Governance as Polity: An Institutional Approach to the Evolution of State Functions

Final version, September 2008

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Acknowledgements

This work is based on work currently under way in the research project Mapping the Irish State: Structures, Processes, Outcomes, a project funded by a Thematic Project Grant from the Irish Research Council for Humanities and Social Sciences (IRCHSS), and based at UCD Geary Institute.

An earlier version of this paper was presented at the NEWGOV International Seminar on New Modes of Governance in Old and New EU Member States. Institute of Public Affairs, Warsaw, 26 October 2007.

The authors are grateful to members of the Mapping the Irish State research team, especially to researchers Ecaterina McDonagh and Mary Shayne; also to participants in the NEWGOV seminar, especially Tanja Börzel and Adrienne Héritier; and to two anonymous readers for their helpful comments.
Governance as Polity: An Institutional Approach to the Evolution of the Role of the State

Abstract

State institutions mediate the challenges of globalization for the domestic political community: the concerns of specialists in comparative politics and in public administration are increasingly converging round an interest in the nature and functioning of state institutions. This paper draws on preliminary findings from a time-series database of national-level political institutions in Ireland to track continuity and change in state functions, through analysis of state agencies. It also identifies four modes of state action: developmental, regulatory, adjudicatory, and moral advocacy, each of which has a traditional and a modern manifestation. While the first two modes are familiar in comparative context, the latter two are likely to merit further analysis cross-nationally.
**Introduction**

The state occupies a central place in explaining variation in policy outcomes, notwithstanding the recent focus on the firm as the basis of the varieties of capitalism (Gourevitch and Shinn 2005; Hall and Soskice 2001; Hancké et al. 2007). The confluence of two strands of research in the social sciences opens up new perspectives though. On the one hand, the well-established institutionalist paradigm in comparative politics makes variation in domestic political institutions central to explanation of differences in state capacity (Schmidt 2008; Streeck and Thelen 2005; Weiss 2003). On the other hand, political contestation over the role of the state has recently attracted more analysis from an organizational perspective. We note the shifting boundaries between state and market, and state and social networks; privatization and New Public Management; the growth of regulation; the erosion of distinct value orientations in public and private sectors; all have combined to bring the study of public administration closer to the core concerns of comparative political science (Christensen and Laegreid 2007; Olsen 2006).

While the role of government has been redefined by the expanding scope of markets, the activities of authoritative decision-makers – government and bureaucracy – continue to be rule-bound: power is exercised through institutionalized relationships underpinned by legal authority (Peters 2005). This means, as Herbert Kitschelt et al have argued, that national political institutions are not merely a ‘dependent variable’, forced to change by outside pressures. They should rather be seen as ‘a critical component of the environment in which actors shape their strategies of adaptation’ (Kitschelt et al. 1999). Political science research on governance, in the sense of the interaction between decision-makers and social interests, is grounded in an understanding of how state institutions function.
Public administration and comparative politics increasingly converge round a common problem set.

Oliver Treib and his colleagues distinguish between institutional properties (polity), actor constellations (politics), and policy instruments (policy) in the analysis of modes of governance (Treib et al. 2005). There is quite a lot of work on the latter two aspects of governance. The rise of network governance and the blurring of the boundaries between formal and informal participation, for example, is often seen as an indication of new patterns of engagement in policy making and implementation (Peterson 2003; Sabel and Zeitlin 2007; Waelti et al. 2004). The growth of new instruments in regulatory governance such as risk assessment, quality audits, and benchmarking might be seen as innovations in the modalities through which new policy objectives are identified and implemented (Radaelli and de Francesco 2007). In practice, of course, these various strands are often inter-related.

It is our contention that we need to pay more attention to the first aspect of governance, that is, to ‘polity’, understood as the institutional properties of the state. Changes in institutional arrangements can reveal more about the dynamics of governance than had previously been supposed. This paper draws on time-series data of state institutions since the foundation of the Irish state in 1922 to offer an organizational perspective on changes in the structure and functioning of the state.

We take as our starting point the pattern of reliance by government on state agencies, and especially the proliferation of agencies since the 1980s which has been one of the more salient developments in the organization of political life in the European Union generally.
The changing profile of state agencies has implications for our understanding of the range of state responsibilities and how they are managed. The rate of creation of state agencies varies over time, and can reveal a good deal about shifts in the substantive policy concerns of government.

We then draw on our functional typology of agencification in Ireland to highlight four modes of state action: regulatory, developmental, adjudicatory, and moral advocacy. Second, a longitudinal analysis of agency creation and change shows changes in how even well analysed state modes of action such as development and regulation evolve over time. We suggest that public administration in Ireland since the establishment of the state in 1922 manifests a shift from traditional to modern forms in each of the four modes examined in the paper.

**Commonality and diversity in state agencies**

The identification of agencies is itself a contentious activity. Categorization according to competing conceptions, and animated by varied theoretical purposes, will capture different ranges of observations and indeed will generate conflict over the total number of bodies that are deemed to qualify for inclusion. Among the objectives of our database as a research tool is to deploy a range of identifying features into the coding of agencies. This will facilitate comparison of different schemata, and will make progress toward creating a schema with real comparative utility.

It is by now generally accepted that the creation of new state agencies is not primarily driven by technical imperatives (Thatcher 2007). Even where we may identify cross-national commonalities in patterns of agency construction, this is generally more usefully analysed as an instance of policy diffusion or policy transfer, rather than as convergence.
round a technically mandated organizational requirement. We may note several congruent political processes at work, such as a convergence of expert opinion about policy appropriateness, a willingness to adopt practices from other jurisdictions, particularly in European countries, along with EU baseline regulatory policy requirements (Levi-Faur 2005; Thatcher and Sweet 2002). Nonetheless, we may also note a good deal of variety in the organizational forms of regulatory agencies in many areas (Gilardi 2008; Hood et al. 2004). Financial services regulation, for example, evinces very different degrees of political independence across Europe (Pérez and Westrup 2004; Way 2005). This must be understood against a backdrop of variations in national political economy and political culture: the constellation of domestic actors, with their competing preferences and interests based on different structural contexts, may produce quite different responses to similar challenges (Hancké et al. 2007; Scott 2003; Thatcher 2007).

Identifying patterns in national public administration overall is notoriously difficult in view of the historically grounded diversity of structures, public administration practices, and legal and constitutional frameworks involved. Paul Roness, for example, identifies at least four very different nationally-specific classifications drawn from the national experiences of Britain, Norway, New Zealand, and the Netherlands (Roness 2007). Our objective in this paper is to attempt to set out a framework for classifying and comparing both commonality and variation in state structures which will enable us to explore how similar activities might be carried out through different institutional forms, or how similar institutional solutions might be devised for commonly shared problems. Furthermore, our approach to analyzing state functions through their embeddedness in organizational forms – in this case, state agencies – helps us to identify trends in modes of state action that may be emerging relatively unnoticed.
Typologies of agencies

The puzzle of agencies is related to the conception of the state, its organizational expression, and its functions. The simplest model of state organization would take constitutional structures as foundational. In English-speaking countries state agencies have typically been created as executive bodies within government departments. However, it has long been recognized that the varied models of federalism adopted in some of the English-speaking countries, such as Australia, Canada and the United States, and now also in the devolved structures of the United Kingdom, are in reality more complex. Second, the assumption that ministerial departments are the core units of government does not travel well beyond common-law systems. Countries with strong administrative law traditions often organize relationships between departments and agencies differently. They also often incorporate pre-modern forms of administrative organization into modern state organization: the semi-public responsibilities of employer organizations and trade unions in German industrial relations are one such example (Crouch 1993).

The diversity of state agencies: continuous not dichotomous

The debate about agencies gained a new focus with the development during the 1980s of theories of New Public Management, with its conception of the dissociation between departmental policy-making and executive agencies delivering those policies at a remove from the core department (Hood et al. 1999). But if we are to consider institutional structures defined in terms of the degree of autonomy from central government enjoyed by an agency or organization, we must take note of a much wider variety of organizational forms. Rather than a twofold distinction, we may identify a continuum, with departmental organizations at one end, then a variety of non-departmental bodies, continuing on toward non-governmental or civil society organizations at the other end,
many of which in turn may play a role in policy delivery under delegated powers, or through contracts or in exchange for financial grants (Hood 1986; Wettenhall 2003, p.229). Indeed, this definition begins to bring private organizations into focus too, since it is not only in New Zealand that, as Roger Wettenhall notes, we may see ‘private and community organizations providing services under contract to one of the main governmental bodies’ (Wettenhall 2003, p.232).

Thus the issue about agencies has moved beyond a purely taxonomical concern with identifying the boundaries of executive agencies, to focus on the tensions involved in delegating expert functions to specialist bodies. Institutionalization of agencies that function as ‘non-majoritarian institutions’ may contribute to securing policy credibility (Majone 1994). Yet the creation of new agencies may equally represent avoidance of difficult political choices, and an opportunity to staff the boards and directorates with politically friendly appointees (Clancy and Murphy 2006). Clearly a more fine-grained analysis is required.

If the principal issue about the creation and functioning of state agencies centres on the degree to which they are politically accountable, then the definition of agencies will pay close attention to the nature of political control and the extent of political autonomy they enjoy. It would therefore be appropriate to adopt a classification system that can distinguish between ownership, legal form, funding, functions, powers, and governance level (Scott 2003; 2008). The full database of Irish state institutions will encode all this information for a wide variety of organizational structures relating to the Irish state. For purposes of the present paper though we focus primarily on functional classification.
Even prior to analyzing functional categorization of state agencies in Ireland, enumerating them poses a challenge. On the broadest definition of a state agency we would include all government ministries, the executive agencies established within them, the wide range of statutory corporations and other non-departmental public bodies and the distinctive constitutional agencies (such as Ombudsman, judiciary, and Comptroller and Auditor General) which operate outside the control of government. We would include educational establishments that are substantially state-funded but autonomous. In the Irish context, this could entail including not just universities and other third-level institutions, but also the great majority of second-level and primary schools, most of which are privately owned and under private management (generally denominational in character); also many hospitals and a range of social services, for the same reason. In addition to statutory corporations, the private company forms (public (listed), private (unlisted) and company limited by guarantee) have been deployed for public purposes, and a number have been under public ownership since the early years of the state. We do not think this would be an appropriate approach.

The number of agencies identified in Ireland can vary significantly depending on the criteria adopted. One recent study identified 482 central public bodies, while excluding regulators of both public and private sectors, working groups and tribunals (both investigatory and adjudicatory). Another found in excess of 600 (Clancy and Murphy 2006; McGauran et al. 2005). The variation arises from classification decisions such as whether or not to include or exclude local government organizations (we exclude), and universities (we include); whether or not to enumerate separately sub-divisions of health boards and similar delivery agencies, and so on. Using Scott’s criteria, the Mapping the Irish State database identifies 362 agencies in 2006, excluding government ministries.
Examples of the agencies classified under each of these headings may be seen in Figure 1 below.

For the Mapping the Irish State project, we modify Patrick Dunleavy’s classic categorization of the British ‘central state’ (Dunleavy 1989, p.249, pp.254-5). Dunleavy specified eight functional categories: delivery, regulatory, transfer, contracts, control agencies, taxing, trading and servicing. With these, he sought to provide an exhaustive categorization of British state agencies directly controlled by departments. The categorization of state agencies undertaken by the Mapping the Irish State project, seeking to combine parsimony with completeness, identifies ten functional categories (including core Departments here as agencies, which will be important for the larger database project): adjudication/ grievance handling; advisory/ consultative/ representation/ advocacy; contracting; delivery; information-providing; Ministries – policy-making and execution; regulatory; taxation; trading; transfer. This list makes it possible to provide a comprehensive classification of agencies in the Irish state. Like Dunleavy’s, it is inductively generated from a national case. Nevertheless, and notwithstanding the diversity of existing classificatory schemata, we anticipate that ours may provide a useful framework for comparative studies of the functional differentiation of state agencies.

The evolution of state agencies in Ireland
State agencies are not at all a new phenomenon in Irish politics, but were already a recognized feature of government at the time of the Ministers and Secretaries Act 1924, shortly after the establishment of the state in 1922 (Maguire, 2008). Many of the idiosyncrasies of British public administration were also directly inherited by Ireland,
such as the use of the Royal Charter to establish institutions such as the Royal College of Surgeons or the Royal Irish Academy.

But Irish public administration has followed a different trajectory from that of the British state. For example, we do not see the widespread devolution of service delivery from government departments to executive agencies associated with the form of New Public Management (NPM) implemented in Britain. Nor do we see much evidence of features such as target-based control of activities, performance-related pay, or other forms of output controlled or market-based disciplines used to alter public sector functioning (PA Consulting 2002; Hardiman and Mac Cárthaigh 2008). It is only in very recent years that we see new organizational systems emerging in areas such as health services, prison services and so on, and the quality of performance that ensued remains controversial.

Figure 2 shows the distribution of agencies according to their functions as defined above. The largest single category is ‘delivery’, with 137 agencies dedicated to delivering an array of services. What most interests us here is the strong profile of a relatively large number of bodies committed to regulation (69), advisory and advocacy activities (75), and adjudicatory functions (36).

Figure 2. State agencies by function, 2006

Among the agencies that existed in 2006, we note that of the agencies that most are of relatively recent origin, as Figure 3 shows.

Figure 3. Cumulative number of agencies
This observation is borne out by breaking down the rate of creation of new agencies by decade. Figure 4 appears to show a sharp increase in the rate of agency creation since 1990.

Figure 4. Rate of agency creation by decade

Some of these apparently new bodies in fact display strong continuities over time, and the appearance of new agencies actually reflects a change in organizational form or legal structure of bodies long in existence. But this does not fully account for the rate of creation of new bodies in the most recent period.

Figure 5. New agencies and re-organization of older agencies since 1990

We cannot yet tell the full story of the creation and death of agencies over time. We expect to find some evidence of the birth and death of agencies in the past, particularly with new agency creation in the 1970s, and a spell of rationalization in the context of economic crisis in the late 1980s; though not at all on the scale of the US, where interest in the life-cycle of agencies has been more intensively analysed (Peters and Savoie, 1995; Adam et al, 2007). For most of its existence Irish public administration was relatively simple and unchanging (Barrington, 1980), therefore we do not anticipate any major change to the picture we outline here.

In any particular area of activity we find that the emphasis on what the state does can shift over time in response to new historical circumstances. During the 1920s, when the new
state was founded, we see the establishment of departmental agencies. In every decade
delivery is a noteworthy function. Some functions often considered quite modern, such as
regulation, are very much in evidence in the early decades of the state’s existence. But the
biggest growth is apparent in agencies concerned with delivery, regulatory, adjudicatory,
and advisory or advocacy functions.

**Four Modes of State Activity**

The patterns of state activity associated with agency creation are rooted in a deeper
dynamic of the expansion and differentiation of state activity. We wish to argue that the
Irish state displays four modes of activity that have not been fully explored to date.
Moreover, we believe these represent modes of activity that can also be identified cross-
nationally and that merit further comparative inquiry. They are:

1. the developmental state
2. the regulatory state
3. the adjudicatory state
4. the moral advocacy state

Our approach is grounded in middle-level theory about state and economy, state and
society, which understands these links as institutionally embedded, resulting in different
action capabilities for state, economic, and civil society actors (Skocpol, 1985, 2008; Hall,
1986). We also draw on those strands of economic sociology that analyse markets as
social and political constructs (Vogel and Barma eds, 2007). Our focus is on institutional
diversification in agency creation that reflects changes in the mode of state action.

We do not seek to provide a comprehensive specification of the functional requirements
of modern states, whether grounded in social or economic imperatives. It is not our
purpose to replicate analysis of macro phenomena such as the rise of the ‘welfare state’,
whether understood as a response to market inequalities, or conflicts over the distribution of resources, or as a consequence of democratic mobilization (as variously discussed in the work of classic authors such as T.H. Marshall, Walter Korpi, and Gösta Esping-Andersen). The Irish welfare state is recognized as having developed relatively late and to a lower standard of service delivery than in most other OECD states. Most Irish welfare functions are delivered through core government departments, and through contractual links with voluntary sector service providers. Since our intention in this paper is to explore some aspects of state action through institutionalized capacities in the form of state agencies, the scope for investigating the welfare state is limited.

Our four modes of state action are grounded in an understanding of the state as the framework for economic activity, as regulator of order in liberal societies, and as responsive to public opinion in democracies: not comprehensive, but a contribution to building state theory through conceptual clarification and empirical investigation (Levi, 2002).

It is now widely agreed that the role of the state in economic management is no longer captured by what John Gerard Ruggie termed ‘embedded liberalism’ or others have termed the ‘Keynesian welfare state’ of the postwar decades, and that all developed states are constrained to adopt more market-conforming priorities (Ruggie, 1982; Glyn et al, 1992). Philip Cerny has proposed that we understand this as a shift toward ‘the competition state’, which Kirby applies to the Irish state over recent decades (Cerny, 1997; Kirby, 2000, 2002). But the diversity of state responses to globalization seems to resist any single label (Evans, 1997; Garrett, 1998; Schmidt, 2002; Weiss, 1998; Hancké et al eds., 2007). The designation ‘competition state’ risks conflating the institutionally
grounded capacity for state action, the situational constraints on policy, and the ideological orientation of government, all of which may vary cross-nationally. We are interested in the range of state capacities that gain institutional expression, and regard this as foundational for any more sustained study of policy choices and distributive consequences.

Our designation of modes of state action goes beyond the identification of functions, and can be carried out through agencies as well as through government departments. Each of our modes of state action may imply the exercise of a variety of functions. We adopt Peter Evans’s understanding of the ‘developmental state’ to denote the activities of public bodies to mobilize productive resources in the economy, whether through direct ownership of productive assets, supports to the expansion of domestic industry, or engagement with the international economy to mediate inward investments (Evans, 1995; Katzenstein, 1985; Ó Riain, 2000, 2004).

The development of the ‘regulatory state’ is often thought of as a consequence of the retreat of the state from direct economic activity. We suggest that any conception of state of a regulatory mode of governance needs to encompass features such as the direct intervention into private activities, the devolution of public power to private bodies, and the establishment of mechanisms for steering public agencies to which public power has been delegated, as well as the provision of frameworks for market-related activities. Many long-established economic regulatory powers are central to state capacity and are vested in Ministries, but a number turn up in agency form too.
The expansion of state power on issues of law and order, and justice, is likely to entail a growth in dispute resolution activities, and a corresponding rise in concerns over individual rights. But beyond this, we consider that the evolution of rights discourse itself may also give rise to new kinds of claims made by civil society against the state. These are the phenomena we explore under the heading 'the adjudicatory state'.

Finally, we also note the growth of a mode of state action that we believe also stems from shifts in citizen expectations of the state, and from government attempts to manage the complexity of policy demands from civil society interests. This we term the ‘moral advocacy state’. We may trace it through statute law aimed at promoting a particular code of moral values. It is reflected in public sector bodies whose role is to mediate public opinion to itself and to provide structured channels of engagement from civil society into the heart of policy-making, and in turn, to shape attitudes and behaviour in what are deemed to be desirable directions. In this respect it goes beyond conventional understandings of pluralist or corporatist or even networked modes of policy influence.

An indicative sample of the agencies engaged in each of these functions is set out in Figure 6 below:

Figure 6 here

**The developmental state**

Irish state agencies played a vital role in generating and managing economic development from an early date. To some degree we find active state supports for the market even in states with classically liberal economies. The market economy itself is a complex of institutional structures supported by a combination of statute law and bureaucratic
procedure, backed by state power. The British state has long been heavily involved in direct productivist activity especially in the colonial context: the East India Company, for example, or early oil exploration activities, started out as private initiatives that were then taken over by the state. But the dominant trend from the mid-nineteenth century on was to move away from mercantilist priorities and to construct a distance between state institutions and emergent industrial interests. As Polanyi has noted, ‘There was nothing natural about laissez-faire; free markets could never have come into being merely be allowing things to take their course… laissez-faire itself was enforced by the state’ (Polanyi 1944/1975, p.139).

At the time of Ireland’s independence from Britain in 1922, the British state itself entailed a patchwork of state competences, but the dominant economic stance was liberal. Then in common with many other European countries, Britain took major sections of industry and services into public ownership during the years after World War Two, thus acquiring a significant role in commercial, productive, distributive and transport activities. The wave of privatization in Britain and elsewhere during the 1980s and 1990s reversed the trend; rather than privatization we should perhaps speak of ‘re-privatization’ of many of these activities, as a preference for market-led allocative mechanisms took hold across Europe (Wright 1994).

The pattern of state engagement with economic activity in Ireland is rather different. The Irish state, at its foundation, inherited the apparatus of the liberal state from Britain; for the first ten years of its existence, macroeconomic policy was run on impeccably free-trade, market-conforming lines (Fanning 1978). This was helped by the retention of the value of the Irish pound at parity with sterling until 1979. But between 1932 and 1948,
Ireland adopted a policy of economic protectionism, and set out to develop a fledgling domestic industrial base in what was still a largely agriculturally-based economy. Starting in the 1920s, even prior to protectionism, we see the development of whole range of state agencies committed to supporting economic development. Some of these were wholly state-owned commercial bodies (or ‘semi-state companies’ as they are known in Ireland), taking an early lead in nationalizing activities such as the rail network and train and bus services, gas, etc.; and setting up new state companies in areas such as electricity generation, turf production, sugar and food processing, etc. From this early date too we can see the establishment of state-owned investment banks and other financial supports to domestic industry and agriculture (Ó Gráda 1997).

These activities of the ‘developmental state’ go well beyond anything comparable in Britain at this time. However, they share a developmental orientation in common with the Old Commonwealth states of Canada and Australia, where it has been noted that ‘irregular’ state agencies, diverging from the British prototype, supported a range of economic activities, including but not confined to public commercial enterprise (Wettenhall 2003, p.223). And in the US during the 1930s, federal state activism in direct economic activity became more common, most familiarly perhaps with the establishment of the Tennessee Valley Authority (TVA) in 1937 (Selznick 1949). But the scale of Irish state endeavor is perhaps more akin to the roles the state might play in modern developing countries. Peter Evans identifies what he calls the ‘demiurge’ role – the direct involvement of the state in production – and the ‘midwife’ role – active preferential support for domestic enterprise through the use of tariffs, subsidies and other fiscal instruments (Evans 1995); both of these were prominent features of the Irish industrial development strategy under protectionism between the 1930s and the 1960s.
After Ireland adopted outward-oriented economic policies in the early 1960s, we see a change in the way the developmental state role functioned. It was from this time on – and especially after Ireland’s increasing integration into the European economy following EEC membership in 1973 – that the Industrial Development Authority (IDA), established in 1949, came into its own. This was not a directive investment body on the Asian model, but a ‘flexible developmental’ agency committed to an active role in soliciting and facilitating foreign direct investment (FDI), supported by the favourable corporate tax regime that had been evolving since the 1950s. It functioned as a ‘glocal’ facilitator – mediating between global actors and local needs (FitzGerald 2000; MacSharry and White 2000; Ó Riain 2000; 2004).

A further set of development-supporting structures were set up over the following decades, which can be seen as consistent with the developmental needs of a small open economy adapting to increased exposure to international trade (Katzenstein 1985). We see the emergence of new state bodies to support the export and marketing needs of domestic industry, and of new functions such as managing public debt, borrowing, and public investment needs, property acquisition to build roads, and so on. We also see the development of state-led tripartite consensus-seeking on economic priorities and in pay determination; to extend the networks of consultation from economic actors to non-governmental organizations (Hardiman 2007). We might see these trends as evidence of ‘flexible network governance’ (Hardiman 2006), very much part of the spectrum of development-oriented state activities.
The expansion of welfare services may also be understood as having a developmental aspect to it – the ‘compensation hypothesis’ suggests that increasing trade exposure generates growing demand for stronger state supports to insulate workers against market hazards. We might therefore see the growth of social services through the expansion of health and welfare agencies in Ireland. In fact in Ireland direct state effort was quite limited in this area (Hardiman et al. forthcoming 2008). Responsibility for many welfare services had long been devolved to denominational interests, especially the Catholic Church, and to a mix of public and private provision. But this is not unlike some aspects of the role of the Catholic Church in service provision in Germany or the Netherlands, or of some Jewish welfare agencies in Israel.

As noted above, New Public Management in Ireland has not involved any extensive redrawing of the boundaries between state and market. Privatizations have indeed taken place as a matter of government policy, and some were more contentious than others – most notably perhaps that of the national airline, Aer Lingus – but many proceeded uncontentiously. It was difficult to sustain the claim that the state had any ongoing inherent interest in activities it had embarked upon under protectionism such as food processing or life insurance, or that the loss-making activities of steel or fertilizer production merited any further public subsidies. But unless mandated by EU competition policy, the Irish state proved a relatively unenthusiastic privatizer (Chari and Cavatorta 2002; Palcic and Reeves 2004/5).

In the area of public contracting, the same relative absence of ideological commitment resulted in a strong commitment to the principles of public-private partnership in infrastructural investments. During the 1990s and into the 2000s, major public contracts
had proven liable to significant cost over-runs, and there was a good deal of concern over the capacity of the state to manage large and complex contracts. The turn toward the Public-Private Partnership initiative reflects recognition of this weakness. But it has followed into many areas of investment on a much smaller scale such as school-building, sewage works, and so on. Deloitte consultancy notes that Ireland is a ‘world leader’ in such areas (Deloitte 2006). Rather than an explicit commitment to market-led solutions, this may reflect distrust of public service capability to achieve value for money.

**The regulatory state**
The Irish state, as is common in other countries and especially across the EU, experienced a wave of regulatory agency creation since the 1980s. Ireland now has a variety of free-standing and semi-independent regulatory bodies on a par with other EU member states: the regulatory state has come to stay.

But the evidence of our database of Irish state agencies from the foundation of the state suggests that the regulatory function itself is not new. Certainly the areas into which state regulation has ventured have changed over the last two decades, and the manner in which regulation takes place has changed over time. But the concept of ‘regulation’ extends beyond the market understanding of a framework for ensuring efficiencies in economic activities or supply of services. State regulatory powers must be understood in a broader sense, if we are fully to comprehend the changing nature and scope of state action. The establishment of authoritative bodies to regulate areas of economic and indeed social life is not a new one. For example, the great expansion of British municipal powers in the nineteenth century was strongly based on the enforcement of public health and sanitation regulations, backed by legal sanction (Briggs, 1968). And part of the extension of the regulatory power of the modern state has involved the delegation of public power to
private bodies who, under license, can engage in oversight of professional activities that have a public interest dimension to them. The Irish state inherited these early regulatory capacities at independence. Hence we see a flurry of new licensing agencies created between the 1920s and the 1950s, particularly in the area of health care. These grow up alongside some other long-standing agencies exercising delegated public powers such as the Law Society of Ireland, established in 1830 both to train solicitors and to authenticate the professional accreditation of legal practitioners. We must additionally recognize the importance of government ministries within the ‘old regulatory state’, particularly as licensing authorities (which will be explored in a later phase of the Mapping the Irish State project). Furthermore, other bodies not often thought of as having a regulatory function should also be brought into this category, such as the national police force. The loss of credibility of the British policing model prior to the establishment of the Free State in 1922 led the newly independent government to establish An Gárdá Síochána (literally ‘guardians of the peace’ on a broader basis (Mulcahy forthcoming). In some ways this is reminiscent of the multi-purpose implementation and regulatory functions of the Prussian Polizei or public authority.

**The adjudicatory state**

The role of the state in conflict resolution and the redress of grievances is in one sense inherent to the functions of the state itself, if by this we mean the capacity to have recourse to law – criminal, property and contract – to underpin capitalist social ordering and processes of exchange (Hayek 1982). Laws relating to crime, property and contract may perhaps be thought of as the foundation of the modern state, establishing defense of the person, property rights, and other classic liberal protections. However, we have a more specific understanding of state adjudicatory functions here, the evolution of which can be tracked through the establishment of state agencies. We have identified a range of
additional activities carried out by the Irish state, which we believe are also widely in
evidence in other states but as yet relatively under-examined.

The first wave in the creation of new adjudicatory mechanisms by the Irish state came
during the 1940s, in parallel with the activist role of the state in economic modernization.
This may be seen as the extension of redress facilities beyond the courts and judicial
proceedings and into the heart of economic and commercial life. In the early 1940s, the
Fianna Fáil government had attempted to reconfigure trade union organization away from
the pluralist and voluntarist British tradition, but had failed due to constitutional
protections for the rights of the individual to organize. Undaunted, the government
legislated for the establishment of the Labour Court in 1946, a bipartite and voluntary, but
authoritative and quasi-judicial industrial dispute resolution mechanism. This was
intended to play a leading role in wage determination, and indeed did so for a time. Its
importance in industrial relations stabilization has fluctuated, but on balance the Labour
Court and its associated agencies have become more firmly institutionalized in industrial
relations over time (MacCarthy 1977; Roche et al. 2000). The expansion of adjudicatory
powers in the employment relationship can be further seen in the creation of agencies
such as the Employment Appeals Tribunal, and the mechanisms for dispute resolution that
evolved since the 1990s in the context of tripartite social partnership (Hastings et al
2007).

The evolution of quasi-judicial agencies to investigate and adjudicate can also be seen in
the use made in Ireland of Tribunals of Inquiry, that is, investigatory bodies set up to
examine policy failures, shortcomings in executive functioning, or suspicion of political
malpractice. Evidence produced at these Tribunals has no standing before the courts, yet
they carry weight and authority. They are not recent innovations; but many more of them were set up during the 1980s and 1990s to investigate a whole range of difficult political problems (Mac Cárthaigh 2005).

Alongside Tribunals of Inquiry, this period also saw the creation of a new kind of state agency, the redress board. These were set up to investigate and compensate victims of state neglect or misconduct across a range of experiences, as an alternative to the very much more expensive formal judicial route.

In parallel with these boards, other new agencies were also set up to support individuals in the vindication of their rights in areas such as claims about unfair rents, planning decisions, etc. We might also note here the establishment of the office of the Ombudsman in Ireland in 1984 – rather later than comparable institutions elsewhere in Europe. This is likely to reflect some weakness in the capacity of the individual to press claims against the state, compared with other countries; this would indeed be consistent with the argument that Ireland, like Britain, is characterized by particularly strong executive powers and relatively weak powers available to the legislature in general and to the parliamentary opposition in particular (Mac Cárthaigh 2005).

What we see nonetheless is an extension of the scope of the rights that individuals may hope to vindicate through state agencies. We distinguish between statutory and non-statutory claims, and statutory and non-statutory channels through which these might be progressed, resulting in the four-way distinction displayed in Figure 7 below.

Figure 7. A Typology of the Adjudicatory State
Statutory rights, advanced through judicial channels, represent the conventional or mainstream means of vindicating grievances and seeking adjudication. It would not be possible to press claims that did not have formal recognition of some sort through the courts; this is a null category. The interesting categories are the remaining two. We have seen the development of a range of non-judicial agencies through which individuals may process claims and seek vindication that have statutory recognition and vindication. But in addition, we have seen the emergence of a new aspect of the adjudicatory state: this is where a category of grievances is legitimated by virtue of being able to produce experiential evidence, and where the means of processing the claim will accept evidence that falls far short of legally compelling status.

This last category reflects a broadening of the conception of the rights that individuals may be able to claim, particularly personal rights claims that are made against the state. Going well beyond investigation of claims of maladministration that are proper to the role of the Ombudsman, we might see this as a reflection of a more generalized sense of rights claims and grievance processing. The boundaries of these claims may be quite fluid and open to being expanded by public opinion or political vulnerability: for example, a special body during the 1990s was set up to adjudicate claims about deafness suffered by members of the Army in the course of their duties. That innovation was inspired in part by concerns about the rise of litigation and the emergence of ‘a compensation culture’ with adverse impacts both state bodies and on the insurance industry. A more generalized response was the establishment of a Personal Injuries Assessment Board in 2004 as an intermediary stage in processing personal injuries claims. Most claims are intended to be resolved by bureaucratic assessment, and litigation may only be pursued once those
efforts have failed (Quigley and Binchy 2004). It may be useful to envisage this aspect of state agency activity as a manifestation of the long fallout of the ‘rights revolution’, the pervasiveness of rights claims, and therefore the inevitability of demands for adjudicatory mechanisms (Sunstein 1993). The adjudicatory state is likely to be with us to stay.

The moral advocacy state
The fourth area in which we see new trends in the role of state agencies is in what we term the moral advocacy state. The state has always played a central role in the regulation of private life – most obviously in the statutory regulation of family life, individuals’ rights within the household, custody of children and the extent or indeed absence of their autonomous rights. States have varied enormously in the way they have regulated these roles (Therborn 1993; 2004). Moral issues have been so significant that they are continue to constitute an independent dimension of political values and party competition, orthogonal to competition on left-right economic issues (Laver 2005; Mair et al. 2004). Changes in the conception of the proper boundaries between personal morality and legal regulation have varied across countries. There has been some convergence on a liberal agenda, but in no direct or automatic fashion, and the sequencing of liberalization of laws on availability of contraception, availability of divorce, and abortion rights has shown great variation across countries over time.

In addition to the highly consequential regulation of personal morality, the state may also seek to support or even promote a certain climate of moral values – the state as the ‘engineer of human souls’, albeit in the context of liberal democratic politics. From our analysis of Irish state agencies, as well as trends in statute law, we can broadly identify two waves of innovation in this area. During the 1920s, we see a concern with promoting Catholic moral values – not because government represented Catholic interests directly,
nor because Catholic Church interests were directly represented on state bodies, but because in an almost wholly Catholic and conservative society, these values were in fact widely subscribed to (Inglis 1998). The Catholic Church did not need to exercise influence to have legislation congruent with its preferences enacted (thought there is plenty of evidence that bishops did indeed speak out both directly and indirectly to secure their aims); there was virtually no organized alternative body of opinion to resist these values (Garvin 2004; Whyte 1980). We see the establishment of the public censorship agency in the 1920s, as well as statute law in areas such as the prohibition of contraception, licensing of dance halls, licensing of the sale and consumption of alcohol.

By the 1990s, economic growth, rising levels of education, the impact of the women’s movement, and closer integration into the EU, combined with crisis inside the Catholic Church itself in the wake of a series of scandals, to weaken the authority of conservative and religiously-grounded values (Garry et al. 2006; Hug 1999). However, what we now see is the emergence of a new role for the state in the promulgation of values. In this case, the consequences are very much less visible: rather than prohibiting, regulating, and constraining, the objectives are to shape values and change dispositions through exhortation, discourse, and education. The agencies in question are concerned with issues ranging from promoting attitudes of equality, supporting a positive view of older people, opposing racism, to promoting healthy eating and an active lifestyle. In some cases they originated in, or continue to work through the extension of state funding to non-governmental organizations; in others the agency was set up de novo by government to channel opinion from stakeholder interests to advise government policy. Membership often draws on civil society or voluntary sector organizations, and may be engaged in mediating public opinion to government and providing policy advice, as well as
channeling policy outward and downward. Some of the value-forming agenda in the current period emanates from the legislative activity of the EU, and may be thought of as an example of the extension of the logic of appropriateness, of elite consensus on the desirability of particular values, that are then transmitted into national discourse (Dolowitz and Marsh 2000). The new equality agenda has been in evidence since the 1970s, with implementation of European directives on sexual equality in the workplace and equal pay for men and women, which came hard on the heels of admission to EEC membership in 1973; immigrant integration issues are more recent. The practical policy application of the activities of such agencies can seem somewhat remote at times. Yet Ireland is not unique in the spread of such agency creation: Johannes Lindvall and Bo Rothstein note the existence in Sweden of a whole layer of ‘ideological state apparatus’ of just this sort (Lindvall and Rothstein 2006).

The evolving role of the state: changing modes
Putting together these four modes of state action, we can analyse trends in the phasing of institutional creation and functional differentiation. We suggest not only that each of these four modes of state action is reflected in the constellation of public agencies established in Ireland but that each has a traditional and modern form, with differences in the primary locus of action and initiative in each. These are summarized in Figure 8.

Figure 8. Trends in Modes of State Action

In the Irish case, the traditional phase is approximately identified as the 1920s to 1960, and the modern phase from 1960 to the present. The traditional modes of action involve a direct state role and a proactive policy stance; the modern modes of action involve more indirect state initiative and a coordinating rather than directive relationship with social
actors. There is some overlap in phasing though: as already noted, what we have identified as a modern function, the ‘flexible developmental’ approach to industrial policy, was initiated in 1949, though it evolved significantly from the 1970s on (O'Sullivan 2000).

This analysis begs the further question whether some transition to a late modern form might also be in train, which might variously be associated with neo-liberal, post-regulatory or post-modern governance, each of which down-plays the steering role of central state actors in making and implementing policy. We leave this possibility open for further exploration at a future date.

**Conclusion**

This paper has shown that an organizational analysis of governance – focusing on governance as polity – can be revealing in three ways. Firstly, our time-series database reveals hitherto neglected continuities as well as innovations in the functional composition of government activity. This approach may prove valuable as a means of analyzing the underlying reasons for variation both cross-nationally and within a single country over time. Using the data on functions of agencies it is possible to draw broader conclusions about changes in the more abstract modes of government activity. The regulatory state, for example, is too often assumed to be a relatively recent innovation. We have indicated continuities over time in the development and regulatory modes that can be overlooked in cross-sectional contemporary studies. Secondly, linking our functional typology to the identification of distinctive governance modes makes it possible to conceptualize some modes of state action that we believe merit more extensive cross-national investigation. Regulatory governance is by now quite well established as the focus of comparative inquiry; the developmental state has attracted growing interest.
recently. We suggest that two other governance modes identified here have received less attention to date than they merit – the adjudicatory state, and the moral advocacy state. And thirdly, our typology of the modes of governance, distinguishing between a traditional and a modern form for each of the four modes we analyse, sets out a framework for further comparative analysis. In sum, an institutional and organizational approach to analyzing the evolution of state functions, and a new conceptualization of modes of governance, points toward a rich and potentially very fruitful new comparative research agenda.
References


Garvin, Tom. 2004. Preventing the Future: Why Ireland was so poor for so long. Dublin: Gill and Macmillan.


Figure 1. Examples of Irish State Agencies Classified by Function, 2006

<table>
<thead>
<tr>
<th>FUNCTION</th>
<th>AGENCIES</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjudicatory</td>
<td>Censorship of Publications Appeal Board</td>
<td>1946</td>
</tr>
<tr>
<td></td>
<td>Employment Appeals Tribunal</td>
<td>1977</td>
</tr>
<tr>
<td></td>
<td>Financial Services Ombudsman Bureau</td>
<td>2005</td>
</tr>
<tr>
<td>Advisory/consultative</td>
<td>Therapeutic Services Advisory Committee</td>
<td>1933</td>
</tr>
<tr>
<td></td>
<td>The Law Reform Commission</td>
<td>1975</td>
</tr>
<tr>
<td></td>
<td>Taskforce on Active Citizenship</td>
<td>2006</td>
</tr>
<tr>
<td>Contracting</td>
<td>The National Roads Authority</td>
<td>1994</td>
</tr>
<tr>
<td></td>
<td>National Treatment Purchase Fund</td>
<td>2002</td>
</tr>
<tr>
<td>Delivery</td>
<td>Universities</td>
<td>1592-1980</td>
</tr>
<tr>
<td></td>
<td>An Post</td>
<td>1984</td>
</tr>
<tr>
<td></td>
<td>Affordable Homes Partnership</td>
<td>2005</td>
</tr>
<tr>
<td>Information-providing</td>
<td>Referendum Commission</td>
<td>1998</td>
</tr>
<tr>
<td></td>
<td>Citizens’ Information Board</td>
<td>2007</td>
</tr>
<tr>
<td>Ministries</td>
<td>All government departments</td>
<td>1924+</td>
</tr>
<tr>
<td>Regulatory</td>
<td>Law Society of Ireland</td>
<td>1830</td>
</tr>
<tr>
<td></td>
<td>Irish Patents Office</td>
<td>1927</td>
</tr>
<tr>
<td></td>
<td>Irish Aviation Authority</td>
<td>1994</td>
</tr>
<tr>
<td></td>
<td>The Press Council of Ireland</td>
<td>2006</td>
</tr>
<tr>
<td>Taxing</td>
<td>Office of the Revenue Commissioners</td>
<td>1923</td>
</tr>
<tr>
<td>Trading</td>
<td>Electricity Supply Board, ESB</td>
<td>1927</td>
</tr>
<tr>
<td></td>
<td>Córas Iompair Éireann</td>
<td>1944</td>
</tr>
<tr>
<td></td>
<td>Coillte Teo.</td>
<td>1988</td>
</tr>
<tr>
<td>Transfer</td>
<td>Arts Council</td>
<td>1951</td>
</tr>
<tr>
<td></td>
<td>Higher Education Authority</td>
<td>1968</td>
</tr>
<tr>
<td></td>
<td>Science Foundation Ireland</td>
<td>2000</td>
</tr>
</tbody>
</table>

Source: Mapping the Irish State project, ongoing
Figure 2. State Agencies by Function, 2006

Source: Mapping the Irish State database
Figure 3. Number of State Agencies in Ireland, 1924-2004

Source: Mapping the Irish State database
Figure 4. Rate of Creation of New State Agencies by Decade

Source: Mapping the Irish State database
Figure 5. New agencies and re-organization of older agencies since 1990

Source: Mapping the Irish State database
Figure 6. Institutional Examples of Four Modes of State Action in Ireland

<table>
<thead>
<tr>
<th>MODE OF STATE ACTION</th>
<th>IRISH AGENCIES INVOLVED</th>
<th>PRIMARY FUNCTIONAL CLASSIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developmental</td>
<td>Electricity Supply Board&lt;br&gt;Teagasc&lt;br&gt;IDA Ireland&lt;br&gt;Irish National Productivity Committee&lt;br&gt;National Treasury Management Agency&lt;br&gt;Science Foundation Ireland&lt;br&gt;Irish Financial Services Regulatory Authority</td>
<td>Trading&lt;br&gt;Delivery&lt;br&gt;Delivery&lt;br&gt;Advisory&lt;br&gt;Delivery&lt;br&gt;Transfer&lt;br&gt;Regulatory</td>
</tr>
<tr>
<td>Regulatory</td>
<td>Opticians Board&lt;br&gt;Irish Takeover Panel&lt;br&gt;Commission for Taxi Regulation&lt;br&gt;Irish Sports Council&lt;br&gt;Higher Education Authority</td>
<td>Regulatory&lt;br&gt;Regulatory&lt;br&gt;Regulatory&lt;br&gt;Advisory/ consultative&lt;br&gt;Transfer</td>
</tr>
<tr>
<td>Adjudicatory</td>
<td>Criminal Injuries Compensation Tribunal&lt;br&gt;Equality Tribunal&lt;br&gt;Personal Injuries Assessment Board&lt;br&gt;Special Education Appeals Board</td>
<td>Adjudicatory&lt;br&gt;Adjudicatory&lt;br&gt;Adjudicatory&lt;br&gt;Adjudicatory</td>
</tr>
<tr>
<td>Moral advocacy</td>
<td>Irish Film Censor’s Office&lt;br&gt;The Heritage Council Consultative Committee on Racism and Interculturalism&lt;br&gt;Crisis Pregnancy Agency Redress Board</td>
<td>Regulatory&lt;br&gt;Advisory/ consultative&lt;br&gt;Advisory/ consultative&lt;br&gt;Adjudicatory</td>
</tr>
</tbody>
</table>
Figure 7. A Typology of the Adjudicatory State

<table>
<thead>
<tr>
<th>Legal rights</th>
<th>Court-like/ legal arena</th>
<th>Non-court-like procedures</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal rights</td>
<td>Judicial proceedings</td>
<td>Employment Appeals Tribunal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Personal Injuries Assessment Board</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Redress Boards</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Private Residential Tenancies Board</td>
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<tr>
<td></td>
<td></td>
<td>Mediation</td>
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<tr>
<td>Non-legal claims</td>
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<td>Labour Court</td>
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<td></td>
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<td>Tribunals of Inquiry</td>
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<td>Ombudsman functions</td>
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</table>
### Figure 8. Trends in Modes of State Action

<table>
<thead>
<tr>
<th></th>
<th>Traditional: State direction</th>
<th>Modern: State coordination</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Developmental</strong></td>
<td><strong>Productivist:</strong> Direct production, also aid via tariffs, subsidies etc.</td>
<td><strong>Facilitatory:</strong> ‘flexible developmental’, Industrial policy; also ‘flexible network’, Consultative, advisory, tripartite</td>
</tr>
<tr>
<td><strong>Regulatory</strong></td>
<td><strong>Licensing:</strong> Devolution of state power to actors who provide goods or services</td>
<td><strong>The competition state:</strong> Policing bad initiatives by private actors; regulation</td>
</tr>
<tr>
<td><strong>Adjudicatory</strong></td>
<td><strong>Juridical:</strong> Statutory grievances Statutory remedies</td>
<td><strong>Resolution-seeking:</strong> Non-statutory claims, formal remedies</td>
</tr>
<tr>
<td><strong>Moral Advocacy</strong></td>
<td><strong>Conservative:</strong> Censorship, Catholic values</td>
<td><strong>Liberal:</strong> Promotion of tolerance, pluralism, anti-racism</td>
</tr>
</tbody>
</table>