998).

The third system of devolved governance is Community-Based Co-Management (CBCM). This system of governance is one of co-management, with a greater emphasis on the role of the community in its governance (Pomeroy, 1998). As such, CBCM is people-centred and resource-focussed. Whilst co-management takes the partnership between the community and state into account, a community-based co-management resource incorporates the greater community focus outlined in CBCPR but acknowledges that “to sustain such action, a horizontal and vertical link is necessary” (Pomeroy, 2001). This involves the incorporation of state agencies and representatives in early stages of policy formulation and implementation, something which can often occur in co-management but less often in CBCPR. Thus, a community-based co-management regime can be considered a hybrid regime incorporating both characteristics of CBCPR and co-management to become people-centred, community-oriented, resource-based and partnership-based (Pomeroy 1998).

6. The Adoption of Principles of Community Participation to address shortcomings of the CFP

It is unlikely that a completely devolved system of governance will come into place for any fishery system in the near future given the current plans for a TFC system. The TFC system is applicable to large fishers, whilst small-scale fishers will continue to be designated set levels of total allowable catch, as was the case under the prevailing CFP regime. It is hoped that the TFC scheme will allow for the overcapacity of large fishing boats to be addressed. This provides scope for a community-based system of management for the small scale fishing segment of the fishing fleet whereby a community-focussed rights-based management regime could operate alongside the TFC system. This is desirable, as although it is hoped that an EU TFC system will resolve some of the aforementioned problems associated with the historical command and control policies of the CFP, the current proposition is that the very same bureaucratic and top-down TAC and quota based systems will remain in place for 70% of the EU fishing fleet. Given recent policy commitments for more decentralised forms of European fisheries management (EC, 2009: COM(2009)163), a regionalised community-based system where stakeholders play a larger hand in determining quotas for the small artisanal fleet could act as a complement to TFC.

There are a number of shortcomings which may be addressed by incorporating principles of community-based governance into the management of Irish fisheries. One of the primary shortcomings of the CFP is the perception that regulations are working against the fishers as opposed to with them, having a negative effect on local fishing communities. A previous study of the socio-economic characteristics of the Irish fishing industry found sentiments of “quiet despondence, a puzzled desperation and, above all, signs of a pervasive alienation” towards the current fisheries regulations (Ó Donnchadha et al., 2000). A separate report on the socio-economic profile of Donegal found that the
population of fishing communities surrounding Killybegs was in decline (Interdepartmental Group on Donegal (IDG), 2006). This report stated that “the fishing and fish processing sectors have been in decline due to a combination of the dwindling supply of fish, the EU quota system and the fact that the large trawlers do their own processing on board, thereby not requiring on-shore processing facilities”. Findings of the survey indicated that if the prevailing trends continued, there was little hope of a viable fishing industry in the west of Ireland. This IDG (2006) survey also found that fishers felt a sense of powerlessness under the current regime. It may be argued that such powerlessness may contribute towards the economic incentives of non-compliance reported in section 3. Greater local community involvement by adopting some of the principles discussed in section 5 may counteract some of these shortcomings, however.

Discussed in section 5, community-based regimes allow for the building of legitimacy into the governance regime, which may contribute towards removing the economic incentive for non-compliance. In building such legitimacy, it has been found that the level and quality of stakeholder input is of great importance. Involvement by relevant stakeholders is required in all decision-making phases and throughout the programme cycle (i.e. from design to implementation to evaluation) for participation to be meaningful (Kapoor, 2001). The mechanisms through which this legitimacy may be built are known as ‘empowerment measures’.

Empowerment is defined by the United Nations Environment Programme as a function of an individual’s participation in community decision-making and something which is strengthened by decentralisation, transparency and accountability in all aspects of governance, including the management of natural resources (United Nations Population Fund (UNFPA), 2001). Any policy mechanism through which stakeholder-viewed legitimacy of governance is developed can therefore be seen as an ‘empowerment measure’.

Byers (1996) found these empowerment measures give people the sense that they have the power and skill to act in ways that can resolve environmental issues. User group empowerment provides options or allows organisations to at least be aware of options that reduce environmentally-damaging fishing practices. These options may be technological or social, including the substitution of new fishing techniques or the formation of new policies that enable local users to harvest the resource more sustainably (Byers, 1996). Zanetell and Knuth (2004) also discuss these empowerment measures and suggest the promotion of improved ecological understanding and increased awareness of sustainable fishing practices. Such education gives the user group competence and confidence, at both an individual and collective level and equips them with the necessary skill-set to take an effective role in the management of the fishery. Many fishing representative bodies in Ireland already offer advice to their members on matters such as sustainable and efficient fishing practices. As such, any required measures needed to endow fishers with the necessary skill set are likely to be met with much co-operation as it would represent little change from the current status quo. Furthermore, positive externalities may rise from such empowerment, with Zazueta (1995) noting that a greater sense of ownership resulting from such regimes spurs team-building, joint problem-solving and local management capacity.

Whilst a certain degree of empowerment and thus increased legitimacy is a benefit of all forms of community-based governance, it should be noted that the appropriate level of stakeholder input is largely dictated by the nature of the fishery being considered. In the case of a fishery consisting of migratory fish stocks, the scope for devolution is limited given the requirement for international co-operation in governance. As such, potential exists for principles of co-management or community-based co-management system to improve the setting of TAC levels, regulation and enforcement.
Under such a governance system, TAC levels will still have to be set at the EU CFP level, but the use of tacit knowledge available to local communities in the setting of TACs may provide a stronger vertical link between local communities and EU-level governance. Such a vertical link may provide the primary empowerment measure of such a regime. A belief by fishers that TACs are appropriate and that they have a direct input into the governance of a fishery may give fishers greater confidence in the level of catch allocated for their fishery. Such confidence aids the legitimacy of the regulation in place, whereby fishers may have greater belief of incurring the total cost of unsustainable fishing practice discussed in section 2. As such, greater legitimacy as a result of increased user participation has the potential to aid compliance. Alongside this, stakeholder input with respect to enforcement and regulation practices may aid legitimacy with respect to regulation and enforcement. Stakeholder input regarding appropriate regulation practice along with procedures for appropriate enforcement of these regulations may help create appropriate social norms to ensure compliance. These social norms may provide a more effective means of imposing the full opportunity cost of overfishing on each fisher than existing measures of the CFP. Such a mechanism has been effectively carried out with regard to the Maine Lobster fishery, whereby a strong vertical link has resulted in resource users lobbying governance institutions for more sustainable measures of regulation. Further, it was found that the establishment of social norms with respect to sustainable practice was a key element to ensure the sustainability of the resource. These social norms have included informal rules regarding fishing territory and self-regulation in the form of warnings offered by fellow fishermen as to unsustainable practice by another (Acheson, 1989).

Greater scope exists for community participation in the management of non-migratory species, whereby a greater degree of devolution may be possible. Non-migratory species may be defined as species that do not migrate outside of the boundaries of a single social system, such as a national jurisdiction or the area traditionally fished by a local fishing community alone. In such circumstances, international co-ordination is not necessary for effective governance and thus scope exists for the implementation of a CBCPR or CBCM-type system. Further, fisheries that do not extend beyond 12 miles from a nation’s shore may aid implementation of such a regime, as access to these regions is limited to local fishers under current CFP regulation (Council Regulation (EC) No. 2371/02).

The devolution of EU TAC levels to a regionalised system of governance has been successfully implemented in the Shetland shellfishery (SSMO, 2012). In carrying this out, the Shetland Islands Regulated Fishery (Scotland) Order 2010 was issued to a management co-operative issuing powers to control entry to the fishery and to enforce management measures. This order was issued under section 1 of the Sea Fisheries (Shellfish) Act 1967. Still in operation today, this regulating order came into force on 31st January 2000 (SSMO, 2012) and allows for the management of shellfish stocks through effort limitation (SSMO, 2012). Management is co-ordinate by the Shetland Shellfish Management Organisation limited (SSMO) who were established by the Scottish Fisherman’s Organisation (SFO) in consultation with stakeholders and the Shetland Islands Council (SIC) (Noble, 2003). The SSMO’s objective is to manage all shellfish stocks within 6 miles of the Shetland coast. Initially, fishers who traditionally fished in the area were granted a permit with further permits granted only if the stocks would allow. Along with this, additional restrictions covering vessel size, gear type, closed areas and seasonal closures were implemented. Finally, it was proposed to initiate stock enhancement schemes such as lobster restocking (Goodlaid, 2000). The Shetland Shellfishery does not set TAC levels (SSMO, 2012) but rather oversees the catch levels and licencing of catch within the TAC levels issued by the CFP. As the distribution of TAC is carried out by a single devolved institution, they may allocate a level of TAC less than that advised by the CFP, if they deem it appropriate. This does not contradict CFP policy, as Council Regulation (EEC) No. 170/83 describes TAC levels as the total that is allowable and thus may be considered an upper bound, with no obligation stated to fulfil this allocation. The Shetland system, operating within the CFP, may be considered a community-based co-management regime (CBCPR) whereby management of the level of catch is ultimately devolved to the community level but the necessary link with the international governance of the CFP is facilitated.
This demonstrates the means by which a devolved system of governance may operate within the CFP framework.

The establishment of such a regime in an Irish context would result in the EU designated total allowable catch for small scale fishers within a given region to be administered by a regional authority, according to the practices of a CBCM regime. Like the Shetland system (Goodlad, 2000) and that of the Maine lobster fishery (Acheson, 1989), licencing and enforcement would be the responsibility of a local governance institution and the fishers themselves, helping to create the legitimacy required for effective governance. Although the currently envisaged system will not allow for communities to have direct say on TAC levels, there may be scope to structure the tacit knowledge available in the local fishing community into TAC levels for small artisanal fleet. In this case, stakeholders would have an influence on the final quota decision affecting their regional fishery, thus improving legitimacy further. The ideal is that such a system would allow for greater stakeholder tolerance and participation than a top-down management form of quota allocation.

The appropriate infrastructure is already in existence for the establishment of such a regime in an Irish context. The different regions of Ireland are each served by a regional fisheries producer organisation (FPO) to represent the owners of commercial sea-fishing vessels (IFPO, 2012). This system provides an ideal foundation upon which to build localised administrative institutions to manage and control fisheries, with much of the social and legislative infrastructure required for effective management already in place. In many Member States FPOs pool the quotas of their members (Hatcher et al., 2002). They could also manage quota selling and leasing amongst their members. Collective management by an FPO of several members’ TFCs/quotas could allow for real-time swapping and proper production planning.

The establishment of such community-based governance may contribute towards the strengthening of the wider fishing community. Fishing communities often rely both on capture fisheries and processing industries as a source of income. Bringing these businesses together through inter-branch organisations that collectively manage the pooled TFCs of their members can be advantageous. Quota allocation under this scheme would be decided by an Industry Quota Management Committee, comprising FPOs, inshore representatives, non-aligned fishers and processors/marketers. This proposed management system shares many similarities in structure to that introduced in the Shetland Island shellfishery, discussed earlier (SSMO, 2012). Despite this, the necessary investment to strengthen the communications, research, training, technical assistance and government agencies to deliver such a system is less certain. There exists uncertainty in relation to the financing of these proposals under the current economic climate. Finally, it may be noted that reducing legislative regulation by adopting principles of community-based management bears the risk of playing into the aforementioned “Tragedy of the Commons” scenario which has plagued EU fisheries and the CFP. This, however, would only occur if the legitimacy created by devolution and empowerment did not internalise the full opportunity cost of overfishing. Adopting the community-based approach would need to proceed tentatively, incorporating adaptive management and ensuring that the desired social and environmental objectives were being achieved. Furthermore, the opportunity to harmonise the economic incentives of the artisanal fleet with public sustainability interests through the development of community cooperation schemes and environmentally focussed social norms is of particular relevance (Ostrom, 2000; Seithi and Somanthan, 1996).

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14 Recent EU policy documents, specifically the Marine Strategy Framework directive, have recommended the use of adaptive management in future marine and coastal management. Adaptive management is a systematic process for continually improving management policies and practices by learning from the outcomes of previously employed policies and practices.
7. Conclusion

Creating a sustainable policy of fishery management involves carefully balancing economic viability and ecological sustainability. This paper has outlined the importance of creating incentives of sustainable economic practice for effective fisheries management. Through the preceding analysis it has become apparent that the current measures being implemented under the CFP fail to achieve this. These failures have been manifested through both unsustainably high levels of total allowable catch and incompliance within these regulations. This paper has discussed how these incentives have been created by fleet overcapacity and a lack of legitimacy of prevailing regulations.

It has been found that the establishment of a fishing fleet characterised by overcapacity has led to unsustainable fishing practices, often carried out through economic necessity. As a result of this, any future changes in CFP regulation must address this issue as a pre-requisite. Thus, the merit of the proposed TFC scheme to address these issues has been discussed. Assuming that the TFC scheme reduces capacity and raises fishery profits over time (by ensuring less boats chase more fish), the platform for effective management may be put in place.

Command and control policies, although necessary to scale a social system of governance up to the scale of certain migratory fisheries ecosystems, have a number of inherent deficiencies. Such mechanisms are too detached from the level of the individual fisher and thus do not have the required legitimacy to incentivise sustainable practice. Further, the top-down bureaucratic nature of TAC determination, the conflicting political interests at play, along with the many economic challenges being faced by the industry have resulted in unsustainably high catch quotas, illegal fishing practices, poor fisheries data and a disillusioned, uncooperative fishing community.

In this paper we have discussed the potential that principles of community-based fisheries governance may play in contributing towards more sustainable fishing practices. This potential lies in the capacity of the approach to legitimise the regulations in place. It is argued that by developing community empowerment, cooperation and a “going concern” attitude in stakeholders as opposed to despondence, desperation and alienation, a more sustainable (and practised) system of regulation may be put in place.

The nature of a given fishery is a vital consideration in determining the most suitable form of governance. Certain fisheries target species which spend their entire life cycle in a single location. These types of fisheries are ideally suited to fully-devolved community-based common property resource-type management systems because local fishers alone can target the species and manage the resource internally. This limits the extent to which the fish stock is a common property resource, which as discussed in section 2, diminishes the incentive to fish sustainably. However, many species such as cod, mackerel and herring are migratory in nature. The ecosystems of such fisheries are of a larger scale than local fishing community or national jurisdiction boundaries. In such a situation, sustainable practice in one jurisdiction may be undermined by unsustainable practice in another. Although full devolution is not appropriate in such circumstances, it has been argued in this paper that principles of co-management may be incorporated in the setting of TACs and measures of regulation and enforcement. The participation and empowerment that may result may improve legitimacy and thus create a greater incentive for more sustainable fishing practice.

Indeed, a greater degree of stakeholder participation in the management of fish stocks has comprised one aspect of current proposals for CFP reform (COM(2011) 417). In particular, the importance of greater stakeholder and fisher involvement in improving acceptability and compliance has been acknowledged. However, this EC communication document does not provide any specific detail as to how such regionalised governance may be implemented or the extent of devolution for different regional fisheries. As such, it may be understood that principles of devolved governance are desired for future iterations of the Common Fisheries Policy, but the precise means by which this may be carried out are, as yet, unclear.
The implementation of empowerment measures and the legitimacy that may result must proceed with care, however. Theory would predict that fishers should rationally deduce that they are now fishing in a more sustainable fishery, where the opportunity cost of foregone harvests has been internalised. It is possible, however, that their actions may not correspond to this, especially in the short run. Social and cultural attitudes develop over time, and a “catch them while you can” philosophy may not disappear overnight. For that reason, it is vital that a transition to community management is gradual, and the intentions of the policy for the fishery are clearly communicated to all stakeholders involved. Furthermore, the decision as to whether or not community management should be continued would have to be dependent on how successful it was in achieving the CFP’s objectives of social and environmental sustainable fishing practices. A tentative approach such as this is far more likely to achieve the legitimacy required and thus incentivise stakeholders to act more sustainably.

Finally, further research is required to investigate the wider implications of such policy. In particular, it may be of interest to determine how decentralisation and inclusion of fishers in co and self-management regimes may also help deliver objectives of other EU policies, such as the environmental pillar of the EU’s Integrated Maritime Policy. From an Irish perspective further research is also required to investigate the economic and social impacts of the introduction of TFCs and the impacts that any other potential regionalised property rights regimes under future reforms of the CFP might have on Irish fishers’ behavioural responses to a new set of policy conditions and incentives.
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NEW SKILLS FOR NEW JOBS? CHALLENGES IN ACCESSING THE LABOUR MARKET FOR MARGINALISED COMMUNITIES IN NORTH DUBLIN*

Dr. Matthias Borscheid and Odran Reid

Dr. Matthias Borscheid, SIMCV, Local Development & Education Manager and Odran Reid, BA(Mod) H.DipEd. MSc Spatial Planning, MIED MIPI SIMVC, Strategy Development Manager, Northside Partnership, Dublin, Ireland.

Emails: matthiasborscheid@eircom.net; odranreid@eircom.net

Abstract

This paper examines structural challenges for people from marginalised communities in accessing the labour market. It is a reflection on the Irish situation and uses a case study area in north Dublin to illustrate the barriers to the integration of low-skilled local people into the labour market. It highlights two sets of groupings with low skills: those whose skill levels do not match the employment needs of local/regional economic growth sectors and those who cannot compete in an increasingly specialised and demanding labour market environment. Learning from the work of one Local Development Company in north Dublin, Northside Partnership, suggests that the provision and access of personal development, training and employment opportunities for low-skilled individuals requires a concerted local multi-stakeholder area-based response that links the local implementation of actions with national level policy priorities.

Keywords:

Labour market participation, structural disadvantage, low-skilled workforce, local development, area-based response.

* The opinions expressed in this article are solely those of the authors and not those of the Northside Partnership.
Introduction

Shifting global economic forces, technological advancements and increasing global competition from both traditional competitors and emerging economies increased pressure among trading nations to develop and build on their comparative advantages. In particular the introduction of new technologies in the production of services and manufactured products represent challenges for education and employment policies. Governments recognised the need to reconcile the emerging mismatch between the demand and supply of skills through re-training and up-skilling the labour force in an effort to secure economic stability and stimulate growth. Coping with these challenges means that people are increasingly expected to adapt to the skills needs of the economy, the resulting changes in the workplace and in the production of services and goods technology. The newly coined term *mobication* illustrates the need to have coordination of labour market and education policies to ensure that competitive and dynamic economic environments exist (Andersen, Lubanski & Pedersen, 2011). The dynamics of employment, economic development and migration have resulted in a new set of needs in both education and employment policy development. In this environment it is vital that tomorrow’s employment policies create the conditions for labour market mobility through lifelong education of the individual.

In this paper we will look at the difficulties faced by individuals from disadvantaged communities in accessing the labour market by means of a suburban case study area in north Dublin. These challenges are based on a review of local research and from the experiences of the work of a Local Development Company (hereafter LDC), Northside Partnership. This company was established in 1991 to address the issue of long-term unemployment and social exclusion in of the suburban areas of north Dublin. The LDC in north Dublin went about tackling this seemingly immutable problem in the early 1990s through the development of local education and labour-market interventions. Large parts of the area are characterised by limited access to quality public services and community, retail and social facilities. Often these facilities are of a different standard, and offer different product than those in more affluent neighbourhoods (NSP, 2011).

Poor areas suffer particularly if they do not have an economic core as exemplified by the situation in the north Dublin case study area. Even though they are located beside or near industrial estates and a number of local activation programmes that are aimed at ameliorating long-term unemployment and progressing people from a low income background into training, education and work, structural challenges act as barriers for the progression of people. Local people cannot find local jobs as their educational attainment and skill levels do not match local employer’s needs and there is no overall design or national strategy in place that links employment opportunities with the needs of people who experience such circumstances. The economic collapse of the Irish economy in 2008 has exacerbated the situation for low-skilled job seekers from marginalised communities, particularly for those who have not progressed into employment during the period of economic growth and near full employment who had previously been distant to the labour market and could not be placed into employment. Now, this cohort of people competes for a smaller pool of jobs with hundreds of thousands of skilled and semi-skilled workers with work experience who were made redundant since 2008 (Table 1, next section).

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1 An example is the *ICT Action Plan - Meeting the high-level skills needs of enterprise in Ireland* that was published by the Department of Education and Skills in 2011. The report identifies Information Communications Technology (ICT) as an important growth sector for Ireland whose supply of experts, however, is dependent on internal migration. The action plan sets out to secure a domestic supply of professionals by means of up-skilling (short term) and build up a pool of skilled graduates based on collaboration among government departments, state agencies, the education sector and industry. *Pathways to Work* highlights the provision of conversion courses “to upskill/reskill unemployed people to meet skills shortages in new and emerging sectors. One example in this area is the range of new graduate ICT skills conversion programmes being rolled out from March 2012” (Government of Ireland, 2012 p. 17).

2 In 2007, unemployment was at 4.4 per cent (Table 1, next section).
The Irish Context

In order to understand the local aspects and challenges of labour-market interventions targeted at increasing access to jobs from marginalised communities in north Dublin, it is critical to provide a short synopsis of the national situation that impacted on the labour market since the economic downturn in late 2008. This section will, therefore, illustrate the current wider economic and labour market context within which local initiatives that aspire to progress low-skilled people into employment are embedded.

Looking back, during the boom-era of the Celtic Tiger the Irish Government missed an opportunity to address the more structural aspects of job creation for, and up-skilling of, the low-skilled segments of the labour market. Public finances were in order, fiscal income was high, unemployment low as Ireland had “experienced a spectacular increase in living standards and employment” (Kirby 2010 p. 45). Prior to the economic crisis in 2008, the societal costs of supporting those most distant to labour market via welfare transfers could be carried by Irish society and were of no great concern to the government of the day. Moreover, the administration of welfare was passive and lax toward fraud (NESC, 2011 p. 51). Indeed, as the intervention of the IMF / ECB / EC Troika\(^3\) highlighted, the state’s policy had exacerbated many of the problems now experienced in the Irish labour market, through overly generous welfare payments which were not targeted or supported by appropriate labour market interventions\(^4\).

When the housing bubble burst in late 2008, Ireland’s economy went into recession. The then government had banked on construction and physical infrastructure as key drivers for domestic growth, which also provided job opportunities for low-skilled segments of the labour force as well as ensuring there were very significant fiscal returns to the state. The economic collapse had severe effects on the domestic labour market. 261,000 jobs were lost in the Irish Economy between 2008 and 2010, the majority in the area of construction, manufacturing, retail and related but often high-skilled professions. About one quarter of the Irish GDP was generated in the construction sector and one in eight employees worked in the sector (Kirby, 2010 p. 48). The unemployment rate in Ireland more than trebled within 19 months, from 4.5 per cent in September 2008 to 13.6 per cent in April 2010 and was at 14.7 per cent in March 2012 (CSO, 2012c).

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3 In the context of the current economic crisis, the term Troika is used for the three organisations – the European Commission (EC), the International Monetary Fund (IMF), and the European Central Bank (ECB) – that organised the loans to European states whose banking systems had to be secured from collapse: Greece, Ireland, Portugal and Spain. The Troika also monitors the implementation of agreed measures in the states that received loans.

4 Minister for Social Protection, Joan Burton, TD, speaking at a seminar she organised on Social Protection on 3 March 2012 indicated that the Troika had homed in on a number of welfare payments, including the high level of unemployment benefits and the lack of a proactive approach to getting people of welfare.
Table 1: Changes in Irish Unemployment 2007 to 2012

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unemployed %</td>
<td>4.4</td>
<td>4.8</td>
<td>9.3</td>
<td>12.9</td>
<td>14.2</td>
<td>14.7</td>
</tr>
<tr>
<td>Employed (Jan) '000</td>
<td>2,088</td>
<td>2,124</td>
<td>1,965</td>
<td>1,857</td>
<td>1,804</td>
<td>1,786</td>
</tr>
</tbody>
</table>

Source: CSO Quarterly National Household Survey (CSO, 2012c).

As the crisis unfolded, tax income plummeted, a considerable number of households were forced to default on their mortgages, welfare expenditure increased and emigration soared\(^5\). The banking system faced collapse and was saved by the state through a bank guarantee and, eventually, a nationalisation of the banks. A massive hole appeared in the State’s budget with a reduction of taxation intake from just short of €56 billion to €33 billion in a year, with little immediate reduction in expenditure from €60 billion (Department of Finance, 2012). With the need to stabilise the banking system and to address an unsustainable fiscal budgetary position, the Irish state became highly exposed as it could not access capital on the international markets at interest rates that were tolerable. In November 2010, Ireland was bailed out by a troika consisting of the International Monetary Fund (IMF) the European Central Bank (ECB) and the European Commission (EC). Following the rescue intervention, the Irish Government introduced a series of austerity measures with a view to improving domestic finances and progressing the recapitalisation of the banking system. This resulted in a dramatic contraction of private and public sectors. The collapse in government taxation receipts required the reduction of public service, public sector redundancies/early retirements, public and private sector wage reductions, the increase of and introduction of new taxes and charges for services, as well as reducing government expenditure which in turn led to further contractions of the economy\(^6\). The disposable income of private households was reduced dramatically. Those who were left with disposable incomes reduced borrowing and turned to saving rather than spending money on consumer goods. This set of actions and reactions had a dramatic dampening effect on domestic demand resulting in negative economic growth (ESRI 2012). Ireland went through a period of two years of deflation and contracting retail expenditure (CSOa, 2012).

Between 2008 and 2011, employment in the public sector was reduced by 35,000 (8.2 per cent) and the number of employees in the private decreased by 154,900 (12.0 per cent). The unemployment rate stabilised on a high plateau of over 14 per cent and the number of long-term unemployed reached 182,100 at the end of 2011, which was 60.3 per cent of the total unemployment figure. The corresponding figures for 2009 and 2010 were 51.5 and 33.3 per cent respectively (CSO, 2012a). The numbers of people on the live register started to stabilise in 2011 holding into 2012. Youth unemployment of about 30 per cent (80,000) and increasing emigration\(^7\), especially among the young well-educated, nourishes notions of the lost generation (Irish Times, 19 May 2012).

\(^5\) The CSO (2011) reported that between April 2010 and April 2011 40,200 Irish people emigrated.

\(^6\) As part of the agreement with the Troika and the need to restructure public finances a series of four budgets delivering 15 billion budgetary corrections with a mix of tax increases and public expenditure reductions was established in The National Recovery Plan 2011-2014. This was to deliver a reduction of 24,750 public servants by 2014. In addition, these reductions in staff numbers were accompanied by reductions in pay rates and increases in the contributions made to pension by all staff members at different graduated levels. These changes were agreed by the Government and various public sector bodies with the Public Sector Trade Unions under the Public Service Agreement 2010, more commonly known as the Croke Park Agreement (Department of Public Sector Reform, 2012).

\(^7\) See footnote 3 above.
Though job losses continued new jobs were being announced and created, particularly in the first half of 2012. These included Pay Pal (1,000 in Dundalk) BSkyB (800 in Dublin) Eli Lilly (500 in Cork) Abbot (175 in Sligo) HP (280 in Galway and Kildare) Allergan (200 in Mayo) Mastercard (130 in Dublin) (IDA Ireland, April 2012). Individuals who had lost their jobs in key sectors (construction, retail and other related service sector areas) make up large portions of the new long-term unemployed. In terms of the skill levels, these individuals differ from those who already were long-term unemployed prior to the economic crisis and the collapse of the construction sector and related industries and services. During the economic boom between the mid-1990s and 2008, a large part of low-skilled long-term unemployed found work in the construction sector and related economic activities. These workers who were not up-skilled to a significant level are not likely to find a similar job in the same sector in Ireland in the near future.

The Irish labour market system did not seek to challenge those who were on the live register or who had been on illness benefit or in receipt of other welfare transfers for a prolonged period of time. Labour market activation and social policies of the governments between 1997 and 2011 did not sufficiently focus on supporting and incentivising those who have been considered most distant from the labour market (NESC, 2011). The integration of those low-skilled who recently lost their jobs and those who are part of the cohort of largely disengaged individuals who have not worked during the boom have little hope to find work. This is a huge challenge.

Following the intervention of the Troika, these policies are now changing: a more active interventionist approach is being pursued as mirrored in the greater role for the Department of Social Protection (Social Welfare) (e.g. in the provision of labour market interventions such as Tús and the introduction of a new policy Pathways to Employment (see below).

With declining domestic demand for goods and services (Department of Finance, 2012), Ireland’s economic growth is largely dependent on the performance of its export sector, which grew during 2011 and the first quarter of 2012 but is performing behind expectations (Irish Times, 02 May 2012). Currently, the Irish export sector is dependent on trade with the US and the European Union, which in 2011 accounted for 65.4 per cent of the value of Irish exports and the UK which accounted for a further 15.6 per cent (CSO, 2012b). Ireland is a small open economy and attracts considerable Foreign Direct Investment (FDI) from in the areas of high-end manufacturing in IT, electronics, pharmaceuticals, biotechnology and related research and development activities. Ireland’s main comparative advantage over its European competitors is a young, educated, English speaking workforce and a low corporate tax regime and Ireland is perceived by investors and transnational corporations (TNCs) as bridge head to the markets in the market and the euro zone and provides the European headquarters for a number of FDI companies such as Google, IBM, Intel, Facebook and Pfizer. Barry O’Leary (2012), CEO of the Industrial Development Authority (IDA), considers Ireland “a magnet for multinationals”.

The economic growth areas require highly skilled professionals and the demand for (often multi-lingual) technicians, engineers, scientists and managers is increasing and Ireland has skill shortages in many areas such as electrical engineering, language skills and medical professionals, IT experts and financial experts as well as “niche area expertise” (FÁS, 2011 p. 3). Initiatives like The Green Way in north Dublin seek to develop a comparative advantage in
Cleantech Industries over other regions, both nationally and globally\textsuperscript{10}. Success will be dependent on having access to specialist workers and 3\textsuperscript{rd} level graduates, particularly with a science and IT background, though not exclusively from these disciplines. The Greentech sector will, for example, provide scope for employment in traditional trades like carpenters, plumbers and pipefitters or sheet metal workers\textsuperscript{11}. Accessing jobs in these markets poses great difficulties for those who have the wrong skill set, and particularly for those who have poorly developed educational standards.

Some Reactions and Responses

Public discussion and commentators in the Irish media regularly refer to 'Taxpayer’s Money' that is being spent on costly welfare transfers and on paying senior executives of state-owned organisations. There is a sentiment that social welfare recipients and unemployed people belong to a group of undeserving poor as they are not considered taxpayers and, therefore, are a financial burden for those who pay income tax (though, currently, even the cohort of unemployed highly-skilled professionals or ‘Have-been Taxpayers’ cannot find jobs) (INOU, 2012). The issues of individual dignity, societal cohesion and empathy towards jobseekers have come to the fore and have been highlighted as area of concern by the Irish President, Michael D. Higgins (2011) and the NESC whose Report \textit{Supports and Services for Unemployed Jobseekers} states that “it is not just some individuals on the Live Register who need to be ‘activated’ but Ireland’s entire organisational and policy framework for supporting unemployed jobseekers” (NESC, 2011 p.3).

Commentators propose the development of strategic investments and real job programmes (Sweeney, 2012), the provision of education programmes that are responsive to the anticipated skills needs and developments of the economy (Campbell, 2011), and the wise use of existing fiscal resources. The latter could be achieved by first targeting those people who are most likely to find jobs and where interventions are most likely to be cost-effective (Hamilton, 2011). This is especially so against the backdrop of the interplay between austerity measures, low levels of domestic demand, fiscal constraints and an increased demand for welfare transfers. It seems that following the 2010 bailout, the loss of economic sovereignty and severe austerity measures taken by the Irish Government rule out the development of traditional labour market interventions and job creation programmes.

The magnitude of the job crisis in Ireland and the fiscal constraints of the Irish government require labour market activation measures that reduce the level of long-term unemployment and, thus, focus on supporting those who recently lost their jobs. Interventions consist of actions directed at upskilling unemployed people, the provision of supports to older jobseekers, measures that facilitate access to employment for lone parents and the provision of apprenticeship training for young people or those who were made redundant. On 23 February 2012, the Irish Government launched \textit{Pathways to Work}. The objective of the programme is “to get Ireland working again” (Government of Ireland, 2012 p. 5) by creating 100,000 new jobs up to 2016 and to prevent people from becoming long-term unemployed. Another goal is to move 75,000 people from welfare into work (Government of Ireland, 2012).

\textsuperscript{10} \texttt{http://www.thegreenway.ie} Accessed last on 5 May, 2012.

\textsuperscript{11} These examples are taken from a report on the Greentech sector in California (Economic Roundtable, 2006).
This will be based on a series of measures that are targeted at improving the quality of engagement with the unemployed, incentivising the take up of jobs through workfare-type interventions—such as the National Employment Action Plan and Tús (Appendix 1)—and encouraging employers to hire unemployed people.\textsuperscript{12}

Apart from existing labour market activation policies—as for example outlined in the 2005 NESC Report The Developmental Welfare State—penal measures and workfare interventions, Pathways to Work is complemented by a restructuring of the institutional statutory landscape providing employment services, training and education. One major change has been the closure of the National Training and Employment Authority (FÁS) and the re-allocation of its responsibilities, partly to the proposed new further education and training authority SOLAS (Seirbhísí Oideachais Leanunaigh agus Scileanna) (in late 2012), and partly to the Department of Social Protection. These changes were identified in Towards Recovery, The Programme for Government 2011-2016 (2011).\textsuperscript{13} Other planned arrangements outlined in Pathways to Work indicate that the Irish government pursues a range of different complementary approaches. Proposed measures include contractual arrangements with private employment services, utilising expertise of local development companies (LDCs) via their link with the Local Employment Service Network, the development of targeted educational interventions and the better coordination of interdepartmental efforts in addressing unemployment.

The low-skills issue

In an environment where the distance to employment of large parts of the population increased, social welfare measures did not meet long-term interest of recipients—as people were ‘parked’ on welfare incomes—and relative poverty could rise during a time of unprecedented prosperity (Kirby, 2010), large segments of the labour force became disillusioned and hard-to-reach. A significant poverty cohort of people developed, that now poses a huge challenge in terms of coping with the economic restructuring and debt management. Finding meaningful jobs for those low-skilled, who are distant from the labour market in terms of their level of qualifications and skill sets, is difficult. It is even more challenging for those who have other impediments such as health related or other debilitating issues (e.g. recovering drug misusers\textsuperscript{14}) and those who had not been successfully incentivised by the state or by themselves to up-skill or engage in job seeking (NESC, 2011). This is a mammoth task for the new Irish government that came into power in February 2011, particularly as it addresses a significant fiscal debt, a bank bailout and very high unemployment rates while reducing the size and structure of the public sector. Regarding the role of the state in integrating low-skilled and long-term unemployed people into the labour force a number of challenges arise:

Firstly, skilled construction workers, crafts persons, labourers and people who had worked in the retail sector represent a high share of the unemployed and are not likely to find similar jobs even though current government policies focus on preventing long-term unemployment (Government of Ireland, 2012). Finding new jobs for people who worked in a sector and in jobs that are not likely to be replaced in the near future presumes that they have the

\textsuperscript{12} Pathways to Work also proposes the introduction of a profiling system of those who are firstly signing on for the first time and secondly analysing those who are on the live register for a prolonged period of time. This profiling system, Probability of Exit (PEX), allows the Department of Social Protection to direct job seekers to obtain the most relevant level of intervention. This could range, depending on the circumstances of the unemployed person, from the provision of assistance with CV and job seeking skills (for those who are job ready) to more complex interventions in education, literacy and other appropriate social interventions (Department of Social Protection, 2012).

\textsuperscript{13} Legislation for the establishment of SOLAS has been promised by autumn 2012 and it is expected to be fully operational by the end of 2012 or early 2013. The role of this new body and how it will differ will become clearer in due course.

\textsuperscript{14} Other examples for groups that face barriers in finding work are those with a disability, ex-offenders, older people who were made redundant and find it difficult to upskill and/or find jobs, lone parents or Travellers.
right set of skills, motivation and a degree of mobility to move on to new jobs between sectors, with little intervention and support from the state. This surely holds true for some, not for others.

Secondly, people that are considered to have low skill levels do not fit into one consistent category. In terms of capacity and employability there are at least two broader groupings that need to be considered, each of which requires different interventions and different levels of support. On the one hand, there are unemployed people who have a set of skills and work experience and can find work within a short period of time, if there was work available. On the other hand, there are those who have additional limitations and complex needs and who require a series of more specific interventions from a variety of support services over a longer period of time. This, for example, includes young people who left school during the last few years and could not find either work, an apprenticeship or afford to access to third level education. Individuals from families affected by intergenerational unemployment or recovering drug misusers are even further distanced from the labour market and from participation in active society.

Thirdly, job opportunities for those who do not have the right skill set, who do not have a sufficiently high level of skills mobility and who are not even considered employable are getting even fewer in absolute numbers as the growth sectors are in the area of high-end production and specialist professions. Projected employment change for Ireland between 2008 and 2015 suggests that jobs for people with low skills generally are on the decline, even in growth sectors (FÁS, 2011; ESRI, 2012). In north Dublin, for example, one of such growth sectors is the area of transport and logistics where the potential for low-skill employment is declining due to technology change and the introduction of IT-based chain management systems that increasingly require specialist knowledge (O’Brien & Van Egeraat, 2009). Other promising areas for employment generation that are less depended on high-end jobs are the agri-food sector, catering services and some parts of tourism. Some of these could be strengthened and develop as auxiliary services to the high-tech growth sectors – for example by utilising local initiatives such as labour market interventions provided under the umbrella of local development companies.

This brings up to two questions:

- What implications does this have for the integration of people with the “wrong” skill sets into the labour market through innovative labour market activation measures and targeted educational interventions?
- What can be done locally to address and reduce the mismatch between local skills supply and regional labour market demand?

The new diversity of those individuals who are recently added to the lengthening list of the long-term unemployed brings about a new challenge. With many highly qualified people (e.g. recent graduates from third level education providers) now being long-term unemployed and with an increasing pressure to get people back into work fast, there are notions to use the resources more effectively by focusing on those who are more likely to find a job and need fewer (and less costly) interventions to get back into paid employment (Government of Ireland, 2012). The development of labour market interventions by local development companies whose key focus is on addressing long-term unemployment and the integration of those who are considered most distant from employment has become more difficult. Yet there is an imperative to stop an increase in long-term unemployment, to return the new long-term unemployed back into the labour force as quickly as possible and to address the large fiscal deficit that has been created.

The discussion on the progression of low-skilled unemployed persons into work, however, needs to be de-coupled from notions based on the economic utility of people. Instead, wider societal questions such as the spatial dimension of unemployment, personal dignity, poverty and other structural issues need to come to the centre of attention.
A case study from north Dublin serves to illustrate these aspects.

**Case study area: the example of North Dublin**

The case study area in north east Dublin has a population of approximately 127,000. The area stretches from the city suburbs to the northern fringe of the city (Appendix 4). The area is diverse regarding its socio-demographic profile and contains some of the most affluent and most disadvantaged neighbourhoods in the country, often in close geographic proximity. This contrast is mirrored in the educational attainment levels, which are a good proxy indicator for social status and income.

The more affluent neighbourhoods are located along the coastline and in the city suburbs. In these areas, educational attainment levels are high, which is also reflected in the occupational profile of the area with high levels of people employed in managerial and specialist positions (see the CSO’s *Census 2006 Report*). The poorer areas are on the northern periphery of the city, an area dominated by vast low-density social housing estates. These parts of the city are characterised by high levels of poverty, a dominance of people classified as skilled or semi-skilled workers (Gleeson *et al.*, 2009), a declining manufacturing sector, intergenerational unemployment, disengagement from political issues – as reflected in low participation rates in elections (Kavanagh *et al.*, 2004) – and low educational attainment levels (NSP, 2011). Concerning the potential of availing of employment opportunities, there is a mismatch between opportunities in economic growth sectors and the educational profile and socio-economic status of people in disadvantaged communities (Map 1 and Map 2).
Table 2: Decline of the manufacturing sector in the case study area in North Dublin

<table>
<thead>
<tr>
<th>Year</th>
<th>Company affected</th>
<th>Jobs lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>The US toy manufacturer <em>Little Tikes</em> closed its factory at the IDA estate in Clonshaugh with the loss of over 130 jobs. The manufacture of plastic toys for toddlers was relocated to England (Irish Times, 2 February 2000).</td>
<td>130</td>
</tr>
<tr>
<td>2001</td>
<td>US computer manufacturer <em>Gateway</em> closed its production in Dublin with 900 job losses and most of the workers employed by the company being from the Swords and Coolock areas of North Dublin.</td>
<td>900</td>
</tr>
<tr>
<td>2003</td>
<td>47 staff at Dublin-based <em>Saronix</em>, a US company that produced crystal clock oscillators for use in the telecoms and high-tech sectors lost their jobs when the company closed its operations. Reasons given for the closure were intentions to move parts of the production to China and the lack of demand the products (Irish Independent, 1 April 2003).</td>
<td>47</td>
</tr>
<tr>
<td>2005</td>
<td>The <em>Tayto</em> production plant in Coolock closed, with the loss of 98 production jobs.</td>
<td>98</td>
</tr>
<tr>
<td>2006</td>
<td><em>Cadbury</em> in Coolock announced that the company planned to downsize its operation by reducing staff numbers by 450 (from 1,500 to 1050 over a 3-year period).</td>
<td>450</td>
</tr>
<tr>
<td>2007</td>
<td><em>Chivers</em> in Coolock ceased its operations with the loss of 59 jobs.</td>
<td>59</td>
</tr>
<tr>
<td>2009</td>
<td><em>Smurfit Kappa Cartons</em>, a company producing folding cartons for the healthcare and hi-tech industries closed its plant in Coolock with the loss of 140 jobs.</td>
<td>140</td>
</tr>
<tr>
<td>2009</td>
<td>The closure of <em>SR Technics</em> (handling aircraft and component maintenance) at Dublin Airport with a loss of over 1,100 jobs.</td>
<td>1,100</td>
</tr>
<tr>
<td>Since 2008</td>
<td>Closures of over 200 small businesses and self-employed people in the construction sector since 2008 had a devastating impact on employment and on families in the Partnership area (NorDubCo and the LES Network, 2010).</td>
<td>200+</td>
</tr>
</tbody>
</table>

Source: NSP (2011)

In particular, in the northern suburbs of the case study area are mainly dependent on employment in the remaining local retail and manufacturing sector, which has been on the decline since the late 1990s with no increase in or creation of alternative employment (Table 2). Also, access to job opportunities in business parks and retail and office locations outside the area is quite limited for many neighbourhoods as a result of poor public transport connecting communities with places of work and education (Map 1 and Map 3).
This reduction in local employment has been further fuelled by a series of company closures following the 2008 economic crisis. The main reasons for closures were, firstly, global pressures on the Irish manufacturing sector, resulting in outsourcing operations into more competitive markets or countries with lower production costs (mainly in the Far East and Eastern Europe) and, secondly, the global economic crisis that started in 2008. These developments illustrate the adverse effects of global economic pressures and the economic downturn on the local manufacturing sector in Ireland. The case study area in north Dublin has been dramatically affected by these developments; and the development of the service sector in the area did not compensate for the job losses that occurred in the manufacturing sector.

*Map 1: Educational attainment and job opportunities in North Dublin*

A study carried out in 2009 by the National Institute for Regional and Spatial Analysis (NIRSA) on behalf of the North Dublin Development Coalition (NorDubCo) pointed out an increasing importance and growth potential of the logistics, pharmaceutical and the biotechnology sector in the north Dublin region. The study points out that “Due to these developments, the study area and the GDA [Greater Dublin Area] are well endowed with strategic sites and other...
suitably developed sites, notably at Grangecastle, Adamstown, Clonshaugh [Industrial Estate], and Coolock [Malahide Rd] Industrial Estate (O’Byrne & Van Egeraat, 2009 p. 26). These industries, however, require mostly a highly qualified workforce with third level education (to a lesser extent in the Logistics and Transport Sector though, with some exceptions). The educational profile and professional status of people in disadvantaged areas in the north Dublin case study area indicates that only few people from these areas would be in a position to access jobs in those sectors.


This map provides complementary evidence to data portrayed in Maps 1 and 3. The above map shows that areas with a below average representation of people with 3rd level education (Map 1) also have a lower share of among the group of Higher Professionals, namely below 3.7 per cent. Areas with high educational attainment levels score between 11.7 and 22.2 per cent. The travel-to-work patterns portrayed in Map 3 support the view that low-skilled people in the northern suburbs of Dublin have a lower geographic mobility and less access to well-paid jobs than individuals than career opportunities.


16 Estates highlighted are located in the case study area.

17 Traditional working class areas alongside the main orbital roads transecting the northern part of case study area from east to west show below average figures for socio-demographic indicators with some neighbourhoods being classified the most disadvantaged areas in the country (NSP, 2011: http://maps.pobal.ie/#/Map accessed on 25 April 2011). This suggests that these are ‘low income areas’—especially if compared with the more middle class neighbourhoods in the eastern and southern part of the case study area.

18 The classification aims to bring together persons (aged 15 or older) with similar social and economic statuses on the basis of the level of skill or educational attainment required. The socio-economic groups used in the census are as follows: A Employers and managers / B Higher professional / C Lower professional / D Non-manual / E Manual skilled / F Semi-skilled / G Unskilled / H Own account workers / I Farmers / J Agricultural workers / Z All others gainfully occupied and unknown.
Map 3: Analysis of the POWCAR data set for two neighbourhoods

This data set links the residential address with the workplace address (CSO 2006) for two EDs in the Partnership area and thereby illustrates travel to work patterns. It illustrates the different destinations for work comparing an affluent and a disadvantaged area.

The two maps on the left show the work destination of Northside workers who live in Clontarf West D and Priorswood B Electoral Divisions (EDs). Whereas Clontarf West D is one of the more affluent EDs as reflected in educational attainment levels and socio-economic group (see Map 1 and Map 2), Priorswood B is the most disadvantaged ED in the Partnership area. The maps portray a very different spatial distribution with workers in Clontarf West D having a higher concentration within the city centre and Priorswood B having a higher distribution within the north of the Partnership area. This example stresses for the importance of public transport and educational attainment levels in determining the capacity to access jobs. The data suggests that people from Clontarf West D have access to higher paid jobs in the service sector located in the inner city whilst people from Priorswood B are predominantly employed in the retail and (declining) manufacturing sector on in the northern suburbs of the city.

19 Place of Work - Census of Anonymised Records (POWCAR). Using the POWCAR (2006) dataset it is possible to show the percentage of the workforce within an ED that commute to a specific destination. The POWCAR dataset is an origin-destination matrix of all those employed in 2006 and contains detailed information on residence of worker and destination of worker (http://airo.nuim.ie/category/keywords/powcar, accessed on 15 June 2012).

20 Electoral Divisions (EDs) are the smallest legally defined administrative areas in the State for which Small Area Population Statistics (SAPS) are published from the Census. There are 3,440 legally defined EDs in the State (http://census.cso.ie/censusasp/saps/boundaries/eds_bound.htm, accessed on 15 June 2012).
For example, only up to 17.1 per cent of the population has completed third level education in some of the northern suburbs; in contrast, the more affluent neighbourhoods in the large parts of the Dublin have completion rates of over 44.8 per cent. Map 1 illustrates spatially pronounced disparities concerning educational attainment levels in the case study area. Another indicator highlighting disparities in the case study area is the differentiation of the population by socio-economic group (Map 2). The illustration of travel-to-work destinations for the population for two selected neighbourhoods (Map 3) suggest that educational attainment and social class are main factors in determining sectoral employment and associated income opportunities.

**Role for area-based responses**

Having discussed the structural challenges concerning the integration of low-skilled people into the labour market, what contribution could local initiatives, and particularly local development companies (LDCs), make towards the development of an employment strategy?

In OECD countries, a myriad of local initiatives and pilot projects emphasise the spatial dimension of economic development and learning from these cases suggests that local solutions involving multi-stakeholder partnerships are, to a certain agree, capable of generating remedial effects and, potentially, can create models that could inform the development of national responses to the economic crises and the issue of long-term unemployment (OECD, 2010a/b). At the same time, the learning from local initiatives shows that wider structural forces and interest are powerful and that the utilisation of local assets and the formation of local alliances depend on structured support and the creation of a favourable framework by the state. Past experience (OECD, 1996; OECD, 2001; Lee, 2006; Borscheid, 2007), and current initiatives suggest that the Irish model of LDCs is viewed as a potentially successful model for the delivery of local benefits for marginalised communities in collaboration with partners from the state, employers, trade unions, public representatives and the local community. In 2011, for example, the European Commission launched the PARES (Partnership between Employment Services) Initiative, which highlights the need for intersectoral collaboration between the public, private and third (not-for-profit) sector with a view to complementing one another sectors’ strengths for a concerted approach to tackling the issue of long-term unemployment. The initiative is progressed by partners from EU member countries representing all three sectors (European Commission, 2011).

In OECD countries, LDC-type initiatives play an important role in supporting marginalised communities. They generally deploy area-based strategies that assist individuals in progressing into education, employment and participating in society in a more productive and active way. This includes a range of activities such as linking individuals into quality and appropriate training, ensuring children attend school and progress as far as possible and enhancing bottom-up participation in civil society so as to create a changed future for disadvantaged communities (OECD, 2001; OECD, 2010a).

In Ireland, LDCs work to assist communities take more control over their own futures and to deliver services that are appropriate for them. In the north Dublin case study area, Northside Partnership has been playing a central role in the implementation of these initiatives. This LDC has worked on the principle that having a job is the best way

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21 The OECD publication gives examples of national labour market interventions and schemes with a local dimension and specific local and regional schemes. These include the running of WorkSource Centres connecting students to jobs and further education (Los Angeles, United States), up skilling unemployed people with IT skills (Vukovar, Croatia), providing a scheme which offers contingency plans for apprentices that were made redundant in the economic downturn so they can complete their education (Northern Ireland), career development paths for people aged 50 and older (Flanders, Belgium) and supporting unemployed people in becoming self-employed (Ballyhoura, Ireland) (OECD, 2011 p. 8-12).
of overcoming poverty. Large parts of the case study area have been designated as severely disadvantaged\textsuperscript{22} and have been subject to targeted multi-stakeholder interventions\textsuperscript{23}. Northside Partnership works in collaboration with various bodies from the private, public and community sectors, to ensure that individuals receive quality training and education opportunities, eventually leading to employment. Targeted recruitment for local employers, the assistance of individuals to become self-employed and set up their own enterprise, the establishment of a social enterprise, or targeted training for unemployed youth (Irish Times, 19/05/2012) are just a few examples of this work. The north Dublin LDC has established one social enterprise company itself in the early 1990s, Speedpak, to increase the employability of ‘the hard-to-reach’ (Appendix 1). In the main, local initiatives have been geared towards progressing low-skilled and/or people from low income families into training, education or employment who previously did not engage with the state or who were not previously ready for progression\textsuperscript{24}.

A number of key challenges in the area have been identified in progressing people with relatively low skill levels into employment:

- A local culture of dependency on state support and state-funded services and poverty traps that disincentivise people to actively engage in activation measures and pursue job opportunities (NSP, November 2004; NESC, 2011);
- A poorly designed and serviced public transport network that limit accessibility of neighbourhoods in north Dublin to clusters of jobs and places of economic activity;
- The declining economic competitiveness of more traditional local manufacturing sites;
- The quality of the gap between local skill levels and those skill sets required by employers in the main regional growth industries: the transport and logistics sector, the high-end activities in biotechnology and pharmaceutical development and production (O’Byrne & Van Egeraat, 2009) and the Greentech Sector;
- The increasing number of highly-skilled individuals on the life register competing for jobs traditionally associated with low skill levels;
- A need for the development of cross-sectoral capacity between government departments to agree on overlapping policy priorities and an intermediate coordination mechanism that oversees the local implementation of national policies and that functions as a transmission belt between the local and the national level.

Against the backdrop of the above area-based programmes in north Dublin and the national objectives of the new government programme, \textit{Pathways to Work}, it is worth exploring how the experience of local initiatives that have been working towards the integration of low-skilled into jobs can be brought together. Notwithstanding a clear priority of current policies on working towards fiscal stability on preventing people from becoming long-term unemployed, addressing the needs of those who have less sought after skill sets and opportunities is part of the national activation agenda.

\textsuperscript{22} Areas were designated for targeted investments and associated interventions by LDCs based on the \textit{Irish Index of Relative Aﬄuence and Deprivation} that is a composite measure. It is calculated by means of a complex statistical procedure (Confirmatory Factor Analysis) involving a number of socio-economic variables and demographic data (Haase, 1999; Haase and Pratschke, 2008)).

\textsuperscript{23} This multi-stakeholder model is mirrored at two levels: firstly, the board consists of representatives of the state sector (social protection, health, employment, probation services), local government (ofﬁcials and elected representatives), the social partners (employers, trade union representatives and representatives from the Environmental Pillar) and the community sector (elected representatives from community-based organisations); secondly, the programmes and measures are funded and run in collaboration with partners from the private sector, international funders, the state, the educational institutions and the community and voluntary sector. Appendix 3 provides a visualisation of the complexity of relationships for Northside Partnership.

\textsuperscript{24} The impact of these initiatives in the case study area for 2011 is illustrated in Appendix 2.
Conclusion

Ireland has been strongly promoting education and, as a result, has a well-educated workforce and a favourable demographic structure. Highly-educated job seekers and university graduates cannot, however, find jobs in Ireland in the current economic climate. At the same time, there is recognition that a sizeable segment of the labour force does not have skill sets that match the current and future labour market requirements in the economic growth sectors.

Creating meaningful job opportunities and realistic interventions for up-skilling low-skilled people requires a long-term strategy that must take into account and cater for differences within the segment of the labour market that falls into the category ‘low-skilled’.

Measures also need to be cognisant of a spatial dimension. From the perspective of member states of the European Union, acknowledging the effect of global economic forces and the state of flux concerning economic power balances and their impact on the development potential of nations and regions, a strategy addressing the job creation for the unskilled or under-skilled needs go beyond the short-term needs of the economy. Already, a number of promising pilot projects exist in OECD countries, providing local solutions and approaches of “what works” locally (OECD, 2010a) – though often governance mechanisms translating learning from these initiatives into the sphere of political decision-making seem to be lacking or poorly developed. The NESC point out, “It is hugely important that the policy system enhances its knowledge and understanding of what works, what does not, and how policy design and delivery can be improved in a manner that generates positive outcomes for both clients and the state” (NESC, 2011 p. 5).

The case study from north Dublin serves to highlight local realities, the complementary role LDCs play in supporting job seekers and, more generally, the importance of the spatial dimension to the issue of unemployment.

The developments in north Dublin stress:

- That national labour market activation policies cannot succeed in increasing the scope for low-skilled people to find and access work if they do not take into account the potentially hampering effect of deeply embedded wider structural issues;
- That statutory activation programmes based on incentivisation and workfare work better if access to meaningful jobs, training opportunities and a collaboration of a number of policy arenas – involving a range of actors such as training and education providers, NGOs and social partners – can be achieved locally.

25 The role played by Local Development Companies in this field is subject to change. The Programme for Government (2011) indicates that alignment will take place between Local Development and Local Government. It is clear from the Programme and from Statements from the Minster Phil Hogan TD, that Local Government will be reformed and policy papers on this are due out of the Department of the Environment, Community and Local Government in the coming months. Local Government will have enhanced powers and competencies, which – to date – have not been defined (The Journal, 2012; Dáil Reply, 18 April 2012). The concept of “alignment” and what it means may become more apparent in the coming months and years. Some clarification may come when the Minister produces his reform policies. Ireland is in a difficult economic situation and as part of the agreement with the Troika, and the requirements of developing an efficient and dynamic economy, policy and structural reform are inevitable and are to some extent laid out in the Programme for Government (2011). Changes are inevitable in most sectors. Once the Government has introduced its Local Government Reform Policies, SOLAS and the National Employment Entitlement Service (NEES) - its name will be changed - between June and December of 2012, the direction and role that Local Development Companies will play in this field may become clearer. It would be worth returning to part of this topic again in 2013.
Even if physical accessibility of nearby job and opportunities for training could be achieved in the catchment area by the provision of public transport links to places of work and education, the gap between the skill sets that are required to work in the growth sectors of the regional economy, on the one hand, and level of local skills in the case study area, on the other, is too big to be closed in the short or medium term. This could be achieved through the development of a wider strategic joined-up response, involving both national and local partners from the field of education, businesses, local communities and various policy arenas. These joint efforts could take the form of a national-local alliance, which is based on the agreement and pursuit of mutual objectives and which needs to be coordinated at local level and strategically linked into the national governance framework.

Learning from the development and implementation of programmes and initiatives in north Dublin that have been directed at increasing employability of low-skilled job seekers and those people who need more complex supports in addition to training and up-skilling suggest that labour market activation policies work best:

- If they are based on multi stakeholder arrangements supported by government departments linking multiple layers of governance between the local and the national level;
- If they include expertise from both private providers and specialist providers in the Community and Voluntary Sector to complement state interventions;
- If they create meaningful job opportunities for local people based on a progression plan that takes into account local realities and the socio-economic context within which people live;
- If they look beyond the local/national and are informed by “what works” at the international level and are open to experimentation and pilots.

Based on the experience in the case study area, this paper argues that the success and effectiveness of national labour market activation programmes must be measured against their capacity to bring a local perspective to the resolution of the issue of long-term unemployment. We argue that an awareness and understanding of local realities assists in the development of meaningful policy interventions. Such interventions should be targeted at reducing the gap between local skill sets of some people from areas worst affected by structural disadvantage and socio-economic marginalisation and the demand for labour in the regional growth sectors.
## Appendix 1: Main Labour market interventions in case study area

<table>
<thead>
<tr>
<th>Name</th>
<th>Description/Objective/Funder and 2011 Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Speedpak Ltd.</td>
<td>Established by Northside Partnership in collaboration with the local business community and with the support of FAS. Speedpak is a successful social enterprise in the business of contract packing and manufacturing of rosettes that is supported by Northside Partnership. Between 2010 and 2011, Speedpak developed a Work Accreditation Model (WAM) that provides work experience in a commercial setting with a focus on positive work behaviours, accredited training courses; and specialist one to one support. The WAM approach captures workplace learning that can be converted to a recognised educational qualification.</td>
</tr>
<tr>
<td>NSP Higher Education Support Scheme (HESS)</td>
<td>Scheme piloted by Northside Partnership that became a national programme, the Millennium Fund in 2000. After the abolishment of the national programme in 2010, this programme is continued locally. It is accompanied by local educational interventions progressing young people from low income families into third level education. These have been quite successful at the individual level in terms of progressing people to access and complete third level courses.</td>
</tr>
<tr>
<td>NSP Local Employment Service Network (LESN)</td>
<td>Piloted by Northside Partnership in the early 1990s and established as national programme in 1996. Provision a range of labour market guidance and placement services, enabling people to move from unemployment and welfare dependency into the world of work and economic independence, as well as providing a free and confidential information and placement service to job seekers. The Service forms part of a national network throughout the country focused on working with unemployed job seekers to identify suitable, realistic work opportunities.</td>
</tr>
<tr>
<td>National Employment Action Plan (NEAP)</td>
<td>Unemployed people who reach the three-month threshold of unemployment are referred by the Department of Social Protection (DSP) to the Local Employment Service for an interview to encourage and assist them in re-entering work in form of a job, a training/education scheme, an employment scheme or work experience. The LES provides tailor-made guidance for clients.</td>
</tr>
<tr>
<td>NSP Labour Inclusion Programme (LIP)</td>
<td>This service was developed by Northside Partnership based on a model in Liverpool. LIP delivers a one-to-one training and career-path planning programme supporting the re-integration of ex-drug mis-users into employment. The programme provides information and assistance on accessing further education/training and ultimately getting back into suitable employment as well as settling back into the community.</td>
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<tr>
<td>NSP Business Network</td>
<td>Liaison with employers regarding employment opportunities and the identification of necessary skills needs. The Partnership matches both the employer and the unemployed people’s training needs, which, to date, has resulted in the creation of a range of programmes that have successfully integrated clients of the Local Employment Service Network (LESN) into employment.</td>
</tr>
<tr>
<td>Tús Initiative</td>
<td>National activation scheme based on the random selection of long-term unemployed. Local Partnership Companies are responsible for the recruitment of participants on behalf of the Department of Social Protection. Selected people are interviewed for a 19.5 hour/week work placement over the period of one year with a community group for a top-up of welfare payments by € 20-150. In 2011, 5,000 unemployed people were invited to participate in the initiative.</td>
</tr>
</tbody>
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### Appendix 2: Examples of LDC interventions in case study area and their outcomes

<table>
<thead>
<tr>
<th>Thematic Area</th>
<th>Outcomes</th>
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<tbody>
<tr>
<td><strong>Enterprise</strong></td>
<td>497 unemployed individuals received one-to-one guidance and advice to set up their own business.</td>
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<td></td>
<td>202 people participated in certified business training.</td>
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<td></td>
<td>235 people became self-employed over a wide variety of businesses such as Plumbing, Beauty Salon, Transport, Carpentry, Newsagents, and Hair Dresser. In 2010, 203 enterprises were set up and one year later 160 of these were still in business (survival rate of 75 per cent).</td>
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<td></td>
<td>80 women participated in certified business training under the Equality for Women Measure (EWM). 10 of these women exhibited their business at the North Dublin Chamber of Commerce (NDCC) Expo in November and each business was offered one year’s free membership of the Chamber.</td>
</tr>
<tr>
<td><strong>Employment</strong></td>
<td>94 long-term unemployed people participated in training programmes aimed at keeping people engaged and motivated while job seeking. These personal development programmes help unemployed people cope with their unemployed status and assists them in looking forward to changing their lives.</td>
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<td></td>
<td>67 new clients engaged on a one-to-one basis with the Labour Market Activation Programme (LiP) for recovering drug misusers. 8 people commenced full-time education, 15 enrolled in part-time accredited courses, 7 received placement on Community Employment Schemes and 5 gained full-time employment.</td>
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<td></td>
<td>1,859 individuals were supported in accessing training and education and 495 people were progressed into employment.</td>
</tr>
<tr>
<td><strong>Education</strong></td>
<td>254 young people from low income families or from an otherwise disadvantaged social background were assisted to access third level education. They received career guidance and small financial supports (e.g. for transport costs, fees and learning materials) that prevents them from making ill-informed choices concerning their 3rd level education that are difficult to reverse.</td>
</tr>
<tr>
<td></td>
<td>Over 700 adult learners and young people (18-25) received one-to-one advice on educational opportunities and career paths.</td>
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<td></td>
<td>Speedpak, a social enterprise initiated by the local development company in the case study area, has developed a Work Accreditation Model (WAM©) training programme which captures learning in the workplace and converts it into a full FETAC level 4 award (equivalent to a leaving certificate). Participants in labour market participation programmes (Community Employment Scheme and the Tús programme) take part in this training programme. Of the 41 people employed by Speedpak in 2011, 87 per cent were referred by the Local Employment Service. A total of 194 accredited modules (FETAC Level 4) were completed by this group and 14 of these employees will be awarded a full FETAC level 4 Award in 2012.</td>
</tr>
<tr>
<td><strong>Evaluation</strong></td>
<td>New measures are being developed that are designed to measure the impact of the above interventions on people’s personal development and potential for their individual career progression: a research and evaluation unit was established within the local development company, Northside Partnership, to monitor outcomes of the company’s interventions; Speedpak developed a Distance travelled model that sets out to measure the progression of people’s competencies during their employment with the enterprise.</td>
</tr>
</tbody>
</table>

Source: NSP 2011 Annual Report and conversations with senior staff of the LDC.
Appendix 3: Overview of main relationships and remit of Northside Partnership LDC

*Pobal is an organisation that allocates funding to the company and monitors progress on behalf of the main funder of local development companies, the Department of Environment, Community and Local Government ("*) *.

Source: NSP Presentation, OECD Pobal Conference on 13/14 October 2011, Dublin Castle
Appendix 4: Case study area in north Dublin (Boundary of LDC catchment)

References


Corruption diverts resources from the public weal and bestows wealth and privilege on a small yet powerful class to the detriment of societies’ most needy. Elaine Byrne, in her book *Political Corruption in Ireland 1922-2010: A Crooked Harp?*, guides the reader through the complexities of Ireland’s corrupted political history. The book elicits discrete instances of corrupt behaviour to mount a picture of an intolerably corrupt political culture. Corruption seeped through the Irish state saturating the fabric of Irish social, economic and political life, precipitating economic collapse leading to the loss of Irish economic sovereignty in 2010. Byrne expertly depicts the uprooting of national solidarity for the private gain of a privileged few by empirically mapping the ‘decline in standards’ of our public representatives over a ninety year time span.

In her opening chapter, Byrne argues persuasively for an open-ended approach to defining corruption. She reports the United Nations Convention against Corruption’s descriptive definition as ‘Corruption is a fluid concept, signifying different things to different people. More importantly, it is an evolving concept...’ Byrne’s aim is to promote renewed perceptions of corruption in the public consciousness. Accordingly, ‘mediated corruption’ emphasises the requirement of public representatives to both act and be seen to act democratically. Her definition impugns acts, which although may be within legal parameters offends against the spirit of the democratic rule of law. Public representatives bear a heightened responsibility to avoid conduct that is ‘clearly wrong’ by the community’s moral standards rather than relying on narrow legalistic definitions of corrupt acts.

Chapter two remembers an honourable past when the Free State’s inaugural TD’s conscientiously guarded the fledging nation from the destructive consequences of corruption. The Free State government’s ‘obsession with probity’ emanated in no small part from the frustration of the independence movement by corrupt political patronage in the nineteenth century. Throughout the book Byrne offers case studies to substantiate her points. To illustrate this hopeful start she relays the infamous £4 9s 6d Civil War restaurant bill story – Ministers, TD’s and officials of the Free State were sheltered in Government buildings at the beginning of the Civil War; meals brought to them were paid out of public monies. Some two years later, Minister for Finance Ernest Blythe requested reimbursement for the meals as he didn’t think it appropriate such expenses be paid by the public.
Many pages pertain to Fianna Fáil’s dominance as a political force in Ireland and the concomitant corruption scandals from 1932-2011. Each chapter builds on the previous, demonstrating the effect of Ireland’s demographic and economic transitions on currents of corruption. In the early years of the State excessive economic protectionism facilitated discretionary and unaccountable decision making by State Ministers. The Wicklow Gold Inquiry 1935 and trilogy of tribunals – Great Southern Railways, (involving Archbishop of Dublin Dr. John Charles McQuid,) Ward and Locke attest to the unencumbered practice of bestowing special privilege on private individuals to the detriment of the public good.

Chapter four deals with the period 1950’s-1970’s. Byrne expertly identifies a rising urban population as the catalyst for a new form of corruption – corruption in the planning process. The Planning Act 1963 developed in the context of a growing population and a political appreciation of the importance of long term economic policies. Thus, any person wishing to build would have to apply for permission from one of the planning authorities created by the Act. However, Section four empowered a local councillor to override a planning decision by a county or city manager. This provision created the space for egregious abuse of power within the panning process.

The chapter dealing with the period 1980’s-1990’s is aptly entitled ‘Golden Circles’, a discerning commentary on the corrupt relationship between big business interests and political elites. Byrne furnishes details of political payments to both Fianna Fáil and Fine Gael from wealthy business people which served to oblige Ministers to implement favourable policies, often to the detriment of the common good. The reader is presented with a glance inside the extravagant lifestyles of political leaders such as Charles Haughy and business tycoons like Dermot Desmond – Byrne’s so called ‘self made men’. The breathtaking arrogance with which these men exploited the taxpayer for their personal gain is painfully evident in Byrne’s survey of the Greencore and Telecom Éireann scandals and the Beef Tribunals.

Chapter six – The Tribunal Period 1990’s-2000’s reads as a manual to the McCracken, Moriarty and Flood/Mahon tribunals of inquiry. Byrne produces a meticulous analysis of the tribunals – their context, key actors and findings. The tribunals revealed a damaging culture of politicians accepting political donations in return for favourable policy decisions. Political decisions of intrinsic consequence to the State itself were therefore taken in favour of the single minded financial gain of powerful business and political elites. Byrne discusses the potential impact of these ‘unorthodox links between political donations and business interests’ on Ireland’s financial crisis and eventual loss of economic sovereignty. Fianna Fáil’s financial dependence on the beef industry in the 1980’s and on the construction industry in the 1990’s and 2000’s led to myopic policy decisions and deepened Ireland’s economic crash.

In her final chapter, Byrne reviews the relationship between corruption and the Irish party system, Irish culture and religion, and the Irish media. She argues that the parochial focus of the Irish voting system supports corrupt TD’s once they are perceived to work for their constituency. For instance, Michael Lowry’s electoral fortunes expanded following his expulsion from Fine Gael for corrupt financial dealings with businessman Ben Dunne. Further, Byrne proffers traditional Irish deference to a hierarchal Catholic Church and a reluctance to betray political colleagues as facilitators of corruption. Finally, the chapter includes a discussion of the media’s role in disseminating information on corruption scandals so that public representatives can be held to account.
The corruption scandals documented in Byrne’s book had, as their primary objective, the pursuit of maximum profit for one sector in the economy. In the pursuit of maximum profits for beef barons and property developers, the key political actors pursued for themselves the goal of maximum personal gain, as evidenced by revelations of obscene salaries, bonuses, expenses, pensions, widely disproportionate to the lowest earners in our economy. It is the poor, the unemployed, the socially excluded who are the inevitable collateral damage as wealthy elites single-mindedly pursue personal gain.

Angelina Cox  
*Junior Sophister student, Law and Political Science, Trinity College Dublin, Ireland*
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