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Comparing Social Security Provision North and South of Ireland: Past Developments and Future Challenges¹

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ABSTRACT

The post-Brexit landscape in the north and south of Ireland has resulted in more focused discussions on the possibilities associated with the reunification of Ireland. The welfare state on both sides of the border provides social security protection to those who are out of work and will remain an essential element of any new constitutional settlement. This paper aims to set the scene for future conversations on the development of an all-Ireland social welfare

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¹ Read Responses to this paper by Madeline Leonard, <https://doi.org/10.3318/isia.2021.32b.33> and Fiona Dukelow, <https://doi.org/10.3318/isia.2021.32b.34>.

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system. The respective systems have more in common than not, creating both opportunities and challenges that must be given adequate thought and attention in preparation for a potential border poll.

INTRODUCTION

Since the onset of the ‘Brexit’ referendum, in which the United Kingdom (UK) questioned its ongoing membership in and relationship with the European Union (EU),² many have posed key questions regarding the impact on the status of Northern Ireland (NI). Chief amongst those, of course, has been the degree to which Brexit might accelerate efforts towards the reunification of Ireland.³ However, a point that has been less explored is what Brexit might mean for the coordination of more ‘bread and butter’ issues, which should be mobilised in the process of imagining a ‘new’ Ireland.⁴ This article addresses that gap and examines the discrete area of social welfare coordination, north and south of the border in Ireland.⁵

From a historical standpoint, significant parallels can be drawn in the development of the Irish and British welfare state, particularly in the early twentieth century and in respect of the post-war influence of Sir William Beveridge. Beveridge is credited with ushering in the UK’s social security system, which provided for a centralised administration of insurance-based benefits for the unemployed, the sick, and those with caring responsibilities. The skeleton of Beveridge’s system remains, but the body of social security provision has been ravaged by economic and political change during the twentieth and twenty-first centuries. This article argues that the ideological drivers in respect to welfare state change in Ireland and the UK have more in common than not. Despite clear distinctions in how these systems operate, austerity, activation policies and xenophobia are all common drivers.

² Ntina Tzouvala, ‘Chronicle of a death foretold? Thinking about sovereignty, expertise and neoliberalism in the light of Brexit’, *German Law Journal* 17 (Brexit Supplement) (2016), 117–24.

³ Brendan O’Leary, ‘Getting ready: the need to prepare for a referendum on reunification’, *Irish Studies in International Affairs: ARINS* 32 (2) (2021), 1–38.

⁴ Gerry Mooney and Gill Scott, ‘Welfare, equality and social justice: Scottish independence and the dominant imaginings of the “new” Scotland’, *Ethics and Social Welfare* 10 (2016), 239–51.

⁵ See Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick, ‘Discussion paper on the Common Travel Area’, Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission, 2018, available at: <https://www.ihrec.ie/app/uploads/2018/11/Common-Travel-Area-Paper-13112018-1.pdf> (15 November 2020).

In the UK, ideologically driven policy has transformed the social security system from being a mechanism that protects the economic welfare of citizens to a blunt instrument that shapes the behaviour of those who are not engaging in the formal labour market. Ireland, too, has moved towards utilising the social security system to ‘activate’ and ‘responsibilise’ the unemployed; however, the policy measures introduced in the last two decades have not been as severe as those implemented in the UK. Both jurisdictions are also increasingly hostile to migrants who are seeking a new future, with respective governments in the UK and the republic of Ireland implementing restrictive policy measures to limit migrant access to support from the welfare state.

The article examines how the welfare systems north and south of the border are comparable, using a holistic analysis of their recent development. It does this to assess the potential ways they might move towards some form of shared social welfare system. It does not seek to answer definitively these questions of a shared future. Rather, it argues that these are larger normative questions that require careful consideration, and welfare scholars and interested stakeholders must begin posing these questions as this ongoing dialogue develops. In this way, the article seeks to develop the literature surrounding reunification by underlining the centrality of the welfare state in any future shift away from the current status quo.

The article begins with an analysis of the social security landscapes in both the UK and Ireland, with focus on the respective responses to the world economic crisis in 2008, particularly in relation to unemployment benefit. It then reviews the developing chasm between policymakers at Westminster and those in the Stormont Executive with respect to social security policy. The pressing need to address social welfare in an ‘All Ireland’ context is then considered, beginning with the potential for greater cross-border cooperation in respect of the Common Travel Area (CTA), which has established a relatively borderless travel area between the republic and NI, although the geographic area covered is generally extended to include GB.⁶ The exact nature and extent of the CTA is, of course, subject to the political and social

⁶ Bernard Ryan, ‘The Common Travel Area between Britain and Ireland’, *Modern Law Review* 64 (6) (2001), 831–54: 855; Aoife O’Donoghue, Colin Murray, Ben Warwick and Sylvia de Mars, ‘The Common Travel Area: prospects after Brexit’, 2017, available at: <https://dro.dur.ac.uk/20869/1/20869.pdf?DDC71+DDD19+DDC108+dla0ao> (15 November 2020). The Social Welfare (Consolidation) Act, Section 246(2) defines the Common Travel Area as applying to ‘the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.’

context of a particular point in time,⁷ which means that it has never been truly borderless. Rather, following the Good Friday Agreement, the CTA was expected to facilitate the particular political and social settlement in NI.⁸ The ‘borderless’ nature of the CTA is even more in doubt in a post-Brexit context due to the debates surrounding whether an internal border would have to be reintroduced now that the UK is effectively a third country, existing outside the EU.⁹ The article will then consider other potential measures that might be more suitable, as well as some larger normative considerations that must be addressed in the current political and social landscape.

We conclude that there is an opportunity for new thinking in social security policy development that can more effectively encompass the contemporary socio-economic needs of society. As we remain in the eye of the COVID-19 pandemic storm, the public appetite for answers to important social questions on poverty, inequality, housing and work has grown further.¹⁰

THE TWENTIETH CENTURY WELFARE STATE IN BRITAIN AND IRELAND

Upon gaining independence, the Irish welfare state developed primarily through mimicking the policy of the UK,¹¹ as evident in both the adoption of the Pension and Unemployment Acts and the introduction of the Child Benefit in the 1930s.¹² In the years immediately following the Second World War, William Beveridge, a Whitehall civil servant, sought to revolutionise

⁷ For an overview of this issue, see Jonathan Bardon, *A history of Ulster* (Belfast, 2005), and John Coakley and Michael Gallagher, *Politics in the republic of Ireland* (Oxon, 2005).

⁸ Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland, Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts. See also Protocol on the Application of Certain Aspects of Article 26 TFEU, Article 3.

⁹ On the border issue from the perspective of the Westminster government, see, for example, HM Government, *The United Kingdom’s Exit From and New Relationship with the European Union* (February 2017), available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf (22 April 2021).

¹⁰ John Harris, ‘What British politicians won’t admit: we need to transform the welfare state’, *The Guardian*, 21 February 2021, available at: <https://www.theguardian.com/commentisfree/2021/feb/21/politicians-admit-transform-welfare-state-covid-benefits-system> (10 March 2021).

¹¹ Mel Cousins, *The Irish social welfare system: law and social policy* (Dublin, 1995), 14–15.

¹² Old Age Pension Act 1932 (No. 18 of 1932); Unemployment Assistance (Amendment) Act, 1935 (No. 38 of 1935); Unemployment Assistance (Amendment) Act, 1938 (No. 2 of 1938); Geoffrey Cook, ‘Britain’s legacy to the Irish social security system’, in P.J. Drudy (ed.), *Ireland and Britain since 1922* (Cambridge, 1996) 65–86; Anthony McCashin, *Social security in Ireland* (Dublin, 2004), 25.

social assistance, communicating his vision in the Social Insurance and Allied Services report in 1942.¹³ This report was followed by the introduction of Family Allowance Act 1945, which provided support for children, and the National Insurance Act 1946. The Beveridge scheme saw the introduction of a national insurance model, financed by compulsory flat-rate contributions from workers and employers. Available only to contributors, he intended the system to provide a flat-rate minimum subsistence, which he viewed as an incentive for beneficiaries to provide for themselves.¹⁴ Beveridge's vision of contributors was inherently male—leaving women who did not work dependent on their husband's contributions, their obligations restricted to providing 'vital unpaid service' of childcare and housekeeping.¹⁵ The 'extraordinary' influence of Beveridge is evident in the adoption in Ireland of the Social Welfare Act 1952.¹⁶ However, social conditions in Ireland were distinct from those in Great Britain and, therefore, some of the measures were highly unsuitable, meaning that, even with the Social Welfare Act 1952, the industrialised, worker-based model led to the partial exclusion of a large number of individuals, including the self-employed, public servants and farmers,¹⁷ from comparable protections with workers in a system that remained reliant on these categories. Ireland also differed in terms of its treatment of healthcare, which formed a central part of the reforms suggested in the Beveridge Report, as many stakeholders saw this as more problematic.¹⁸

Beveridge's effort to create a universalist system, one that sought to guarantee social assistance as a right while at the same time providing incentives to work, to save for the future, and to preserve the centrality of individual responsibility, succeeded in defining 'the battleground as it has been fought over since'.¹⁹ In the UK, attitudes towards welfare provision can be divided along left/right political lines: the British left often looking to the collectivist

¹³ National Archives of Great Britain, William Beveridge, *Social Insurance and Allied Services* report, cab\66\31\27, 25 November 1942.

¹⁴ Cab\66\31\27, 11, para 20; 12, para 24.

¹⁵ Cab\66\31\27, 50.

¹⁶ Adrian Kelly, 'The development of social welfare in Ireland, 1922–1952' (unpublished PhD thesis, St Patrick's College, Maynooth, 1996).

¹⁷ McCashin, *Social security in Ireland*, 38. This has shifted since 2019 to grant self-employed persons a right to a specific category of Jobseeker's Benefit. See Fiona Reddan, 'Self-employed to benefit from the dole for the first time from November', *Irish Times*, 29 April 2019, available at: <https://www.irishtimes.com/business/personal-finance/self-employed-to-benefit-from-the-dole-for-the-first-time-from-november-1.3874890> (16 November 2020).

¹⁸ Anthony McCashin, *Continuity and change in the welfare state: social security in the republic of Ireland* (New York, 2019), 53.

¹⁹ Nicholas Timmins, *The five giants: a biography of the welfare state* (3rd edn, London, 2017), 60.

effort to end poverty, and the right holding the view that the state should only provide the basic minimum in return for the fulfilment of un-negotiable obligations.²⁰

In Ireland, the dominant Fianna Fáil-led governments of the early state often emphasised a desire to ‘make the resources and wealth of Ireland subservient to the needs and welfare of all the people of Ireland’²¹ and that ‘the social system at present...is not anything like what it ought to be...It ought to be our constant endeavour to try to remedy it’.²² Article 45 of the 1937 Constitution refers to the obligation placed upon the state to ensure the welfare of ‘the whole people’, albeit as a directive principle only and one that is not judicially enforceable. This apparent political commitment and constitutional (albeit non-binding) obligation was ultimately not implemented in practice, with the Irish state often agreeing to have core welfare state services—particularly for persons with disabilities—provided by the Catholic Church, non-governmental organisations, and other non-state actors.²³ Thus, the national welfare state was said to have been underdeveloped for much of its existence,²⁴ with a reticence by design within the executive to take on a centralised role in welfare provision.

THE CONTEMPORARY SOCIAL SECURITY SYSTEM IN THE UK

Until the 1980s, the UK and Irish welfare states were broadly in step, but the highly politicised movement to retrench the welfare state in the UK led to a divergence between the two. This divergence began with the Thatcher government in 1979,²⁵ and continued in earnest with the premiership of Conservative prime minister, John Major, until his party was defeated at the polls in 1997 by ‘New Labour’ who, to a lesser extent, continued on the same trajectory set by the Conservatives, particularly in its treatment of the unemployed.

²⁰ Timmins, *The five giants*.

²¹ UCD Archives, ‘Memorandum regarding constitution of Fianna Fáil’, MacEntee Papers, P 67/443, 9 November 1926; Fianna Fáil, *Cóni 1934–35* is one such example.

²² Maurice Moynihan (ed.), *Speeches and statements by Eamon de Valera, 1917–73* (Dublin and New York, 1980), 326.

²³ Mel Cousins, *Social welfare law* (Dublin, 2002), 15.

²⁴ McCashin, *Social security in Ireland*, 25; and Cook, ‘Britain’s legacy to the Irish social security system’.

²⁵ See generally, W. Benn Michaels, *The trouble with diversity: how we learned to love identity and ignore inequality* (New York, 2006); R. Rosen, *The world split open: how the modern women’s movement changed America* (London, 2006).

The role of devolved nations in the development of social security policy was extremely limited until the 21st century, with Northern Ireland maintaining a principle of parity to UK law and policy, as will be discussed in detail below.

A swathe of reforms from 1985 and 1996 sought to introduce activation measures to emphasise the primacy of paid employment,²⁶ which was one of the key drivers of reform in both the UK and Ireland. These reforms saw the long-term incursion of ‘welfare conditionality’ into the social security system through the introduction of measures to ensure that claimants accept and meet specific duties before receiving unemployment benefit.²⁷ The centrality of activation in the UK system was further demonstrated in the introduction of Jobseeker’s Allowance (JSA), which required claimants to accept a Jobseeker’s Agreement—a contract between the state and the individual. Under this Agreement, the claimant would not be eligible for benefits unless they agreed to specific employment-related conditions. The introduction of JSA represented a watershed moment in the government’s efforts to ensure that the unemployed were maximising their efforts to seek work, reflecting an ideological position that the unemployed were unmotivated, even lazy, and required a greater ‘stick’ in the form of closer monitoring to ensure compliance with activation measures and sanctions in the event of non-compliance with the jobseeker contract.²⁸ This ‘contractarian’ welfare approach for unemployment benefit, based on claimant behaviour, has endured to the present, subverting the post-war concept of social citizenship from prioritising rights and entitlements towards the overwhelming salience of individualist and consumerist approaches to social security policy. The 1980s and 1990s also witnessed the fundamental erosion of the foundation stones of the Beveridge system—the contribution principle.²⁹ The introduction of the Jobseekers Act

²⁶ Social Security Act 1986; Social Security Act 1988; Social Security Administration Act 1992; Jobseekers Act 1995. See generally, Norman Johnson, *Reconstructing the welfare state: a decade of change, 1980–1990* (London, 1990).

²⁷ Michael Adler, ‘The justice implication of “activation policies” in the UK’, in Sara Stendhal, Thomas Erhag, and Stamatia Devetzi (eds), *A European work-first welfare state* (Sweden, 2008), 95–131:103; and Peter Dwyer, *Welfare rights and responsibilities: contesting social citizenship* (Bristol, 2000), 129.

²⁸ Laura Lundy, ‘From welfare to work? Social security and unemployment’, in Neville Harris (ed.), *Social security law in context* (Oxford, 2000), 291–335, 291; Anne Daguette and David Etherington, ‘Welfare and active labour market policies in the UK: the coalition government approach’, in Hugh Bochel and Martin Powell (eds), *The coalition government and social policy: restructuring the welfare state* (Bristol, 2016), 201.

²⁹ See generally, David Piachaud, ‘The growth of means-testing’, in Alan Walker and Carol Walker (eds), *Britain divided: the growth of social exclusion in the 1980s and 1990s* (London, 1997), 75–83.

1995 weakened contributory benefits to the point where they now represent a minority form of social security provision.³⁰

New Labour asserted at the outset: 'The new welfare state must encourage work, not dependency'.³¹ At the centre of its agenda existed further theoretical reconceptualisation of social citizenship, led by political thinker Anthony Giddens, who introduced the philosophy of the 'third way'.³² The basic principle of the third way was that there ought to be 'no rights without responsibilities'. Paid work was to be encouraged in three main ways: by incrementally increasing the responsibilities for different groups of unemployed (through 'New Deal' programmes),³³ making work pay (ensuring the levels of income were high enough to make paid work worthwhile), incentivising work via the introduction of tax credits, and developing human capital through targeted assistance to find jobs, which included the development of employment and training opportunities that linked participation to entitlement.³⁴ By the end of New Labour's thirteen-year tenure, the majority of the working-age claimant population were contractually bound to take part in work-focused programmes.³⁵ New Labour continued a categorical approach to the distinction between 'deserving' claimants, in the form of those clearly unable to work, and 'undeserving' claimants, in the form of those who resigned themselves to 'worklessness'. The narrative they established, that 'work is the best route out of poverty', meant that the perceived need for a strong welfare state was further weakened.³⁶ Their successor, the Coalition government, was therefore given a freer hand to reduce social support structures as part of the ambition to decrease the economic deficit, with minimal public or political uproar.

As the world continued to reel from the impact of the global financial crash in 2008, the election of the Conservative-Liberal Democrat Coalition government in 2010 ushered in an 'age of austerity' in the UK, with the new

³⁰ Laura Lundy, 'From welfare to work? Social security and unemployment', in Harris, *Social security law in context*, 291–335: 291.

³¹ Tony Blair, 'Leader's speech,' Labour Party Annual Conference, Brighton 1997.

³² Anthony Giddens, *The third way: the renewal of social democracy* (Bristol, 1998).

³³ Stephen Driver, 'New Labour and social policy', in Matt Beech and Simon Lee (eds), *Ten years of New Labour* (London, 2008), 50–67, 53.

³⁴ Mike Brewer, Tom Clark and Matthew Wakefield, 'Social security in the UK under New Labour: what did the third way mean for welfare reform?', *Fiscal Studies* 23 (2002), 505–37: 511. Brewer, Clark and Wakefield outline two main ways that Labour encouraged the unemployed to assume paid work. The latter point has been added by the author, as it can be argued that it also played a key role in supporting Labour's promotion of paid work.

³⁵ Ciara Fitzpatrick, 'Poor citizens: social security law and the unemployed, 1979–2012' (unpublished PhD thesis, Ulster University, 2019), 128.

³⁶ Fitzpatrick, unpublished PhD thesis, 192.

Conservative chancellor, George Osborne, making a commitment to ‘move away from an economic model that was based on unsustainable private and public debt’.³⁷ A major casualty of this agenda was to be the social security budget,³⁸ with severe and punitive measures delivered through the Welfare Reform Act 2012. The election of the majority Conservative government in 2015 brought a new swathe of austerity measures, including the Welfare Reform and Work Act 2016, with the government announcing its intention to extract a further £12bn from the social security budget.

The flagship reform of the UK coalition and Conservative governments was the introduction of Universal Credit (UC), a single working-age benefit that brings together six ‘legacy’ benefits into one payment.³⁹ Universal Credit was part of the drive to further intensify welfare conditionality UC introduced the ‘claimant commitment’ to replace the Jobseeker’s Agreement, which included a new sanction which, at its most severe, would remove unemployment benefit for three years (subsequently reduced to six months in 2019).⁴⁰ The coalition government sought to convey the message to claimants that ‘choosing a life on benefits when you’re able to work is not an option’, using sanctions as a critical part of this approach.⁴¹ Webster termed this policy move ‘the great sanctions campaign’, and sanctions peaked at over one million in 2013.⁴²

Alongside the new benefits, the Conservatives introduced a number of further reforms designed to change the behaviour of those whose lifestyle was considered incompatible with the fulfilment of socio-economic goals.⁴³ The ‘bedroom tax’ limited housing benefit for social housing tenants who were deemed to have more rooms than ‘necessary’. While this policy was projected to generate a £490 million saving by 2014–15, it did not nearly meet this level

³⁷ George Osborne, ‘A new economic model’, Mais Lecture, 24 February 2010, available at: <http://conservative-speeches.sayit.mysociety.org/speech/601526> (27 January 2021).

³⁸ Of the £99 billion of spending reductions by 2015–16, £11 billion cuts were to be applied to benefits and tax credits. Out of the fifty policy decisions listed in the budget, twenty-three were cuts to social security. Timmins, *The five giants*, 358. See, HM Treasury, ‘Budget 2010 Securing the Recovery’, HC 451, 2010.

³⁹ Means-tested Jobseeker’s Allowance (JSA) and Employment and Support Allowance (ESA); Child Tax Credit; Working Tax Credit; Housing Benefit; Income Support. A number of existing payments for working age claimants will remain, including contribution-based JSA, contributory ESA, Attendance Allowance and Carer’s Allowance.

⁴⁰ Welfare Reform Act 2012, s.49.

⁴¹ Mark Hoban, Minister for Employment, quoted in DWP press release, 22 October 2012.

⁴² Patrick Butler, ‘David Webster: benefit sanctions should be a thing of the past’, *Guardian*, 1 August 2017. See also, Michael Adler, ‘A new leviathan: benefit sanctions in the twenty-first century’, *Journal of Law and Society* 43 (2) (2016), 195–227: 208.

⁴³ Neville Harris, ‘Conditional rights, benefit reform, and drug users: reducing dependency?’ *Journal of Law and Society* 37 (2) (2010), 233–63: 233.

of savings and, by the end of the 2014 financial year, was downgraded to £360m.⁴⁴ The management of social tenants, much like the unemployed, has been underscored by the promotion of a culture of responsibility.⁴⁵ A ‘benefit cap’ for ‘workless households’ was implemented to ensure that no family received more in social security than the ‘average’ family income for working households. The benefit cap limit was subsequently further reduced,⁴⁶ and further cuts were applied to housing benefit. Child Benefit, one of the most fiercely guarded and only remaining universal benefits, was also cut and withdrawn from higher rate taxpayers. This reform was introduced with the aim of saving £2.5 billion.⁴⁷ Child Poverty Action Group concluded that the result was that the UK’s tax and benefits system would ‘no longer recognise the extra costs of having children that are faced by all families across all incomes’ for the first time in over a century.⁴⁸

From April 2011, the government switched from using the Retail Price Index to the (lower) Consumer Price Index as the basis for uprating benefits, tax credits and pensions, including public service pensions. The switch was projected to save the government in the region of £6 billion by 2014/15. In the summer 2015 budget, Chancellor George Osborne announced a four-year freeze on working age benefit rates, which meant that they would not rise with inflation. This measure, designed to save £3bn, was projected by the Institute for Fiscal Studies (IFS) to produce an overall reduction in benefit entitlements by £4.6 billion per year, resulting in entitlements being on average

⁴⁴ Timmins, *The five giants*, 328. See also, Stephen McKay and Karen Rowlingson, ‘Social security under the coalition and Conservatives: shredding the system for people of working age; privileging pensioners’, in Hugh Bochel and Martin Powell (eds.), *The coalition government and social policy: restructuring the welfare state* (Bristol, 2016), 179–200: 181; Table 8.1: Key Reforms to Social Security 2010–2014, 183; Robert Chote, ‘Post-budget presentations: opening remarks’ (2010), available at: <https://www.ifs.org.uk/budgets/budgetjune2010/chote.pdf> (24 February 2021); Patrick Butler, ‘Bedroom tax has failed on every count’, *The Guardian*, 28 March 2014, available at: <https://www.theguardian.com/society/2014/mar/28/bedroom-tax-failed-overcrowding-savings> (11 March 2021).

⁴⁵ Helen Carr and Dave Cowan, ‘The social tenant, the law and the UK’s politics of austerity’, *Oñati Socio-Legal Series* 5 (1) (2015), 73–89: 80–81.

⁴⁶ HM Treasury, ‘Spending review 2010’, Cm 7942, October 2010, 8. See also, S. Kennedy, W. Wilson, V. Apostola, R. Keen, ‘The Benefit Cap, House of Commons briefing paper’, Number 06294, 21 November 2016, available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06294#fullreport> (24 February 2021). Current Benefit Cap amounts are available at: <https://www.gov.uk/benefit-cap/benefit-cap-amounts> (2 March 2021).

⁴⁷ HM Treasury, ‘Budget 2012’, HC 1853, March 2012, para 1.177, 30. See also, Timmins, *The five giants*, 331; Steven Kennedy, ‘Child Benefit for higher income families’, House of Commons Library Note, 2012.

⁴⁸ Rys Farthing, ‘Save Child Benefit’, CPAG, Policy Briefing, 2012, 7–8.

£450 lower per year for around 10.5 million households.⁴⁹ Also announced in the 2015 budget was the so-called ‘two-child limit’, whereby families would only be entitled to child tax credit and the child element of Universal Credit for the first two children born after 6 April 2017, reducing low-income-families’ support by around £3,000 per year.⁵⁰ Emeritus Professor, and long-time child poverty advocate, Jonathan Bradshaw has branded it ‘the worst social security policy ever’.⁵¹

Another key driver of welfare state change is xenophobia. The UK has created a ‘hostile environment’ for migrants, which plays into more tribal attitudes to welfare provision that is common in both jurisdictions. The UK implemented the habitual residence measure in 1994 in response to concerns about ‘benefits tourism’, which applied to all people who arrived in the UK (with some exemptions). In 2004, and in response to the growth of the European Union, the ‘right to reside’ standard was also introduced, which created a two-stage habitual residence test. Those without the ‘right to reside’ are not considered to be habitually resident and are unable to claim social security benefits.⁵² In 2012, the government started to enforce a ‘No Recourse to Public Funds’ (NRPF) condition on people who had obtained working visas to settle in the UK, which means they have no entitlement to social security benefits. The NRPF condition also extends to those without a valid immigration status, as well as to those ‘people

⁴⁹ Andrew Hood and Tom Waters, ‘Higher inflation means more pain for households from benefit freeze, less gain from £12,500 personal allowance’, 17 October 2017, available at: <https://www.ifs.org.uk/publications/9993> (15 February 2021).

⁵⁰ Tom Waters, ‘Reform to two-child limit addresses retrospection, but does not change long-run cut to support for big families’, 11 January 2018, available at: <https://www.ifs.org.uk/publications/13804> (2 March 2021).

⁵¹ Jonathan Bradshaw, ‘Why the two-child policy is the worst social security policy ever’, 1 November 2017, available at: <http://www.social-policy.org.uk/50-for-50/two-child-policy/>; as cited by Charlotte O’Brien, ‘“Done because we are too menny”: the Two-Child Rule promotes poverty, invokes a narrative of welfare decadence, and abandons children’s rights’, *International Journal of Children’s Rights* 26 (2018), 700–39: 701. The pandemic has widened the reach of the measure exponentially and there are now almost a million children who are affected, with an estimated 200,000 more children pushed below the poverty line. See, Kitty Stewart, Ruth Patrick and Aaron Reeves, ‘The Two-Child Limit now affects almost one million children: and it is rising when poverty is rising for larger families’, Child Poverty Action Group, 16 July 2020, available at: <https://cpag.org.uk/news-blogs/news-listings/two-child-limit-now-affects-almost-one-million-children> (15 February 2021). See also, Child Poverty Action Group, ‘2021 Budget Representation’, available at: <https://cpag.org.uk/sites/default/files/files/policypost/CPAG-2021-budget-submission.pdf> (15 February 2021).

⁵² Steven Kennedy, ‘The Habitual Residence Test’, House of Commons Library, 18 May 2011, available at: <https://commonslibrary.parliament.uk/research-briefings/sn00416/> (12 March 2020)

subject to immigration control’, unless they fall into a prescribed group.⁵³ Around 1.4 million people are reported to have NRPF conditions applied in 2020, including 175,000 children, with those affected more likely to fall into destitution.⁵⁴ The devastation caused by the introduction of the NRPF policy is exemplified by the Windrush scandal. People who had lived in the UK as British citizens for decades suddenly lost access to healthcare, social security, homes, and jobs, with some becoming destitute and others detained as they were suddenly categorized as ‘illegal immigrants’.⁵⁵ It is likely that the post-Brexit immigration system will create new challenges for migrants accessing social rights, with ‘a high risk that the most vulnerable will be the most likely to lose entitlements.’⁵⁶

The General Election in December 2019 resulted in a landslide victory for the Conservative Party under the leadership of Boris Johnson who campaigned under the slogan ‘Get Brexit Done.’⁵⁷ Social security policy was expected to remain consistent, but when the COVID-19 pandemic took hold in March 2020, the claimant numbers for UC began to increase exponentially, with 1.5 million claims in the six weeks leading to 12 April 2020, compared to 100,000 in January 2020.⁵⁸ Many of these new claimants were those who had lost their jobs because of Covid and were unprepared for the often huge drop in their income under UC, creating a new political pressure for government to raise the benefit rate. The government responded by introducing a weekly uplift of £20 per week (£1,000 per annum) from what it would have been at

⁵³ Immigration and Asylum Act 1999, s.115. Refer to Home Office ‘Guidance on Public Funds’ for exceptions and concessions to the NRPF condition: <https://www.gov.uk/government/publications/public-funds> (12 March 2013).

⁵⁴ Benedetta Zocchi, ‘No recourse to public funds: a government policy that traps people in poverty’, *Conversation*, 27 January 2021, available at: <https://theconversation.com/no-recourse-to-public-funds-a-government-policy-that-traps-people-in-poverty-153658> (12 March 2021). See also, Suzanne Fitzpatrick *et al.*, ‘Destitution in the UK 2020’, 9 December 2020, available at: <https://www.jrf.org.uk/report/destitution-uk-2020> (12 March 2021).

⁵⁵ House of Commons Home Affairs Committee, ‘The Windrush Generation’, Sixth Report of the Session, 2017–2019, available at: <https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/990/990.pdf> (12 March 2021).

⁵⁶ Kitty Stewart, Kerris Cooper and Isabel Shutes, ‘What does Brexit mean for social policy in the UK? an exploration of the potential consequences of the 2016 referendum for public services, inequalities and social rights’, *SPDO Research Paper* 3, 2019, available at: <http://sticerd.lse.ac.uk/dps/case/spdo/spdor03.pdf>.

⁵⁷ Luke Cooper and Christabel Cooper, ‘“Get Brexit Done”: the new political divides of England and Wales at the 2019 election’, *Political Quarterly* 91 (4) (2020).

⁵⁸ Neville Harris, Ciara Fitzpatrick, Jed Meers and Mark Simpson, ‘Coronavirus and social security entitlement in the UK’, *Journal of Social Security Law* 27 (2) (2020), 55–84.

the 2020 uprating.⁵⁹ This uplift does not extend to claimants remaining on those benefits which precede UC. However, the uplift was a time-limited offer, with the chancellor recently confirming that it will expire in September 2021, alongside the expectation that life will return to its pre-COVID reality. In the absence of this normality, the government has come under pressure to retain the uplift as a necessary lifeline, underlining the parsimonious level of existing payments. The government is keen to limit any extension for fear it will become permanent.⁶⁰ Alongside the uplift, there was an unprecedented relaxation of welfare conditionality, with claimants provided with a break from the arduous work-search requirements implemented as part of the Universal Credit regime.⁶¹

Further measures included the extension of disability awards and the removal of the Minimum Income Floor rules for the self-employed.⁶² Also notable are the amendments that provide employees who have the required national insurance contributions to claim Statutory Sick Pay (SSP) during a period of self-isolation—the level of SSP is just £95.98 per week.⁶³ Those not eligible, such as the self-employed or those who are low income, can apply for

⁵⁹ Benefits are uprated according to the Consumer Price Index (CPI) on an annual basis. There was a freeze on benefit uprating between 2016–2020, and therefore benefit levels are currently at 2015 levels (1.7% rise in April 2020). ‘After adjusting for price increases, this benefit freeze has cut the real level of those benefits by 6 per cent, and in many cases that has come on top of earlier real cuts’. See, Adam Corlett, ‘The benefit freeze has ended, but erosion of the social security safety net continues’, Resolution Foundation, 16 October 2019, available at: <https://www.resolutionfoundation.org/publications/the-benefit-freeze-has-ended-but-erosion-of-the-social-security-safety-net-continues/> (11 March 2021). Taking into consideration the £20 uplift, the levels went from £323.22 to £409.89 per assessment period (month) for a single claimant aged over twenty-five and from £507.37 to £594.04 for joint claimants at least one of whom is over twenty-five. See, Universal Credit Regulations 2013 (SI 2013/376), as amended by the Social Security Benefits Up-rating Order 2020 (SI 2020/234) and the Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371), reg.3.

⁶⁰ George Parker, ‘Minister airs doubts over Sunak’s plan to end uplift to universal credit’, *Financial Times*, 3 February 2021, available at: <https://www.ft.com/content/ee0879e7-1e5b-482c-bf2a-ee5bbe9d76f4> (15 February 2021).

⁶¹ Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) reg.10; or Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (SR 2020/53) reg.10).

⁶² The Minimum Income Floor (MIF) equates to the national minimum wage for each hour that a claimant is expected to work. For most people that will be thirty-five hours each week with exceptions for carers and those with physical or mental impairments. For the purposes of entitlement to UC, an individual will be treated as having earned income equivalent to the MIF. See, Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) reg.2; Northern Ireland, the Social Security (Coronavirus) (Further Measures) Regulations (Northern Ireland) 2020 (SR 2020/53).

⁶³ For a detailed review of change to the UK social security system in response to the pandemic, see: Harris, Fitzpatrick, Meers and Simpson, ‘Coronavirus and social security entitlement in the UK’, 55.

a one-off household payment (up to £500), the provision of which is based on meeting particular criteria.⁶⁴

THE CONTEMPORARY SOCIAL SECURITY SYSTEM IN IRELAND

The development of the Irish welfare system was much less ideologically driven, but the decision to leave it largely unchanged from the 1930s meant that it never developed to the same extent as the UK system and, therefore, never provided comparable levels of protection. Overall, the measures adopted in Ireland historically tended to be less effectual versions of those in the UK. This is not to say that the Irish State did not extend benefits in certain areas; for example, the Social Welfare Act 1973 introduced payments, such as the ‘unmarried mother’s allowance’. However, these extensions tended to be more isolated and were even subject to constitutional challenges by those who saw these as contrary to established social mores.⁶⁵ The key benefit of this divergence for citizens in the republic is that welfare conditionality and employment activation would not become key features of unemployment benefit until after the global financial crash of 2008.⁶⁶ Therefore, whilst the UK has often demonstrated a propensity to reduce the financial dimension of benefits, in Ireland the amounts awarded remained relatively constant until the 2008 financial crisis.

Although the Irish welfare system had experienced intermittent contractions in the level of welfare provision over time,⁶⁷ it was only in the late 1990s that it underwent a highly concerted programme of reform,

⁶⁴ Four different schemes in each part of the UK. See Department of Work and Pensions, Discretionary Housing Payments Guidance Manual, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/957616/discretionary-housing-payments-guide.pdf (20 March 2021).

⁶⁵ *MhicMathúna v Ireland* [1995] 1 I.R. 454. For greater context on this issue, see Colm O’Cinneide, ‘MhicMhathúna v Attorney General: a commentary’, in Mairead Enright, Julie McCandless and Aoife O’Donoghue (eds), *Northern/Irish feminist judgments: judges’ troubles and the gendered politics of identity* (Oxford, 2017), 137–46.

⁶⁶ On the historic lack of conditionality within the Irish welfare system, see David Grubb, Shruti Singh, and Peter Tergeist, ‘Activation policies in Ireland’, *OECD Social, Employment and Migration Working Papers* No. 75 (2009).

⁶⁷ See, for example, Dáil debates, ‘Social Welfare Bill, 1992: second stage’, Tuesday, 24 March 1992, vol. 417, no. 5, available at: <https://www.oireachtas.ie/en/debates/debate/dail/1992-03-24/26/> (22 April 2021); and Mark Brennock, ‘Keeping everybody happy just isn’t McCreevy’s style’, *Irish Times*, 11 December 1999, available at: <https://www.irishtimes.com/culture/keeping-everybody-happy-just-isn-t-mccreevy-s-style-1.260044> (22 April 2021).

prompted by the perceived need to tackle birth and ‘welfare tourism’.⁶⁸ This was based on the belief that asylum seekers⁶⁹ and certain categories of migrants were relocating to Ireland to take advantage of its more generous welfare system,⁷⁰ as well as its birthright citizenship, which would enable individuals to use ‘anchor children’ to ensure their own right to stay in the country. This resulted in the wholesale exclusion of asylum seekers from the primary welfare system through the creation of the system of Direct Provision,⁷¹ the adoption of a habitual residence condition for all migrants,⁷² the centralisation of the employment permit system, and revamping of the immigration system.⁷³ This emphasis on limiting or wholesale excluding migrants and asylum seekers from accessing the welfare state is an example of how the common driver of xenophobia or nationalism, which exists in both the Irish and UK systems, was invoked in the Irish context. Otherwise, as Aoife Nolan outlines

[I]ow taxes, the reliance on non-state actors to deliver [economic and social rights]-related goods and services, and the adoption of a market-based model to healthcare, including heavy reliance on

⁶⁸ Ronit Lentin, ‘Ireland: racial state and crisis racism’, *Ethnic and Racial Studies* 30 (4) (2007), 610–27: 610; *RTÉ Radio 1*, ‘The Marian Finucane Show’, 16 October 2003; Bryan Fanning and Faustin Mutwarasibo, ‘Nationals/non-nationals: immigration, citizenship and politics in the republic of Ireland’, *Ethnic and Racial Studies* 30 (3) (2007), 439–60; Mark Maguire and Fion Murphy, *Integration in Ireland: the everyday lives of African migrants* (Manchester, 2012), 18.

⁶⁹ For a detailed discussion of this issue, see Liam Thornton, ‘Social welfare law and asylum seekers in Ireland: an anatomy of exclusion’, *Journal of Social Security Law* 20 (2) (2013), 66–88.

⁷⁰ Steven Castles and Mark Miller, *The age of migration: international population movements in the modern world* (4th edn, London, 2009), 25; Hein De Haas, ‘The determinants of international migration: conceptualising policy, origin and destination effects’, International Migration Institute Working Papers, Paper 32 (April 2011), 1–31: 20. For the Irish position from the then minister for justice on this matter, see Conal O’Boyle, ‘The Bull’s Island’, *Law Society Gazette* (June 2000), 10, available at: <https://www.lawsociety.ie/globalassets/documents/gazette/gazette-pdfs/gazette-2000/june2000.pdf> (14 November 2020).

⁷¹ DSCFA, *SWA Circular 04/00 on Direct Provision* to Chief Executive Officers, Programme Managers, SWA Appeals Officers, Superintendent CWOs and CWO (10 April 2000); and DSCFA, *SWA Circular 05/00 on Direct Provision* to Chief Executive Officers, Programme Managers, SWA Appeals Officers, Superintendent CWOs and CWO (15 May 2000) were the original basis for this, the latter of which is now repealed. See also, Department of Justice, Equality and Law Reform, *Integration: a two-way process* (Dublin, 2000), 10, 25.

⁷² Charles O’Sullivan, ‘Europeanisation and the Irish habitual residence condition’, *Journal of Social Security Law* 26 (2) (2019), 79–96: 85.

⁷³ The Aliens Act 1935 was the primary legislation in place until the 1996 Act was adopted, although it was not until the Immigration Act 1999 that the 1935 was unseated as being the primary act in force.

private health insurance were key features of Celtic Tiger Ireland (and beyond).⁷⁴

Nolan's remarks underline the importance of this programme of reforms, which were focused on asylum seekers and migrants, and, other than this quite specific form of retrenchment, the Irish system of social security remained relatively constant.

Following the financial crisis of 2008 and subsequent financial bailout package entered into by the Irish state with the Troika—made up of the International Monetary Fund, European Central Bank and European Commission—Ireland saw its first sustained movement towards retrenchment.⁷⁵ This is the first clear example of the common driver of austerity reformulating the state's relationship to welfare provision on a sustained basis. The arguments for this relied on two central pillars: first, the more generous elements of the welfare state needed to be reformed to save it; and second, the actual cuts themselves were largely outside the control of the executive and mandated by the terms of the bailout package. The first argument is quite easily countered by the fact that Ireland had engaged in comparatively low levels of social spending,⁷⁶ while the latter, as Rod Hick argues, is more attributable to a desire to cut certain programmes that were viewed as wasteful. Although the state maintained a degree of discretion in terms of how cuts would be made, it was an opportunity for those within power to 'cut the cloth',⁷⁷ with an external force beyond their control to hold responsible.

As Philip Finn notes, conditionality became a core feature of the welfare system immediately after the onset of the financial crisis in Ireland, filtering

⁷⁴ Aoife Nolan, 'Welfare rights in crisis in the Eurozone: Ireland', in Claire Kilpatrick and Bruno De Witte (eds), *Social rights in times of crisis in the Eurozone: the role of fundamental rights' challenges* (2014), EUI working papers, 30–41. It should, however, be stressed that the Voluntary Health Insurance Act 1957 created the Voluntary Health Insurance Board (now VHI Healthcare), emphasising that, from some vantage points, the health system is more 'mixed', but without developing a nationalised system similar to the National Health Service (NHS) in the UK.

⁷⁵ Delia Ferri and Charles O'Sullivan, 'The impact of the economic crisis on the Irish legal system: between austerity and constitutional rhetoric', *Federalismi* (30 December 2016), 1–29: 26.

⁷⁶ Fiona Dukelow and Mairead Considine, 'Outlier or model of austerity in Europe? The case of Irish social protection reform', *Social Policy & Administration* 48 (4) (2014), 413–429; Fiona Dukelow and Mairead Considine, 'Between retrenchment and recalibration: the impact of austerity on the Irish social protection system', *Journal of Sociology & Social Welfare* XLI (2) (2014), 55–72.

⁷⁷ Rod Hick, 'Enter the Troika: the politics of social security during Ireland's bailout', *Journal of Social Policy* 47 (1) (2018), 1–20.

many on jobseeker's payments into activation schemes.⁷⁸ Although he counters the narrative that conditionality had never featured within the Irish welfare system, he does underline that it did not become a central tenet until after this time, despite being encouraged by many within the system itself.⁷⁹ The bailout package therefore presented the ideal opportunity to implement these reforms, as the responsibility for any measures adopted in respect of greater welfare conditionality and activation could be placed at the feet of the Troika and the need to successfully exit the bailout package. Within a short time, the Jobspath programme was implemented in order to ensure that those on unemployment benefits would be required not only to engage in further mandatory training, but also to take part in community work schemes and often unpaid internships.⁸⁰ Alongside this shift was an increasing emphasis on fraud prevention,⁸¹ with the implication being that this dual emphasis would root out those who were taking advantage of the system. The earlier discourse on migrants was now being mobilised to deal with benefit recipients more generally. The shift also demonstrated a very concerted move to align the previously quite constant provision in Ireland with the journey undertaken in the UK since the 1980s, which altered the nature of focus of social welfare provision and the relationship between state and claimant.

Additionally, the bailout programme itself necessitated large-scale adjustments to public welfare spending in particular, and led to cuts of almost €750 million.⁸² Such cuts could have been offset by increases in taxation and other measures, but this would have conflicted with the low-tax model that has been a consistent feature of the Irish economy for many decades, viewed as a key feature of its economic success. Increases in taxation would also have limited the potential to initiate cuts that were desirable to the executive. Many of these more substantive changes directly impacted upon disability-related payments and unemployment benefits. For example, the Disability Allowance

⁷⁸ Philip Finn, 'Playing with the absurdity of welfare: experiences of Irish welfare conditionality' (unpublished PhD thesis, Maynooth University, 2019), 96–130.

⁷⁹ Finn, unpublished PhD thesis, 96.

⁸⁰ See, for example, Department of Employment Affairs and Social Protection, *Pathways to Work* (Dublin, 2012); Department of Employment Affairs and Social Protection, *Pathways to Work* (Dublin, 2014); Department of Employment Affairs and Social Protection, *Pathways to Work* (Dublin, 2016).

⁸¹ Mary Murphy, 'Low road or high road? The post-crisis trajectory of Irish activation', *Critical Social Policy* 36 (1) (2016), 1–21; Mark Collins and Mary Murphy, 'Activation: solving unemployment or supporting a low-pay economy?', in Mary Murphy and Fiona Dukelow (eds), *The Irish welfare state in the 21st century: challenges and changes* (London, 2016) 67–92.

⁸² European Commission, 'Ireland's economic crisis: how did it happen and what is being done about it?', available at: ec.europa.eu/ireland/economy/irelands_economic_crisis/index_en.htm (15 November 2020).

(DA) was cut for younger recipients (between 18–21 and between 22–24), as well as increasing the qualifying age from 16 to 18.⁸³ Similar changes were made to younger recipients of unemployment benefits, as well as general cuts to the overall rates and to payments like the Rent Supplement, Maternity Benefit, and One Parent Family Payment,⁸⁴ mimicking the many cuts made in the UK during the 1980s. Overall, these measures had the most notable and disproportionate impact on vulnerable sections in society; some of the most affected were those under 25, persons with disabilities, low-income families and lone parents.⁸⁵ There was also a highly gendered component to those affected, with an over-representation of women within these groupings.⁸⁶

Despite Ireland's eventual 'successful' exit from the bailout programme, many of these changes remain in place. For instance, persons with disabilities have highlighted the need to reverse many of the cuts that impact them directly, a situation that poses a potential legal problem for the Irish state due to its ratification of the United Nations Convention on the Rights of Persons with Disabilities.⁸⁷ Likewise, the emphasis on conditionality and fraud have continued, with the latter forming a key element of Leo Varadkar's campaign for taoiseach and leader of Fine Gael,⁸⁸ despite its lack of success, including a later qualification from the relevant department on the value of running a campaign such as this.⁸⁹

⁸³ See: www.budget.gov.ie/Budgets/2010/Summary.aspx#SocialWelfare and www.budget.gov.ie/Budgets/2011/2011.aspx (15 November 2020). See also www.citizensinformation.ie/en/money_and_tax/budgets/budget_2012.html (15 November 2020); Disability Federation of Ireland, 'Newsletter: budget 2012 special', available at: www.disability-federation.ie/download/legacy/NEWSLETTER%20%20BUDGET%20SPECIAL%20December%202011.pdf (15 November 2020); and Disability Federation of Ireland, 'Budget 2012 analysis', 2012, available at: www.disability-federation.ie/about/publications/newsletter-budget-2012-special/full-text/ (15 November 2020).

⁸⁴ See <http://www.budget.gov.ie/Budgets/2010/Summary.aspx#SocialWelfare> and <http://www.budget.gov.ie/Budgets/2011/2011.aspx> (15 November 2020).

⁸⁵ Rod Hick, 'From Celtic Tiger to crisis: progress, problems and prospects for social security in Ireland', *Social Policy and Administration* 48 (4) (August 2014), 394–412.

⁸⁶ See: <http://www.oneparent.ie/CSO-Statistics-On-Lone-Parent-Families-2011.pdf> (13 November 2020).

⁸⁷ Charles O'Sullivan and Donna McNammara, 'The 'necessity' of austerity and its relationship with the UN Convention on the Rights of Persons with Disabilities: a case study of Ireland and the United Kingdom', *Human Rights Law Review* 21 (1) (2021), 1–29.

⁸⁸ Leo Varadkar, 'Welfare cheats cheat us all', 18 April 2020, available at: <http://leovaradkar.ie/2017/04/welfare-cheats-cheat-us-all/> (15 November 2020).

⁸⁹ Conor Gallagher, 'Social welfare fraud detection falls despite Varadkar campaign', *Irish Times*, 16 October 2017, available at: <https://www.irishtimes.com/news/politics/social-welfare-fraud-detection-falls-despite-varadkar-campaign-1.3256899> (14 November 2020); 'Official admits "welfare cheats" campaign was a mistake' *RTE News*, 17 December 2017, available at: <https://www.rte.ie/news/politics/2017/12/07/925784-welfare-cheats/> (15 November 2020).

The COVID-19 pandemic led to public health justifications for an extension of the welfare state and more generous welfare provision. The Irish executive's response to the first wave signalled a clear and quite immediate shift in the priorities of the state, with conditionality and other issues being set aside in order to halt the spread of the virus. Ensuring that the material needs of citizens were prioritised efficiently diverged quite markedly from past practice.⁹⁰ Although far from perfect, this response has carried over into the 2021 budget, with many payments, such as the Child Benefit, being increased in an effort to address the ongoing realities of a country under lockdown.⁹¹ However, it can be noted that many of these payments appear to be targeted more at general categories of payments and not at those who are the most vulnerable, raising questions over how significantly the priorities of the state have altered in substance rather than in form.

DEVOLUTION IN NORTHERN IRELAND

Overall, what can be drawn from the preceding analysis is that the Irish and UK systems are similar and dissimilar. They both utilise the same basic concepts and mechanisms, but the UK system implemented a greater ideological retrenchment of state support. The Irish system followed a slightly different trajectory in that it has not retrenched to the same degree, despite a more recent regression that bears many of the same, more ideologically driven, changes as the UK system, particularly since 2008.

Increased devolution in the United Kingdom has added a further layer of complexity to this narrative. In particular, the Scottish Parliament and the NI Assembly have taken steps of varying magnitudes to move away from the increasingly austere British welfare state model, particularly that which has been propagated since 2010. The Scottish Parliament's attainment of increased social security powers following the Independence Referendum in 2014 led to the passage of the Social Security (Scotland) Act 2018, which Mark Simpson *et al.*

⁹⁰ Charles O'Sullivan, 'Against ideology? examining social rights in Ireland during times of crisis', *BioLaw Journal: Rivista di BioDiritto* 2020 (Special Issue 1) (2020), 715–21.

⁹¹ Róisín Phelan, 'Benefit increase: Budget 2021: Irish parents set for Children's Allowance boost of €5 weekly for kids over 12 and €2 for children under 12', *Irish Sun*, 13 October 2020, available at: <https://www.thesun.ie/news/6018741/budget-2021-children-allowance-benefit-increase/> (15 November 2020).

suggest ‘represents a major step towards the establishment of a devolved system and a legislative statement of intent regarding social security’.⁹²

Meanwhile, NI has traditionally been less inclined to diverge substantially from approaches in Great Britain, despite being the only devolved nation to have social security competencies prior to 2012.⁹³ Despite social security being designated as a devolved power since the formation of the NI state in 1921, devolved NI governments have followed a parity convention whereby the rates and eligibility criteria for benefits reflect those in GB. This convention towards parity has been based on a statutory requirement to agree to the extent to which the GB and NI systems maintain parity but, perhaps more significantly, is also due to the budgetary constraints attached to the administration of a distinctive approach.⁹⁴ However, there was such political discontent with the measures contained primarily in Westminster’s Welfare Reform Act 2012 that the NI Executive negotiated an unprecedented welfare reform mitigation package in order to introduce a series of measures to lessen the impact of social security changes for claimants.⁹⁵ The divergences may be considered relatively small and are currently time-limited (recently extended to 1 April 2022). Yet as Simpson outlines, ‘their importance should not be underestimated’, particularly in the context of the scarcity of past departures from parity.⁹⁶ This mitigation package arguably demonstrates a precedent for future deviation from parity with Westminster policy on social security, particularly in the context of the colossal economic fallout from the current global pandemic and the yet largely unknown implications of Brexit.

The limitations of the annual block grant from HM Treasury to the Department of Finance create a financial disincentive to raise benefit levels

⁹² For a full analysis of the practical implications of the Social Security (Scotland) Act 2018, see: Mark Simpson, Gráinne McKeever and Ann Gray, ‘From principles to practice: social security in the Scottish laboratory of democracy’, *Journal of Social Security Law* 26 (1) (2019), 13–31: 13.

⁹³ Simpson, McKeever and Gray, ‘From principles to practice’.

⁹⁴ Mark Simpson, ‘Developing constitutional principles through firefighting: social security parity in Northern Ireland’, *Journal of Social Security Law* 22 (2015), 31–49: 31. See also Gráinne McKeever, ‘Legislative scrutiny, coordination and the Social Security Advisory Committee: from system coherence to Scottish devolution’, *Journal of Social Security Law* 23 (3) (2016), 126–49.

⁹⁵ Northern Ireland Office, ‘A fresh start: The Stormont agreement and implementation plan’, November 2015, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf (24 February 2021).

⁹⁶ Mark Simpson, ‘Protecting dignity, fighting poverty and promoting social inclusion in devolved social security’, Northern Ireland Assembly knowledge exchange seminar series, 2017, available at: http://www.niassembly.gov.uk/globalassets/documents/raise/knowledge_exchange/briefing_papers/series7/simpson060618.pdf (6 January 2021).

in NI.⁹⁷ Another reason is NI's long history of political instability and, indeed, the shifting political balance of the parties as single unionist rule, has been replaced by power sharing with nationalists and republicans, which has consequently upset the unionist predisposition of alignment to central UK policy and legislation. Sinn Féin, the second largest party in the Executive, expressed immediate objection to the austerity agenda enshrined in the Coalition's Welfare Reform Act 2012⁹⁸ and sought for the Bill to be rejected. Yet, they did not produce a viable alternative and ultimately transferred political power on the issue back to Westminster through the Fresh Start Agreement. The current Sinn Féin leadership elected to take control of the Department for Communities, and Minister Deirdre Hargey has asserted that tackling poverty is one of her key priorities.⁹⁹

Political disquiet in the NI Assembly became particularly evident, following Sinn Féin's assumption in 2012 of Chair of the Social Development Committee, which was responsible for the scrutiny of social security legislation. There was particular consternation as the evidence showed that the reforms would have a disproportionate impact on NI, unrivalled by any other region of the UK.¹⁰⁰ The Social Development Minister and Finance Minister (both DUP) resisted Sinn Féin's calls for substantive divergence on the basis of cost and the implications of deviation from Westminster policy, and the dispute eventually came to a head, as the Welfare Reform Bill failed to pass through the NI Assembly and, as a consequence, brought the institutions to the brink of a collapse.¹⁰¹ This divergence is of course emblematic of the

⁹⁷ McKeever, 'Legislative scrutiny, co-ordination and the Social Security Advisory Committee', 136–38. Statement from the Minister for Communities, Deirdre Hargey MLA, 2 February 2021: 'It is clear that the draft budget presents very significant challenges for the Executive and across departments with a constrained Spending Review outcome', available at: <https://www.communities-ni.gov.uk/news/hargey-resources-will-be-targeted-those-most-need> (24 February 2021).

⁹⁸ McKeever, 'Legislative scrutiny, co-ordination and the Social Security Advisory Committee', 137.

⁹⁹ 'Platform: Communities Minister Deirdre Hargey', *Irish News*, 21 February 2021, available at: <https://www.irishnews.com/news/northernirelandnews/2021/02/16/news/platform-communities-minister-deirdre-hargey-2221711/> (25 March 2021).

¹⁰⁰ The extent of the impact was first mapped out in a report commissioned by the Northern Ireland Council for Voluntary Action (NICVA). Christina Beatty and Steve Fothergill, 'The impact of welfare reform on Northern Ireland' *Centre for Regional Economic and Social Research October*, 2013, available at: <https://www4.shu.ac.uk/research/cresr/sites/shu.ac.uk/files/impact-welfare-reform-ni.pdf> (24 February 2021).

¹⁰¹ David Young and Michael McHugh, 'Northern Ireland Assembly votes down Welfare Reform Bill and leaves power-sharing Executive facing total collapse', *The Independent*, 26 May 2015, available at: <https://www.independent.co.uk/news/uk/politics/northern-ireland-assembly-votes-down-welfare-reform-bill-and-leaves-power-sharing-executive-facing-total-collapse-10277558.html> (24 February 2021).

republican/unionist divide, not only on welfare policy but also in respect of alignment with policies set in Westminster.

As part of the Fresh Start Agreement to stabilise the NI Assembly, the Executive parties negotiated a £585m ‘top up’ (from the Executive budget) to provide for the mitigation of the worst impacts of welfare reform. But as part of this deal, they also agreed to give fast-track effect to further prospective welfare reform, namely the measures contained in the Welfare Reform and Work Act 2016.¹⁰² A Working Group, led by Professor Eileen Evason, produced a report outlining recommendations for a range of supplementary payments to mitigate the loss of income for those with disabilities, ill-health, those impacted by the Benefit Cap and the Bedroom Tax, and working families impacted by the introduction of Universal Credit.¹⁰³ In addition, a number of payment flexibilities were agreed to further support affected claimants for four years from 2016–2020.¹⁰⁴ In the interim period the Executive collapsed, leaving civil servants responsible for administering the schemes. As the sand timer ran down to March 2020, it was confirmed that the schemes could not be extended without legislative consent from the Executive.¹⁰⁵

The Executive was reformed in January 2020, and, as part of the *New Decade, New Approach*, a commitment was made that ‘[a] review of welfare mitigation measures will be taken forward as a priority, with any agreed measures in place *before* March 2020.’¹⁰⁶ Nonetheless, the onset of the pandemic quickly changed the new Sinn Féin minister’s proactive approach to

¹⁰² ‘A fresh start: the Stormont Agreement and Implementation Plan’, 17 November 2015, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/479116/A_Fresh_Start_-_The_Stormont_Agreement_and_Implementation_Plan_-_Final_Version_20_Nov_2015_for_PDF.pdf (24 February 2021).

¹⁰³ ‘Welfare Reform Mitigations Working Group report’, January 2016, available at: <https://www.executiveoffice-ni.gov.uk/sites/default/files/publications/ofmdfm/welfare-reform-mitigations-working-group-report.pdf> (24 February 2021).

¹⁰⁴ Mervyn Storey, ‘Letter to NI church leaders’, 20 October 2014, available at: <http://www.irishchurches.org/lo/01/elfare-reform-response-from-minister-mervyn-storey/> (24 February 2021).

¹⁰⁵ Ciara Fitzpatrick, Kate McAuley and Kevin Higgins, ‘Mitigation of welfare reform in Northern Ireland: on a cliff edge’, *Child Poverty Action Group, Poverty*, Article 162 (Winter 2019), available at: https://cpag.org.uk/sites/default/files/files/resource/CPAG-Mitigation-welfare-reform-Northern-Ireland-Poverty162_0.pdf (24 February 2021).

¹⁰⁶ *New Decade, New Approach*, January 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/856998/2020-01-08_a_new_decade__a_new_approach.pdf (3 March 2021). The new Sinn Féin Minister committed to ‘work to challenge austerity and welfare cuts and will provide reaffirmed commitment to protect the most vulnerable and embed human rights standards in all that we do’. See Gemma Murray, ‘Communities Minister Deirdre Hargey reveals determination to get Casement Park built’, *Newsletter*, 15 January 2020, available at: <https://www.newsletter.co.uk/news/politics/communities-minister-deirdre-hargey-reveals-determination-get-casement-park-built-1366632> (24 February 2021)

a reactive approach, and rather than push the limits of devolution, the mitigation package introduced in 2016 has simply been extended for a further year, with a commitment to close two technical loopholes that compromised some people's access to mitigation payments. Despite positive soundings that the minister intended to introduce further mitigations, the current draft budget has revealed that severe financial pressure on the Department of Communities finances are likely to render this a distant possibility.¹⁰⁷ Indeed, Simpson affirms that NI's weak fiscal position makes it more susceptible to pressure to conform to UK government policy and is ultimately the primary obstacle to greater divergence.¹⁰⁸

A fundamental weakness in the current devolution model that the NI Executive is currently pursuing is that the four-year mitigation package was designed to be a time-limited measure, and, as such, its existence is predicated on having sufficient finances year on year¹⁰⁹—the cycle of cliff edges is set to continue indefinitely unless there exists a strong political will in the NI Executive to seek powers and the financial competences to implement a long-term solution. Thus, the prospect of an all-Ireland system becomes more appealing in this context, as it would incur a break from the financial dogma that currently binds the NI Executive to the parity principle. Yet, this possibility is tempered by bigger, unanswered constitutional questions about the political and legislative mechanics of reunification.

A SHARED FUTURE

On a surface level reading, both the Irish and UK social security systems appear to be quite similar in terms of the social, political and ideological drivers that have led to the development of their contemporary systems of income replacement. This similarity stems, in large part, from the Irish historical experience as a colonised state. In this way, the starting point of the Irish welfare state is that of the UK, as they had a shared legal foundation. Although they diverged to some extent over time, with the Irish welfare

¹⁰⁷ 'Department for Communities, (budget) equality impact assessment', 27 January 2021, available at: <https://www.communities-ni.gov.uk/sites/default/files/consultations/communities/DfC%20Draft%20Budget%2020212022%20Equality%20Impact%20Assessment.pdf> (24 February 2021).

¹⁰⁸ Mark Simpson, 'The social union after the coalition: devolution, divergence and convergence', *Journal of Social Policy* 46 (2) (2017), 251–68.

¹⁰⁹ McKeever, 'Legislative scrutiny, co-ordination and the Social Security Advisory Committee', 138.

state neither developing nor retrenching to the same degree, both can arguably be categorised as liberal models of welfare provision according to the model developed by Esping-Andersen,¹¹⁰ as both currently seek to emphasise employment, with social security benefits being increasingly conditional and with the objective of ‘basic sufficiency,’ whereby the state intervenes as a last resort with means-tested benefits for those in need. Those who have sufficient resources are encouraged to secure social protection and services through the market.¹¹¹

This is perhaps why the Common Travel Area has been proposed as a method of achieving a more unified approach, and potentially even facilitating a path towards reunification—by taking advantage of these commonalities and engaging in greater coordination rather than harmonisation. The CTA has often been used to justify both Ireland and the UK opting out of the scope of EU rules in the fields of immigration and asylum matters via Protocol 21 to the Treaty on the Functioning of the European Union (TFEU). In a post-Brexit context, however, Article 2 of Protocol 20 TFEU outlines that ‘The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the Common Travel Area),’ and this arguably includes social welfare matters. It is also difficult to view the rules in place for cross-border coordination without considering the existence of EU rules and how they supplement this issue. That is because, in the EU context, Regulation (EC) 883/2004 and the implementing of Regulation (EC) 987/2009, for example, provide the basis for the coordination of social security systems to ensure that movement for the purposes of employment does not impact a citizen’s entitlement to social security as s/he moves between member states.

The complexity attached to this regime is stark, but its ability to operate reasonably well demonstrates what has been possible in terms of the cross border coordination of both systems.¹¹² At the same time, Sylvia de Mars *et al.* also note that the similar habitual residence conditions in place in GB and NI pose difficulties and administrative challenges for cross-border access: ‘EU

¹¹⁰ Gosta Esping-Andersen, *The three worlds of welfare capitalism* (Cambridge, 1990), 27–28.

¹¹¹ Philip Manow, Bruno Palier and Hanna Schwander, ‘Introduction: welfare democracies and party politics: explaining electoral dynamics in times of changing welfare capitalism’, in Philip Manow, Bruno Palier, and Hanna Schwander (eds), *Welfare democracies and party politics: explaining electoral dynamics in times of changing welfare capitalism* (Oxford, 2018), 1–26: 7.

¹¹² See Stephanie Reynolds, ‘May we stay? Assessing the security of residence for EU citizens living in the UK’, in Michael Dougan, *The UK after Brexit: legal and policy challenges* (Cambridge, 2017), 181–202.

law has nudged and shaped the UK and Irish approaches to social security, but even pre-Brexit there have been areas where coordination has not been total or successful'.¹¹³ They also highlight that the existence of EU rules in this area acts as a bridge to alleviate many issues in terms of classification, etc., which would only be made worse if GB and NI were to diverge from these post-Brexit.¹¹⁴

Gráinne McKeever has also highlighted the extent to which this lack of clear coordination rules has failed to address certain gaps in pre-Brexit coordination measures.¹¹⁵ In *NB v HMRC*,¹¹⁶ the issue of accessing childcare in the republic by a northern citizen living close to the border was raised before the tribunal and was only resolved by arguing that this violated the appellant's EU Treaty rights to access services across the border. It is for this reason that *de Mars et al.* suggest that the 'gold standard approach' post-Brexit should be the creation of a Common Travel Area treaty to formalise all necessary arrangements, including in the field of social welfare and access to benefits.¹¹⁷ A treaty of this kind, although not prima facie representing the creation of an all-Ireland system, could be a vehicle towards ironing out some of the most prominent difficulties attached to the simultaneous operation of two social welfare systems, and indeed provide a greater impetus for the development of a unified approach more broadly.

However, increased coordination in this discrete area of social welfare law does not adequately address the question of how a shared future between both parts of the island may be envisaged in the field of social security and, indeed, in respect of the welfare state more broadly. As previously stated, in a post-Brexit context, there has been increased consideration of Irish reunification, as well as the potential for all-Ireland cooperation in various fields

¹¹³ de Mars, Murray, O'Donoghue and Warwick, 'Discussion paper on the Common Travel Area', 57.

¹¹⁴ de Mars, Murray, O'Donoghue and Warwick, 'Discussion paper on the Common Travel Area', 56–57.

¹¹⁵ Gráinne McKeever, 'Brexit, the Irish border and social security rights', *Journal of Social Security Law* 25 (2018), 34–55: 50.

¹¹⁶ (TC) NICom, 47.

¹¹⁷ de Mars, Murray, O'Donoghue, and Warwick, 'Discussion paper on the Common Travel Area'.

in lieu of this occurring.¹¹⁸ There is a considerable practical gap between the coordination of two distinct systems, as evident in the workings of the CTA, and the amalgamation of two distinct systems, which would be required in the case of reunification. It is not possible, in the parameters of this paper, to answer the question of what a 32-county welfare state would look like, or how it would operate, particularly in the context that there are so many unknowns in terms of what a model of reunification will entail.

A rational starting point is arguably a direct comparison of the current models of social security provision in the UK and the republic of Ireland; however, the authors contend that this is of limited value, as, crucially, it does not account for variance in the cost of living in either country or the gaps in equivalence between the different elements of both systems, nor does it account for the disparities in household entitlement owing to complexity of unemployed people’s lives and current family situations. However, the table below provides a simple view of the difference in provision for a single unemployed person, to allow for an insight into the headline generosity of a core social security benefit (before and during the pandemic).

Table 1. Unemployment benefit rate

Country	Unemployment benefit	Standard rate per week
UK	Standard element of UC	£74.00 (currently £94.00 in response to the COVID-19 Pandemic)
Republic of Ireland	Jobseeker’s Allowance	€203.00 (around £182.50) Those who are unemployed as a consequence of the pandemic can claim the Pandemic Unemployment Payment (PUP) to a maximum of €350 (highest earners).

¹¹⁸ See for example John Garry, Brendan O’Leary, Kevin McNicholl and James Pow, ‘The future of Northern Ireland: border anxieties and support for Irish reunification under varieties of UKexit’, *Regional Studies* (2020); Brendan O’Leary, ‘A referendum on Irish unity is coming, whether we like it or not’, *Irish Times*, 11 January 2021, available at: <https://www.irishtimes.com/opinion/a-referendum-on-irish-unity-is-coming-whether-we-like-it-or-not-1.4454681> (18 March 2021); Ed O’ Loughlin, ‘The ‘messy and angry’ prospect of Ireland reunifying’, *Atlantic*, 21 October 2019, available at: <https://www.theatlantic.com/international/archive/2019/10/ireland-britain-brexite-reunification/600328/> (18 March 2021). Also see the latest research from this journal’s Analysing Researching Ireland North and South (ARINS) Project, available at: <https://www.ria.ie/read-arins-research> (18 March 2021).

The standard rate of unemployment benefit in the Republic of Ireland is more than twice the rate of that in the UK. One of the rationales that Hick and Murphy offer for this particular divergence is the difference in ‘policy emphasis’ in respect of social welfare delivery.¹¹⁹ The UK has prioritised a ‘legislative’ model of social security, which ‘embraces complexity and its attendant policy considerations, such as work incentives, withdrawal rates, and so forth’.¹²⁰ Nowhere is this reflected more intensely than the introduction of UC. The benefit, which replaces six ‘legacy’ benefits, is still in the process of being rolled out across the UK (with a projected completion year of 2024) and is operating in tandem with the old system of benefits that encompasses different rates and eligibility criteria. Furthermore, the different devolution settlements, particularly in Scotland and NI, have fomented further divergence from the Westminster-designed social security model, creating a further level of complexity, as it includes various supplementary payments that invoke further variation in financial assistance provided by current UK schemes.¹²¹

In Ireland, there is a focus on ensuring a straightforward process of benefit administration that can facilitate an efficient delivery of payments. Hick asserts that the greater generosity in the administrative model reflects Ireland’s ‘discretionary’ approach, whereby benefit levels are announced in annual budget statements and are viewed as electorally important, even for politicians on the right. Thus, ‘ratcheting’ social security at budget time is quite common.¹²² In the UK, social security benefits are up-rated annually, in line with predetermined rules and by minuscule amounts—a process that does not feature heavily in public debate.

The complexity of undertaking a more extensive comparison exercise—particularly alongside the interaction of completely different healthcare systems that either absorb or generate additional costs for claimants—may render such a comparison meaningless, but it also frames the issue in a way that may not be helpful, taking one or other system as the normative model, when a first-principles approach might be better. It is for these reasons that the authors have opted to focus on the key drivers of welfare state change in both countries. Particularly in the aftermath of the 2008 financial crisis, there was a pronounced

¹¹⁹ Rod Hick and Mary P. Murphy, ‘Common shock, different paths? comparing social policy responses to Covid-19 in the UK and Ireland’, *Social Policy and Administration* 55 (2021), 312–25: 314

¹²⁰ Hick and Murphy, ‘Common shock’.

¹²¹ In Scotland, a new ‘Scottish Child Payment’ has been introduced which provides additional support to families. The Scottish Child Payment Regulations 2020.

¹²² Hick and Murphy, ‘Common shock’, 314; Hick, ‘From Celtic Tiger to crisis’.

advancement of an activation approach in respect of the unemployed, coupled with an increasing narrative of benefit deviance that sought to problematise the behaviour of social security claimants. There was also a concerted effort to exclude and isolate migrants from claiming social citizenship rights.

It is the synthesis of the political and economic motivations of each country that has enabled a consideration of some of the opportunities and challenges that future discussions may begin to address. From a utopian viewpoint, a constitutional reunification process provides an opportunity to build a new welfare state system from the ground up, prioritising the social, economic, and cultural rights of contemporary society, which can be enshrined in a legislative framework that embodies dignity, respect,¹²³ and a minimum standard of income for all social security claimants. Indeed, the devastating economic consequences related to the current pandemic have bolstered calls in the UK for ‘a new Beveridge report’, as increasing numbers of people fall into poverty and destitution.¹²⁴ Interestingly, in NI, the Democratic Unionist Party, who were most reticent to diverging from the UK welfare settlement in 2015, recently brought forward a motion in the NI Assembly that sought to affirm the need for ‘welfare support’, asserting that support via the ‘extension of the welfare mitigations...has been committed to and must be taken forward’.¹²⁵ This arguably represents a slightly different trajectory from the previous narrative and is an opportunity to create more political consensus in the north on how those in most need should be supported. South of the border, the 2020 election witnessed a significant surge for Sinn Féin, particularly from younger voters. The party centered its campaign on a need for drastic social ‘change,’ involving huge public investment in housing and childcare, as well

¹²³ The Scottish Equality and Human Rights Commission commissioned a research report to understand what a social security system based on dignity and respect would look like, which was instructive in influencing the development of the Social Security (Scotland) Act 2018. Mark Simpson, Gráinne McKeever and Anne Marie Gray, ‘Social security systems based on dignity and respect’, Equality and Human Rights Commission, August 2017, available at: https://www.equalityhumanrights.com/sites/default/files/social_security_systems_based_on_dignity_and_respect.pdf (18 March 2021).

¹²⁴ Michael Savage, ‘Call for new Beveridge report as number of destitute UK households doubles during Covid’, *The Guardian*, 20 February 2021, available at: <https://www.theguardian.com/society/2021/feb/20/call-for-new-beveridge-report-as-number-of-destitute-uk-households-doubles-during-covid> (18 March 2021).

¹²⁵ Alex Easton, ‘Welfare Support’ Official Report (Hansard), vol. 137, no. 2, 16 March 2021, available at: <http://data.niassembly.gov.uk/HansardXml/plenary-16-03-2021.pdf> (18 March 2021).

as tax increases for big business.¹²⁶ This focus on social change underscores changing priorities, particularly for the next generation.

The other side of this coin is laced with risk, particularly in light of both countries' embrace of retrogressive policies that have significantly eroded the rights of the unemployed, migrants, persons with disabilities, and women in the years since the 2008 financial crash. In this context, a unified welfare state might be one with even lower standards. This is particularly true given the Irish executive's propensity to blame external circumstances, such as the bailout package, for the reduction in welfare rights and higher degrees of conditionality, and the UK's embrace of austerity politics. Thus, it becomes necessary to have these difficult conversations *at the same time as* discussions on reunification from a constitutional and political standpoint, as policy actors determine the shape of a new system. For example, would the new system simply involve the assimilation of the NI social security system wholesale into that of the republic and would it be reordered accordingly? Would assimilation occur through a gradual phasing out of the northern system, a hybrid version that would include elements of both systems, a completely asymmetric arrangement where the north retains devolved autonomy in the social welfare sphere, or a new system that signals a clear break from the previously utilised systems on either side of the border with a joining mission statement? Maintaining the current structures in the north would also raise questions about autonomy in the spheres of health, given its symbiotic relationship with direct welfare payments as part of the larger welfare state, and taxation, in order to ensure that they have the required funds to make that autonomy effective.

What these benefits and risks highlight, in an overarching sense, is that any potential future in the welfare sphere will require asking and answering larger normative questions, as well as the mutual agreement of all parties to negotiations. While this may prove difficult, it is necessary to embed these discussions within any broader conversation surrounding reunification, or a shared future, for the island as a whole.

¹²⁶ Cliff Taylor and Pat Leahy, 'Sinn Féin surge driven by younger urban voters', *Irish Times*, 7 February 2020, available at: <https://www.irishtimes.com/news/politics/sinn-f%C3%A9in-surge-driven-by-younger-urban-voters-1.4164649> (18 March 2021).

CONSTITUTIONAL CHALLENGES AND OPPORTUNITIES

This article has endeavoured to outline the recent history of the development of the welfare systems north and south of the border in order to tease out how they compare and differ. One of the key commonalities is that both jurisdictions share a colonial past that offered a similar starting point for the development of their respective welfare states. Although Ireland ultimately never developed nor experienced ideological welfare retrenchment to the same degree as the UK, both systems have been shaped by the mobilisation of austerity and racism/xenophobia to justify the restriction of social security benefits in terms of availability, eligibility criteria, and the financial amounts provided.

In light of the increased debate post-Brexit concerning not only greater coordination but also reunification, significant questions arise in terms of what the shared vision for this future would look like. However, matters associated with the welfare state have often been represented as ancillary or less foundational within these debates. Even when scholars such as de Mars *et al.* discuss future arrangements, it is often practical or pragmatic, focused on existing arrangements that might be exploited to their full potential to benefit cross-border workers and those living along the border between north and south. Consideration of a unified vision for a new welfare state settlement has thus far been unexplored. Yet, as this article has argued, any discussion of future arrangements, particularly reunification, necessitates a more nuanced and ultimately difficult discussion surrounding what citizens and the respective executives believe should be the role of social security in a shared Ireland. Welfare state scholars must therefore engage in this ongoing discussion and ensure that it is not minimised in terms of its overall importance.

In many respects, this leaves many unanswerable questions, the first of which is whether a shared future will be one of increased cooperation or a completely unified social security system. Whatever the outcome, the ideological direction of both systems can be reconciled with one another. After the 2008 financial crash, and in light of the ongoing COVID-19 pandemic, both jurisdictions have undergone quite significant alterations, many of which are being re-evaluated based not only on persistent or chronic issues, but also on the evolving situation at present. This means that they remain in a certain degree of flux, so it is likely that any shared vision would need to begin once the current circumstances have settled. It may be the case that both systems have diverged too significantly in terms of legislative structure to be reunified

without a significant overhaul and the creation of a new system. It is also true, with all the changes that have taken place to reduce the protection and rights granted on both sides of the border, that, even if it were feasible to apply a 'like for like' approach, this would be undesirable, as it would fail to capitalise on the opportunity to radically reimagine what a new Irish welfare state could be. Conversely, even a departure from what came before would need to be thoughtfully considered, as this might facilitate politicians to choose the payments and policy measures they appreciate the most because of their severity and lead to a further writing down of social welfare provision.

If we follow the route of gradually building greater cross-border coordination with a view to eventually reunify, there would still need to be an end goal. By extension, questions regarding whether the north remains a devolved region, whether it secures powers over health and taxation, what its competencies are, and what that means for cross-border workers if the border were, in effect, otherwise eliminated, must be addressed. It is therefore not practical to suggest that intensifying coordination could lead to a satisfactory outcome in the absence of difficult conversations about what is important for citizens in a 'new' Ireland. Similarly, working towards an undefined or unclear vision may engender distrust between stakeholders or lead to a situation in which they are acting at cross-purposes and have different objectives in mind. Leaving aside the question of unification, if there is a political will to invest in greater cross-border cooperation, then the current arrangements should be viewed through a critical lens. There must also be a clear shift away from the historic propensity to leave the arrangements created under the CTA largely informal, with EU rules on coordination fulfilling the largest function.

What this ultimately means is that any dialogue on a shared future, regardless of what that might be, must consider the importance and centrality of the welfare state, and more specifically the social security system. This will necessitate going back to basics and revisiting quite fundamental questions, such as 'what is social security', and establishing whether common agreement can be reached on that normative point. If social welfare continues to be an under-developed point of consideration in discussions of a shared future, or an all-Ireland vision, then there is a distinct risk that the utopian vision could be greatly compromised due to the historic propensity of both Ireland and the UK to erode rather than enhance the protections granted by their respective welfare states.