



Traveller Ethnicity

An Equality Authority Report



THE EQUALITY AUTHORITY
AN tÚDARÁS COMHIONANNAIS

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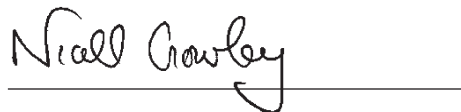
Foreword

The Equality Authority publishes this report at a time when there has been considerable debate on Traveller ethnicity accompanying the reporting process of the Irish Government under the UN Convention on the Elimination of all Forms of Racial Discrimination. The report examines the issue of Traveller ethnicity from an academic and public policy perspective. It establishes a clear case for the acknowledgement of Traveller ethnicity.

This is important in that:

- The issue of Traveller ethnicity is likely to be raised in casework supported and pursued by the Equality Authority and by others;
- An understanding and recognition of Traveller ethnicity is central to the effective promotion of equality of opportunity for the Traveller community.

The Equality Authority is grateful to Laurence Bond, Head of Research at the Equality Authority, for his work in preparing the draft of this report.

A handwritten signature in black ink that reads "Niall Crowley". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Niall Crowley

Chief Executive Officer

Equality Authority

July 2006

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Part One

Introduction

The Equality Authority has a broad mandate to promote equality of opportunity and to combat discrimination in the areas covered by the Employment Equality Acts 1998 and 2004 and the Equal Status Acts 2000 to 2004. The Equality Authority is the specialised body for the promotion of equal treatment on the grounds of racial or ethnic origin within the meaning of Article 13 of the 'Race' Directive and also on the ground of gender under the amended Gender Equal Treatment Directive of the European Union.

The Employment Equality Acts 1998 and 2004 prohibit discrimination in the workplace and in vocational training. The Equal Status Acts 2000 to 2004 prohibit discrimination in the provision of goods and services, accommodation and educational establishments. Separate provision is made in relation to registered clubs. Both Acts cover nine grounds: gender, marital status, family status, age, disability, sexual orientation, race, religion and membership of the Traveller community.

The functions of the Equality Authority include to combat discrimination in the areas covered by the Acts, to promote equality of opportunity in the areas covered by the Acts, to provide information on the Acts, and to monitor and keep under review the Acts and to make recommendations to the Minister of Justice, Equality and Law Reform for change. The powers accorded to the Equality Authority to carry out its functions include: to conduct equality reviews and action plans, to prepare Codes of Practice, to conduct inquiries, to provide legal assistance to claimants under the Acts at its discretion, to take cases in its own name in certain circumstances and to conduct research.

The Equality Authority in its work since its establishment has recognised Travellers as an ethnic group. Given the debate that continues to surround this recognition of Traveller ethnicity it was decided to produce this report. The Irish Human Rights Commission (2004) has considered the question of the recognition of Travellers as an ethnic group from a legal perspective. This report examines the public policy literature on Travellers, and the academic literature, as they relate to recognition of Travellers as an ethnic group. This is important because:

- The issue of Traveller ethnicity is likely to be raised in casework supported and pursued by the Equality Authority and by others;
- An understanding and recognition of Traveller ethnicity is central to the effective promotion of equality of opportunity for the Traveller community.

In December 2002 the Equality Authority published its most definitive position on cultural diversity in Irish society. *Building an Intercultural Society* was published as a submission to support the preparation by the Government of its National Action Plan Against Racism.

The introduction to *Building an Intercultural Society* sets out that:

“This submission uses the term ‘Black and minority ethnic groups’. It is important to note that this term includes the Traveller community... In looking at the experiences of racism in Ireland it is important to acknowledge:

- That racism is not a new phenomenon. It has been the experience of the Traveller community over a long period. As a minority ethnic group with a nomadic tradition the Traveller experience has its own specific dimensions.” (2002:4)

The submission makes reference to needs specific to the Traveller community in recommending ‘supports for the Traveller economy’ and ‘mechanisms to secure the full implementation of local authority Traveller accommodation plans and to improve these where necessary’.

This acknowledgement of Traveller ethnicity is not only a matter of academic importance. It has significant practical implications in the promotion of equality of opportunity for Travellers and in the elimination of discrimination experienced by Travellers. These practical implications include:

- International agreements and EU legislation will not name specific ethnic groups from particular States within their provisions on ethnicity. Traveller ethnicity needs to be recognised to ensure Travellers can enjoy the protections and benefits that flow from these agreements and this legislation alongside other ethnic groups;
- Traveller ethnicity is a key factor that has to be taken into account in identifying and responding to the needs of the Traveller community. Culture and identity will shape the needs of a group. Policies and programmes that respond to needs will only be effective to the extent that they take into account the culture and identity of the group concerned;
- Equality is not only concerned with access to resources or access to decision making. The achievement of equality must involve access to recognition, status and standing in society and to relationships of respect, care and solidarity. The recognition of Traveller ethnicity is central to any equality of status or standing for the Traveller community. The recognition of Traveller ethnicity also provides the basis for new relationships of respect, care and solidarity between the Traveller and settled communities.

This report validates the recognition by the Equality Authority of Travellers as an ethnic group. Part Two of this report examines public policy literature on the recognition of Travellers as an ethnic group. It provides an overview of the evolution of public policy thinking on Travellers' identity as a group in Irish society, drawing on the three major official reports on Travellers and related material, relevant Dáil debates and various statements of Government policy. Part Three provides an overview of the principal academic literature on Traveller ethnicity. This part of the report considers the conceptualisation of ethnicity and introduces some key ideas from anthropology that have shaped the literature on Travellers and it provides a general overview of the main academic arguments on Traveller ethnicity. Part Four presents a conclusion to the report.

Part Two

Public Policy Debate on Traveller Ethnicity

The public policy literature on Travellers addresses issues arising across many areas, especially housing and accommodation, education, health, training and employment and social welfare. Such discussions incorporate and are significantly shaped by assumptions or perspectives on the identity and status of Travellers in Irish society. The focus here is on these underlying assumptions or perspectives particularly as they relate to recognition of Travellers as an ethnic group.

This Part therefore provides an overview of the evolution of public policy thinking on Travellers' identity as a group in Irish society, drawing on the three major official reports on Travellers and related material, relevant Dáil debates and various statements of Government policy. The approach is largely chronological beginning with the Commission on Itinerancy and subsequent developments in the first section, and moving through the contribution of the Travelling People Review Body, the introduction of legislation on incitement to hatred, the Task Force on the Travelling Community and the introduction of equality legislation. A further section considers how the Government has addressed the issue of Traveller ethnicity in reporting under its international human rights obligations and this is followed by a brief conclusion.

The Commission on Itinerancy

The terms of reference of the Commission on Itinerancy (1960-1963) required it:

- “(1) to enquire into the problem arising from the presence in the country of itinerants in considerable numbers;
- (2) to examine the economic, educational, health and social problems inherent in their way of life;
- (3) to consider what steps might be taken –
 - (a) to provide opportunities for a better way of life for itinerants;
 - (b) to promote their absorption into the general community;
 - (c) pending such absorption, to reduce to a minimum the disadvantages to themselves and to the community resulting from their itinerant habits;
 - (d) to improve the position generally; and
- (4) to make recommendations.” (1963:11)

In addressing the inaugural meeting of the Commission, the Parliamentary Secretary to the Minister for Justice, Charles Haughey, noted that “These terms of reference are comprehensive and they acknowledge that there can be no final solution to the problems created by itinerants until they are absorbed into the general community” (1963:111).

The Commission decided that “for the purpose of their considerations the best definition of ‘itinerant’ was a person who had no fixed place of abode and habitually wandered from place to place, but excluding travelling show-people and travelling entertainers ...” (1963:12). Issues of the identity and status of Travellers received little further consideration in the Report. In considering the history of Travellers, the Commission noted that “as it was not essential to the consideration of the Commission’s terms of reference, no special study was made of the origins of the itinerant population of this country” (1963:34). Noting that “Few of the itinerants in Ireland are of Romany or Gipsy origin” (1963:34), it suggested that:

“The existence of itinerants in Ireland has been ascribed to many causes. It is said that they are the descendants of the remnants of Irish tribes dispossessed in the various

plantations. Some are said to be the descendants of the journeying craftsmen and metal workers who travelled the country centuries ago. Others are said to be the descendants of those who were driven to a wandering way of life because of the poverty and distress caused by the famines of the last century, the oppressions of the penal law era and earlier. It is likely that a combination of all these factors to a greater or lesser degree was responsible for the greater number of those now on the road.” (1963:34)

In addition the Commission argued that:

“Itinerants (or travellers as they prefer themselves to be called) do not constitute a single homogenous group, tribe or community within the nation although the settled population are inclined to regard them as such. Neither do they constitute a separate ethnic group. There is no system of unified, authority or government and no individual or group of individuals has any powers or control over the itinerant members of the community” (1963:37).

The Report does not explain – other than what is in this paragraph – what prompted the reference to ‘ethnic group’ here although it might have been intended, at least in part, as a counter to the wider community’s outright rejection of Travellers as despised and racialised inferiors. In a chapter on the ‘Attitude of Settled Population to Itinerants’ the Commission stated that:

“...in nearly all areas itinerants are despised as inferior beings and are regarded as the dregs of society. Many feel that they would demean themselves by associating with them...

Itinerants find it difficult to find many forms of employment because of their background and the unwillingness of some employees to associate with them...

They are not permitted to enter many public houses and public houses where they are served are avoided by many of the settled population... the majority of the settled population wish to avoid any contact with itinerants in any form and break off any contact that is established as soon as possible...

The plight of itinerants and their isolation by the settled community, which is becoming progressively worse, is a serious problem and one which has not troubled the public conscience to any degree...

The argument that itinerants are free to leave the road of their own volition and that their plight is of their own making does not bear examination. Little heed is given to the virtually insuperable difficulties which face the unaided efforts of an itinerant family to settle...

The attitude of the settled population in so far as itinerants is concerned is not confined to those on the road.” (1963:102-103)

However even while explicitly rejecting this systematic contempt, the Commission itself reflected it in its conclusion that:

“For both social and economic reasons it is clearly undesirable that a section of the population should be isolated and follow a way of life which is harsh, primitive and of low economic value both to those who follow it and to the nation and, most important, which tends to create a closed and separate community which will become increasingly inferior to the rest of the national population and from which it will become increasingly difficult to escape.” (1963:104)

In response to the Commission’s report the Government issued a policy statement setting out a number of measures it intended to immediately take including introduction of a state subsidy to local authority provision of serviced halting sites, and initiatives in respect of health services, social work, education and social welfare. It also included commitments to setting up a national advisory committee and to encouraging the setting up of local voluntary committees to help in the ‘re-settlement of Irish itinerant families’.

The Commission’s report and the Government’s policy statement set the framework for action over the following two decades and this period saw a range of initiatives in regard to accommodation, education and training as well as the setting up of voluntary settlement committees across the country. This increased level of public and voluntary activity in relation to Travellers coincided with - and in part gave rise to - widespread public expression of hostility to Travellers. More generally, it gave rise to some reconsideration of the assumptions that had largely guided the Commission. For example, Fr. Tom Fehily, a member of the Commission who later became a leading member of the settlement movement, writing in 1974, suggested that:

“From the beginning the central theme of our [the settlement movement] policy has been quite clear, and contrary to the ideas of many people, it is not to persuade the Travellers to settle, or to settle them at any cost. We have always maintained, and still

do, most strongly, that if the Travellers wish to continue travelling, then they have every right to do so, and it is the duty of society to allow them to do so in conditions that befit human dignity. On the other hand, if they wish to settle in our community, then we must accept them as we would any neighbour. There may be a third option they may decide to keep their own identity and accept as many of the benefits of settled living as appear good to them. This must be their decision.” (in Bewley, 1974: 7)

In the context of growing activism and public debate, issues of Travellers’ rights began to be recognised as the rights of a distinct minority group. Thus, for example, when the prestigious journal the *Crane Bag* published a special issue on ‘Irish Minorities’ in 1980, it included an article on Travellers by journalist Maev-Ann Wren. This article, entitled ‘The Travelling People – Racialism in Ireland’, argued that Travellers:

“.. are the victims of blatant discrimination. Their non-conformism to the Irish norm and specifically to the norm of urbanized affluent Ireland is used to justify refusing them jobs, health care, education and housing.

Irish attitudes to travellers are not unlike the attitudes of the Boston Irish in their opposition to bussing, or the attitudes of the white minority in South Africa. For the attitudes are those of racialism” (in Hedermann and Kearney (eds.), 1981:756)

Travelling People Review Body

In January 1981 the Travelling People Review Body was established jointly by the Ministers for the Environment and for Health and Social Welfare “to review current policies and services for the travelling people and to make recommendations to improve the current situation” (1983:1).

In addressing the Inaugural Meeting of the Review Body, the Ministers asked the Body to review a range of issues, which in addition to considering arrangements for education, training and health and social welfare services for Travellers, included:

- The needs of travellers who wish to continue the nomadic way of life;
- The organisational arrangements to ensure that travellers are represented in decision making affecting them at local and national level;
- The way in which barriers of mistrust between the settled and travelling communities can be broken down and mutual respect for each others’ way of life increased.

These terms of reference already clearly signalled a move away from the more extreme assumptions of the Commission towards a different understanding of Travellers' identity as a group, and this was explicitly addressed by the Review Body in a section entitled, 'Who are Today's Travellers?' It suggested that definitions such as that of the Commission (cited above) were inadequate. Referring to the Commission's reference to Travellers' history the Review Body noted that:

"Since that time, there has been some academic debate on the question whether travellers comprise a distinct culture, an ethnic group or subculture and, particularly, a sub culture of poverty. There is as yet no agreement among researchers as to the origins of travellers or their status as a group. ...It was not within the terms of reference of the Review Body to resolve the issues – this is a matter for historians and anthropologists – but for the purposes of its work, the Review Body developed the following descriptive definition of today's travellers.

They are an identifiable group of people, identified both by themselves and by other members of the community (referred to for convenience as the 'settled community') as people with their own distinctive life style, traditionally of a nomadic nature but not now habitual wanderers. They have needs, wants and values, which are different in some ways from those of the settled community. More than half of those in the group now have a place to live either in houses or on serviced sites. Some may take to the road either occasionally or seasonally. The majority of those not yet provided with accommodation desire a fixed place of abode, and many of them are, in fact, encamped in locations with reasonable permanence. However, there is still a substantial number of transient families.

The designation 'traveller' is used throughout this report in place of the term 'itinerant' which was used by the Commission, as the latter is unacceptable to the persons to whom it is applied. They call themselves 'travellers' or the 'travelling people' and prefer to be known as such.

The term 'traveller' is used here to designate membership of the identifiable group referred to and not just to make the distinction between a nomadic way of life and a more settled one. The abandonment of the nomadic way of life does not automatically entail the renunciation of the traveller ethic nor integration with the settled community. Integration, if it is to occur, is a long and complex experience." (1983:5-6)

Further, commenting on the absorption policy of the Commission on Itinerancy, the Report noted that:

“The Review Body considers that in the light of experience and current knowledge the concept of absorption is unacceptable, implying as it does the swallowing up of the minority traveller group by the dominant settled community, and the subsequent loss of traveller identity. It is suggested that it is better to think in terms of integration between the traveller and the settled community. It is a long and complex process implying adjustment of attitudes towards one another, both by the traveller and by his neighbours in the settled community. As far as travellers are concerned the extent to which they will integrate with the settled community will depend on individual decisions by them and not on decisions by travellers as a whole or of any grouping of them. There are some who wish for total integration with the settled community and to be indistinguishable from those long housed and settled. On the other hand, there are some who wish to continue the traveller lifestyle while adjusting to the changes in it dictated by the withering away of their former modes of livelihood and the mechanisation of their transport. Others still, and possibly the largest grouping, will be those who will tend to adopt elements of the traveller way of life. In formulating programmes to meet the needs of travellers their various attitudes and desires as far as integration is concerned must be respected.” (1983:6-7)

It is evident that a significant change in understanding of the identity and status of Travellers was underway. Nevertheless the Review Body, despite references to Traveller identity, largely couched its own positive arguments in terms of the rights of Travellers as individual citizens. Again, at least in part, this was presented as a counter to stigmatised group identification “Stigmatising travellers as a group should cease and they should be treated as individuals with the same rights as all other citizens” (1983:31).

However it also reflected some confusion and/or ambiguity in the Report about the nature of group identity – and specifically Traveller identity – and its meaning and significance for individuals. This ambiguity is most strikingly represented by the Report’s rejection of legislation to protect Travellers from discrimination:

“The desirability of having special legislation enacted to outlaw discrimination against travellers as a minority group was examined by the Review Body. It became apparent from this examination that implementation of such legislation would be fraught with

many difficulties, especially in the absence of a precise legal definition of 'traveller'. Accordingly, the enactment of anti-discrimination laws is not sought." (1983:31)

Following its publication, a Task Force of Ministers of State considered the Review Body's Report and, as a result, a detailed statement of 'Government Policy in Relation to Travelling People' was issued in July 1984, setting out a "comprehensive programme to provide accommodation and other services for travellers, to deal with the problems which arise because of the large numbers who now live on the roadside and unauthorised sites and to integrate the travellers and the settled community" (see Committee to Monitor, 1985: 25-38). The Minister for Health was given an overall co-ordinating role in relation to Travellers and a committee to monitor the implementation of government policy on Travellers was established.

The Monitoring Committee began meeting in September 1984 and from the outset it called for legislation to combat discrimination against Travellers. Thus in its first report issued in November 1985 it noted that:

"At its very first Meeting, in September 1984, at the request of the traveller members, the Committee discussed the possibility of legislation being introduced to make it illegal for anyone to be discriminated against by reason of race, colour, creed or membership of a minority community. As a result of this discussion, a meeting was held between members of the Committee and representatives of the Departments of Justice and Foreign Affairs and the Attorney General's Office, on the need for and the nature of such legislation...

The Monitoring Committee is aware that this country has not yet ratified important United Nations Conventions on human and civil rights. Ratification of these Conventions, for which there is considerable pressure, will require measures to outlaw discrimination on the grounds of race, colour, religion or ethnic identities. The Monitoring Committee recommends that any legislation to be introduced should prohibit discrimination against Travellers and the Department of Health has undertaken to pursue this point with the relevant Departments." (Committee to Monitor, 1985:23)

The Monitoring Committee repeated its call for anti-discrimination legislation in each of the six reports it issued through its lifetime, before it was dissolved in 1993.

In November 1984, the National Council on Travelling People adopted a *Charter of Rights of Travelling People*. The Charter listed twelve rights, the first of which was the right to recognition of their distinct cultural identity: “Travellers as individuals, and as a group, have a right to realisation of their own cultural identity, indispensable for their dignity and free development as persons”. In November 1985, the Seanad debated and agreed a motion on the Charter, stating:

“That Seanad Eireann welcomes the Charter of Travellers’ Rights adopted by the National Council for Travelling People on November 11 1984 and calls on the Government to introduce, as a matter of urgency, the administrative and legislative reforms demanded by the Charter.” (Vol. 109:Col. 1023)¹

In the context of that debate the Minister of State at the Department of Social Welfare (Mr. Donellan) speaking for the Government, said that:

“In June of this year, the national council presented a copy of the charter to the Taoiseach who welcomed it as an important means of measuring progress towards travellers’ full participation in society. The charter is an important document, marking a further stage in the demand of travellers to be treated as full and equal members of our society.

Drawing on important international conventions and Bunreacht na hEireann, the charter highlights the human, social, political and legal rights of travellers as a minority community and as individuals. It is the first time that the rights of travellers have been looked at in a comprehensive way and the national council is to be congratulated for supporting this initiative.

In the introduction the authors say that the charter constitutes a set of principles for policy and for action and call on public bodies to recognise the principles of the charter. I am glad to say that many of the principles enunciated in the charter have gradually been accepted by Government in policies and services for travellers.

Take, for example, Article 1.1 which says that travellers ‘as individuals and as a group, have a right to realisation of their cultural identity’, I would argue that the recognition of travellers’ distinct identity and of their right to retain that identity, are fundamental

¹ All citations of Oireachtas debates are from the electronic record published on the Oireachtas website.

pillars of current policy towards travellers. This was not always the case [referring to the Commission on Itinerancy and the policy of absorption].” (Vol. 109: Col. 1052-1053)

Following a recommendation of the Review Body, the Government Statement of 1984 included a commitment to legislative clarification of the responsibilities of housing authorities in relation to Travellers and to ensure that these responsibilities were met, including through giving county managers additional powers in certain circumstances. The legislation which eventually resulted, the Housing Act 1988, included the first legislative definition of Travellers. Section 13 entitled ‘Provision of sites for travellers’ stated that “This section applies to persons belonging to the class of persons who traditionally pursue or have pursued a nomadic way of life”. Section 13 clarified the powers of housing authorities to provide serviced sites and Section 9 required housing authorities, in assessments of housing need, to assess the need for provision of serviced sites for Travellers. This legislation also gave City and County Managers powers in certain circumstances to proceed with provision of accommodation for Travellers without reference to the local authority.

Introduction of Incitement to Hatred Legislation

In 1988 the Government published an Incitement to Hatred Bill. The passage of this legislation saw the most detailed consideration by the Oireachtas of issues of Traveller identity and ethnicity and the pattern it established has shaped subsequent equality legislation.

As enacted Section 1.1 of the Incitement to Hatred Act 1989, states that

“In this Act ...

‘hatred’ means hatred against a group of persons in the State or elsewhere on account of their race, colour, nationality, religion, ethnic or national origins, *membership of the travelling community or sexual orientation.*” (emphasis added)

The Government’s original Bill did not include the above references to ‘membership of the travelling community or sexual orientation’. In introducing the legislation the Minister for Justice, Mr. Collins, indicated that the listed categories were those which had been identified as requiring legislative protection in order that Ireland could, in the first instance, ratify the International Covenant on Civil and Political Rights. In addition to the grounds of race, nationality and religion required by Article 20 of the Covenant, the original Bill included the

grounds of colour, ethnic or national origins to also meet the equivalent requirement of the Convention on the Elimination of all Forms of Racial Discrimination (CERD).

From the outset the importance of ensuring that Travellers would be protected under this legislation was central to the debate in the Oireachtas. Many of those arguing in support of this position argued that Travellers were an ethnic group (including spokespersons for Fine Gael, the Labour Party and the Progressive Democrats as well as a number of independents.) In the Seanad, Independent Senator Brendan Ryan argued that the legislation should clearly indicate that ‘ethnic origins’ covered Travellers and he moved an amendment to that effect. In responding to that debate the Minister stated that the Government did not intend to define the term ethnic origins further in legislation and that it should be left to the courts to define the precise meaning of the term. In this context the Minister referred on a number of occasions to the 1983 case of *Mandla versus Lee* in the House of Lords and said:

“In my opinion, it would be best to leave it to the courts to work out the case law the precise ambit of the term ethnic origins. If, as has happened in Britain, the term is construed widely by the courts in a broad cultural and historic sense, then we can be confident of a liberal interpretation of this term. We can also be confident that it will be interpreted with precision by the courts in the light of developing knowledge of the history and the background of any groups in our society who could be said to be ethnically separate from the majority community.” (Vol.121: Col. 962-963)

Later the Minister was asked: “Does the Minister think that in the view of the parliamentary draftsman that the term ethnic origins would cover a group like the travelling community?” (Vol. 121: Col 967). In responding the Minister said:

“I am satisfied that the Bill covers all ethnic minorities. If the travelling community are an ethnic group – this would be a matter for the courts to decide – then they will be covered as well...Having regard to the definitions arrived at in other countries with regard to the interpretation of the law including the United Kingdom where a liberal interpretation has been established, I feel quiet satisfied that the protection for the Travelling people which Senator Ryan is seeking is there in the Bill.” (Vol. 121: Col 967)

When the Bill came before the Dáil there was broad support – among both Government and other Deputies – for ensuring that Travellers should be protected by the legislation and the Minister’s suggestion that this was a matter for the Courts was not generally accepted. Referring to the Minister’s reference to the *Mandla* case, Deputy Mervyn Taylor

noted that the Irish courts were not bound by this decision and asked: “Why leave it to be determined and decided by the courts whether travellers are an ethnic group or not...?” (Vol. 387: Col. 2207).

Later Deputy Abbott of Fianna Fáil said:

“the constructive comments made by the opposition in relation to the inclusion of the travelling community are to be welcomed and I urge the Minister to bear them in mind in any modifications he might pose to the Bill. The travelling community may not be recognised by the courts as a group of people who should be protected by the Bill or who should come within its ambit, and the provision of separate defences and protections for the travelling people would be a very positive step and would be of great assistance to the travelling people and the public generally.” (Vol. 387: Col. 2212)

Responding to the second stage of the debate the Minister for Justice, Mr. Collins, said:

“I acknowledge the strength of feeling expressed in this house and in the other house that the Bill should make special reference to the travelling community. I acknowledge this and I personally deplore behaviour or activities intended to stir up hatred against members of the travelling community. It is often maintained on behalf of that community that they constitute a separate ethnic group within the State, and of course, in so far as travellers can be said to have separate origins they are covered by the Bill. However in view of the weight of the argument on this point and since there is continuing doubt as to whether members of the travelling community can be said to have distinct ethnic origins so that they could be regarded as already covered by the Bill, I will certainly look favourably at the question to see if we can have consensus on an amendment at committee stage.” (Vol. 387: Col. 2235-2236)

Subsequently a large number of amendments addressing these issues were put down at committee stage. These included a range of amendments seeking to add a specific reference to ‘membership of the travelling community’ as a protected category and a number of amendments aimed at defining the term ethnic origins as including the Traveller community.

Moving the proposal to add the phrase ‘or membership of the travelling community’ to the list of protected groups, Deputy Séan Barrett argued that, while the travelling community were an ethnic group:

“It would be an unfortunate situation if those people [referring specifically to the example of travellers living in local authority housing estates] had to go to court to prove they were covered under this Bill because they are part of an ethnic group. If we include ‘or membership of the travelling community’ we cover both sides”
(Vol. 389: Col.254)

Deputy Anne Colley moved a proposal to insert the following text: ‘ethnic origins includes references to the group of persons within the state known as the Travelling Community, which community traditionally pursue, or whose forebears traditionally pursued a nomadic way of life’. She argued that:

“the interpretation of ethnic origins should be spelled out as it is a phrase not in common use or not readily discernible from references to racial origins. It is worth while differentiating between the two. It would also serve the purposes of the Bill – to stamp out incitement to racial or ethnic hatred – to make specific reference to who would be included among ethnic groups. One of these should be the travelling community.

There is much support within the community at large for the inclusion of the travelling community among ethnic groups. For the sake of clarity it would be very useful to state definitely that we wish to include the travelling community under that heading rather than leave it up to the court to decide at a late stage. Given that we do not have any legislation of this on the statute book, cases dealing with this matter have not come before the courts. The courts should be given guidance; certainly, the courts should be aware of what was in our minds when we were passing this legislation.”
(Vol. 389: Col. 249-250)

The Minister accepted the Fine Gael amendments which added ‘membership of the travelling community’ as a protected category at the relevant points in the Bill. He said that, having examined all the proposed amendments he had come to the conclusion that ‘the simple approach is the best one’ and said:

“I am satisfied that these will give the travelling community the maximum protection afforded by the Bill with no qualifications brought about by definitions or other extraneous matters. This is one of those all too rare occasions when there is unanimity as to what we are trying to achieve and I might add that, any disagreement there may be is on matters of detail. I hope I have managed to convince Deputies that the amendments in the name of Deputy Barrett that I am accepting are the correct ones

both in drafting and policy, and fully meet the intentions of the other amendments I do not propose to accept.” (Vol. 389: Col. 264)

Rejecting Deputy Colley’s amendment the Minister said that the term ‘travelling community’ was well understood and that attempts to define it posed unnecessary risks to how its coverage might be interpreted. He also said:

“...on the basis of present knowledge about the history of the travellers there may be certain indications but little proof of their origins. I could not agree to a definition now that would tie the hands of the courts and could one day turn out to be factually wrong.

One day the courts may be asked to decide on whether the travellers are a distinct ethnic group. If that happens, *which in the context of this legislation it cannot if the amendments I am accepting are made*, the courts will make their decision in the light of prevailing knowledge of the history and background of the travellers. That knowledge may well be at a far more advanced stage than it is today.” (Vol. 389: Col.263-264 emphasis added)

Later rejecting another amendment to include ‘ethnic origin’ in the long title of the Bill (as its inclusion or otherwise in the long title had no implications for the application of the legislation) the Minister commented:

“A fairly typical dictionary definition of ‘ethnic’ is that it pertains to race or that it relates to the classification of groups on cultural, social or some other basis. Its meaning is very close to ‘race’. Similarly, ‘national origins’ has a meaning different but nonetheless related to ‘national’. ‘Colour’ in the context of this Bill means something different than ‘race’; but again it does not appear in the titles. The fact that ‘ethnic’ is not in the title did not prevent the amendments on the travelling community being accepted and that community are probably closer in meaning to ‘ethnic origins’ than any of the categories actually included in the titles.” (Vol. 389: Col. 267)

Finally, we should note that, further to the Minister’s comment (highlighted above) that the amended legislation would mean that the matter of whether Travellers were an ethnic group would not come before the courts under this legislation, Deputy Colley raised a concern about the implications of the approach adopted by the Minister for any future consideration of this matter:

“One very important aspect that occurred to me during this debate is that, given that the Minister has accepted those amendments, there is a question as to whether it will be possible for the courts to find that travellers are an ethnic group and they have been excluded from it in this Bill. I would ask the Minister to investigate that matter. He says that in the future the courts may be faced with applications to declare whether the travelling community is an ethnic group. If at that stage the courts have regard to this legislation, they will find that the Act will refer to ethnic or national origins, or membership of the travelling community. They are separate and different. The courts will then be faced with the problem as to whether they can disregard that completely in their deliberations. We must be extremely careful about what we do with regard to any amendment that we put forward. The Minister is right in saying that we should not tie the hands of the courts in making future decisions. Each one of us has said in his or her own way that he or she believes that the travellers are almost definitely an ethnic group, that they have various characteristics. That is what I understand most, if not all, Deputies to be saying here. I would be concerned that the net result of accepting these amendments would be that the travelling community would then be excluded from being regarded as an ethnic group in the future.” (Vol. 289: Col. 272)

In responding to this Deputy Barrett said that “The travellers are an ethnic group and are covered under the Bill, but to avoid any possible difficulty we are making specific mention of that group” (Vol. 389: Col. 277). In conclusion Deputy Colley withdrew the amendment in order that consensus might prevail but asked the Minister to consider the points she had raised before the Report Stage. However this matter was not further adverted to at the Report Stage of the Bill, which took place when a new Minister – Deputy Burke – was in office and when Deputy Colley had left the Dáil.

The Task Force on the Travelling People

The Task Force on the Travelling People was established in 1993. Its Terms of Reference required it inter alia:

“To advise and report on the needs of travellers and on Government policy generally in relation to travellers, with specific reference to the co-ordination in policy approaches by Government Departments and local authorities.

To make recommendations, for consideration by relevant Ministers, to ensure that appropriate and co-ordinated planning is undertaken at national and local level in the

areas of Housing, Health, Education, Equality, Employment, Cultural and Anti-discrimination areas.

To explore the possibilities for developing mechanisms including statutory mechanisms to enable travellers to participate and contribute to decisions affecting their lifestyle and environment;

To analyse nomadism in modern Irish society and to explore ways whereby mutual understanding and respect can be developed between the travelling community and the settled community.” (1995:10)

In order to meet its terms of reference the Report:

“examines and makes recommendations in relation to three principal areas, as follows:

- key policy areas of relevance to Travellers, namely accommodation, health, education and training, and economic development, including the co-ordination of policy approaches by the relevant statutory agencies;
- relationships between Travellers and ‘Settled’ people;
- the experience of Travellers with a particular focus on culture and discrimination.

Within each section, this Report recommends strategies to tackle the problems of social exclusion and social disadvantage which are faced by the Traveller community today. The main elements of these strategies include:

- the need to provide 3,100 units of additional accommodation by the year 2000, with supporting administrative and legislative changes to meet the needs of the existing and projected population of the Traveller community;
- the introduction of measures to improve the health status of the Traveller community and to remove the obstacles to Traveller access to the health services;
- the encouragement and undertaking of new initiatives to support the development of the Traveller economy and increased levels of Traveller participation in the mainstream labour force;
- the adoption of measures which address the problem of discrimination faced by the Traveller community;

- the introduction and/or, where necessary, the improvement of mechanisms in order to ensure that statutory agencies which provide services that impact on Travellers do so in a co-ordinated manner;
- the need to increase participation by Travellers and Traveller organisations in the decision making process in areas which affect Travellers' lifestyle and environment;
- the need to recognise and take into account the distinct culture and identity of the Traveller community in policy making and service delivery.” (1995:57-58)

In a section on relationships between the Traveller and the settled communities the Task Force noted that “Minimal contact between both communities contributes to barriers of prejudice based on fear and ignorance on both sides” (1995:61). It stated that “The Task Force believes that it is imperative that both communities play a role in fostering understanding, consideration and respect for each others' culture. The State also has a key role to play in this process” (1995:62). In this context it noted important changes in the nature and approach of Traveller organisations:

“The past decade has seen significant growth in the number of Traveller organisations. This growth has been accompanied by change in the nature and role of these organisations. This change can be seen in a number of areas including:

- a shift in focus has taken place, from a welfare approach inspired by charity to a more rights based approach inspired by a partnership process, in seeking to improve the living circumstances and general welfare of Travellers...
- the recognition of the importance of concepts of culture, ethnicity, racism and discrimination has entered in the debate about the situation of Travellers. This has resulted in a redefinition of the Traveller situation in terms of cultural rights as opposed to simply being a poverty issue.” (1995:62-63)

In a further section on ‘Culture’ the Task Force argued that:

“the Traveller culture lies in the values, meanings and identity that the Traveller community shares. It is clear that the Traveller community's culture is distinct and different. Settled people generally recognise the difference but fail to understand it as a cultural difference. This is a phenomenon characteristic of many societies, where the majority culture sees itself as holding a universal validity or norm in relation to values, meaning and identity.” (1995:71)

It suggested that visible markers of Traveller culture include Traveller nomadism, the importance of the extended family, the Traveller language and the organisation of the Traveller economy and it discussed in some detail the significance of Traveller nomadism and the Traveller language. In particular it emphasised the importance of recognition of Traveller culture and identity as a fundamental factor that should underpin strategies for addressing the needs of Travellers in policy. These arguments were summarised in the following conclusion:

“Everybody has a culture. Culture is the way we learn to think, behave and do things. The Traveller culture is that distinct complex mix of values, traditions, customs and patterns of behaviour that are shared by the Traveller community and practised in their daily lives. This involves a specific field of communication, meaning and belonging.

Traveller nomadism, the importance of the extended family, the Traveller language and the structure of the Traveller economy all provide visible or tangible markers of the distinct Traveller culture. The Traveller way of life is an adaptation of culture and circumstances. It is important that culture and circumstances are not confused.

Nobody’s culture can be destroyed, wiped out or assimilated. A person’s cultural reality is not capable of complete or immediate change. While, in normal circumstances, cultures are dynamic, change cannot be imposed and must come from within. Communities, ‘Settled’ or Traveller, cannot give up their values and customs and beliefs totally and adopt others.

There is minimal contact between the Traveller community and the ‘Settled’ community. The relationship between the two communities is characterised by conflict and tension. Legislation and planning based on an acknowledgement of cultural difference can reduce this conflict and tension. Such initiatives carry with them obligations and responsibilities which should be enforced on the Traveller community just as they are on the ‘Settled’ community.” (1995:76)

The Task Force therefore specifically recommended “that the distinct culture and identity of the Traveller community be recognised and taken into account” (1995:76).

The importance of full recognition of Traveller culture and identity is a cross cutting theme throughout the Task Force Report and is referred to in a number of specific policy discussions on areas such as accommodation, education and healthcare. It is also

fundamental to the Section C of the Report which deals with discrimination. Here the Task Force notes that:

“Academic debate and various international fora focus attention on the link between racism and cultural difference particularly in scenarios of unequal power relationships. The forms of prejudice and discrimination experienced by the Traveller community equate with racism in the international context.” (1995:79)

In regard to Equal Status Legislation it argued that “Recognition of the distinct culture and identity of the Traveller community will make a significant contribution to this community enjoying equal status in Irish society”(1995:82) and it recommended specifically that “the Equal Status legislation would define Travellers in a manner that acknowledges their distinct culture and identity” (1995:82). Furthermore, on the basis of a review of British case law, the Task Force argued that:

“For the purposes of British law it is clear from these judgements that the Traveller community could be identified as an ethnic group. In the Irish context, it is important that Equal Status legislation in specifying its protection of ethnic groups would also specifically name the Traveller community as being protected.”(1995:84)

Finally it recommended that the rights of Travellers be addressed by Government in the context of the full range of its international human rights obligations.

Following consideration of the Task Force Report by an Inter-Departmental Working Group the Government announced a strategy in relation to Travellers which included inter alia: a five year National Strategy for Traveller Accommodation which would be underpinned by new legislation, a commitment to strengthen health and education services for Travellers, and, a commitment that the Task Force recommendations would be taken into account in the preparation of equality legislation.

In December 1996, *Partnership 2000*, in a section on ‘Travellers’ agreed that:

“5.32 The Government strategy in response to the report of the Task force on the Travelling Community will continue to be implemented and will be monitored, with a view to effecting a real advance in the living circumstances of members of the Traveller Community, as well as improving relations between the settled and Traveller Communities, *and a new status for the culture and identity of the Traveller Community.*”
(emphasis added)

Following the Task Force report, specific legislation to address Traveller's accommodation was enacted. The Housing (Traveller Accommodation) Act 1998 requires local authorities, in consultation with Travellers and their representatives, to prepare and adopt five year programmes to meet the accommodation needs of Travellers in their areas and obliges local authorities to take appropriate steps to ensure their implementation. It also established the National Traveller Accommodation Consultative Committee on a statutory basis and required local authorities set up local traveller accommodation consultative committees.

Section 6 of the Act requires housing authorities when making an assessment under Section 9 of the Housing Act 1988 to make assessment of the need for halting sites in the functional area concerned. In making this assessment housing authorities must have regard, inter alia, to the estimate of Travellers and the need for halting sites with limited facilities (referred to in Section 13 of the Act of 1988 (as amended by the 1988 Act) in relation to the annual patterns of movement of Travellers, otherwise than as their normal place of residence.

Section 7 requires housing authorities to adopt an accommodation programme and to specify in that accommodation programme the accommodation needs of Travellers and the provision of accommodation required to address those needs. Section 10 (3) requires housing authorities in preparing an accommodation programme to have regard to, inter alia, "(6) the distinct needs and family circumstances of Travellers".

In June 1998 a 'Committee to Monitor and Co-ordinate the Implementation of the Recommendations of the Task Force on the Travelling Community' was established. The Monitoring Committee established has issued two progress reports to date – both of which have emphasised the centrality of the recognition of Travellers culture and identity. The first, published early in 2001 stated that:

"A considerable amount of work remains to be done to ensure the importance of recognising the distinct culture and identity of the Traveller community, as being central to the recommendations of the Task Force, is fully understood and accepted by all officials and elected representatives at local level who are responsible for the implementation of many of the recommendations of the Task Force" (2001:8)

and made a number of recommendations in this regard, including:

“Statutory and non-statutory bodies with responsibility for social policy and local development should develop a clear and collective understanding of the importance of taking into account the recognition of the distinct culture and identity of Travellers in the design and implementation of policies.” (2001:11)

Planning for Diversity: The National Action Plan Against Racism was published in January 2005. The Plan notes that “Racism takes different, sometimes overlapping, forms and impacts on a range of groups in Ireland, including: Racism experienced by Travellers” (2005:29). The Plan states that “Irish Travellers are an important part of the existing cultural diversity in Ireland. Travellers are an indigenous Irish community with a shared history, a nomadic way of life and distinct cultural identity” (2005:50). The need for ‘targeted strategies focusing on the integration of Travellers, Migrants and Refugees’ is highlighted throughout the Plan.

The Task Force Monitoring Committee’s second report, issued in December 2005, states that:

“One of the key recommendations of the Task Force report was that the distinct culture and identity of the Travellers Community should be recognised and taken into account...

Traveller culture needs to be recognised as the foundation for the other sections of the report” (2005:12)

However the Monitoring Committee report clarifies that not all the recommendations of the Task Force had been accepted by Government and mapped the status of each recommendation. This mapping exercise indicated that the Task Force recommendation on Traveller culture and identity had been ‘Accepted in Principle’ by Government. This was defined as “The Government accepts the general thrust of the Recommendation but is implementing it differently to the (sic) Task Force intended” (2005:133).

Equality Legislation

We saw earlier that the Monitoring Committee set up in 1984 had consistently called for legislation to address discrimination against Travellers in the context of meeting the requirement of ratifying the CERD. In its final report issued in 1991 it recommended that the work of the Interdepartmental Committee looking at the measures required for

ratification “be given priority attention by the Departments concerned , having regard to the continuing discrimination being experienced by Travellers” (1991:7) and it said it regarded it as unacceptable that the examination process of the Convention ‘should go on interminably’. The need for such broader legislation to address discrimination against Travellers in order to meet the CERD requirements had also been frequently referred to in the context of the Oireachtas debates on the Incitement to Hatred Bill discussed earlier. An Equal Status Bill, 1990 which was introduced by the Labour Party as a Private Members Bill was entitled ‘An act to make unlawful certain kinds of discrimination on grounds of sex, marital or parental status, sexual orientation, age, handicap, religion, race or membership of the travelling community’ and sought to prohibit discrimination against groups defined by reference to inter alia ‘national or ethnic origins (including membership of the travelling community)’. In 1993 the Programme for Government agreed by Fianna Fáil and the Labour Party stated that:

“We will pass equal status legislation which will prohibit discrimination and will cover a wide range of grounds including sex, marital or parental status, sexual orientation, religion, age, handicap, race, colour, nationality or national or ethnic origins, including membership of the travelling community”

and that:

“We are satisfied that the commitment in this programme to the passage of legislation which will enable Ireland to ratify the UN Convention on Ending All Forms of Discrimination will be of particular relevance and benefit to travelling people who experience discrimination at all ages and in most aspects of their lives”

Early in the life of that Government an Unfair Dismissals (Amendment) Bill was introduced which, as published, specified inter alia that dismissal on the basis of sexual orientation constituted unfair dismissal. During the passage of the Bill the Oireachtas adopted amendments which additionally specified that dismissal on the basis of an employee’s age or their ‘membership of the travelling community’ constituted unfair dismissal. These grounds of unfair dismissal were added to the grounds already specified in the Unfair Dismissals Act 1977 which included trade union membership, religious or political opinion, race or colour of the employee, pregnancy and the involvement of an employee in proposed or actual civil or criminal proceedings against their employer. The Act did not refer to ethnic origin.

In February 1994 the *Programme for Competitiveness and Work* included a commitment to introduce employment equality legislation as early as possible in 1994 which would inter alia “extend to other groups the principle of equal treatment provision in employment” (1994:71) and also equal status legislation to combat discrimination beyond the employment field.

The Employment Equality Bill 1996 and the Equal Status Bill 1997 both proposed to prohibit discrimination on nine discriminatory grounds including ‘that one is a member of the travelling community and the other is not (the travelling community ground)’. While both these Bills were passed by the Dáil and Seanad they were struck down by the Supreme Court on referral by the President. Following this a revised Employment Equality Bill 1997 referred to ‘traveller community’ rather than ‘travelling community’ but otherwise was unchanged from the 1996 Bill in regard to the matters of relevance here and no relevant amendments were made in its passage through the Oireachtas. The Equal Status Bill 1999 as initiated also referred to ‘traveller community’ rather than ‘travelling community’ but otherwise was unchanged. However the consideration of this legislation by the Oireachtas saw the adoption of important amendments to the definition of the Traveller community. At Committee Stage amendments were put down to capitalise the term Traveller and to amend the legislation to specifically incorporate an ethnic definition of Travellers, following the definition adopted in the Northern Ireland Race Relations Order 1996.

In regard to capitalisation of the term Traveller, Deputy Higgins noted that “It is only a small change but it is a significant and symbolic one. We are talking about a group which sees itself as a distinct cultural and ethnic group.” (This and the following quotations are from the Committee Stage discussions which took place on November 3rd, 1999). In response the Minister, Mr O’Donoghue said that the term ‘traveller community’ has been adopted following a recommendation of the NESF. However, it should be noted that the NESF recommendation specifically proposed ‘Traveller community’ and this was directly related to its proposal for clearer legislative recognition of Travellers as an ethnic group. In its Opinion on the Employment Equality Bill 1996 the Forum had recommended that “the Bill should make reference to the ‘Traveller community’ and to the ‘Traveller community ground’. The Traveller ground should be described in a manner that identifies Travellers as an ethnic group” (1996:20).

In the event the Minister agreed to consider the amendment and to come back at Report Stage. In regard to amending the legislative definition of ‘Traveller community’, Deputy FitzGerald argued that:

“The current definition of the travelling community [i.e. that of the Housing Act 1988] is not sufficient to make the Bill workable and it may mean that we are not able to ratify the UN Convention on the Elimination of All Forms of Racial Discrimination. It would be preferable if the Bill could amend the previous legal definition of traveller under the Housing Act, 1988, to a definition of the travelling community as a distinct ethnic group. This definition was introduced in Northern Ireland under the Race Relations Act, 1997, article 5(2).”

When the Minister replied that he did not favour the insertion of this definition, Deputy FitzGerald again argued that the current definition of traveller might not meet the requirements for ratifying the CERD and went on:

“The belief of the groups which made the submission to us is that this definition [i.e. the existing definition in the Housing Act] is open to legal challenge as a result of its ambiguity and that it defines travellers in relation to their position as a problem within housing policy. The travelling community believes the definition should be more holistic in defining an ethnic group from the inside rather than from the outside by policy makers. It is already in article 5 (2) of the Northern Ireland Race Relations Act.

I would like the Minister to look at the information available on the definition before Report Stage, the fact that it exists in Northern Ireland and that it has a high level of support in the travelling community and among policy makers. It would strengthen the Bill. It came from a legal precedent laid down by the House of Lords in 1983 which enshrined two tests for ethnic origin in law - a long shared history and a cultural tradition with family and social customs.”

Replying the Minister agreed to look at the implications of the proposal although he did not at that time ‘hold out much cause for optimism’. Nevertheless, at Report Stage the Minister brought forward amendments both to capitalise the term ‘Traveller’ throughout the equality legislation and to incorporate the following definition of the Traveller community in both the Equal Status and Employment Equality legislation:

“the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including, historically, a nomadic way of life on the island of Ireland.”

Introducing these amendments the Minister said:

“I have given careful thought to how best to define the traveller community. The definition posed, which as suggested in the Select Committee, is modelled on the Northern Ireland Race Relations Order, 1996, is the most appropriate....

I am pleased to bring forward these amendments following the interesting discussion we had on Committee Stage. I hope the opposition spokespersons will find the definition to their satisfaction.” (Vol. 512: Col. 1606)

Responding Deputy FitzGerald said:

“I welcome the Minister’s amendments. On Committee Stage we pointed out that the definition of ‘traveller’ in the legislation was insufficient to make the Bill workable and that it might not ratify the UN Convention on the elimination of all forms of discrimination. We suggested that the Bill should amend the previous legal definition of ‘traveller’ in the Housing Act, 1988. Given that there was no definition of traveller as a distinct ethnic group in legislation, we considered it important to introduce one.” (Vol. 512: Col. 1606-1607)

Not surprisingly then, the incorporation of this definition in the legislation was generally interpreted as confirming legislative recognition of Travellers as an ethnic group. In the words of Professor Gerry Whyte “This definition thus represents the successful culmination of a campaign by Travellers to be recognised as a distinct ethnic, as opposed to economically deprived, group in Irish society” (Whyte 2002: 218).

Government Reporting Under International Human Rights Obligations

In this section we turn to consider how the Government has addressed the issue of Traveller ethnicity in reporting under its international human rights obligations.

In 1992, Ireland’s first report under the International Covenant on Civil and Political Rights referred to the issue of Travellers ethnic identity in its comments on Articles 2 and 27. Article 2 requires each State Party to respect the rights recognized in the Covenant,

“without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Here Ireland’s report commented:

“Allegations are sometimes made of discrimination against the travelling community. This is a community whose members, like the gypsies in other countries, used to travel from place to place in pursuit of various traditional callings. Many of these occupations in the modern economic climate are obsolete. Nowadays travellers tend to live in caravans close to the major cities. Some of the bodies representing travellers claim that members of the community constitute a distinct ethnic group. The basis of this claim is not clear. Travellers do not constitute a distinct group from the population as a whole in religion, language or race. They are not a Romany or gypsy people. However, members of the community are undoubtedly entitled to all rights under the Covenant and not to be discriminated against as a group and it does not appear to be of particular significance whether their rights relate to their alleged status as an ethnic group or to their social origin.”

Article 27 states that “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Here Ireland’s report commented:

“Insofar as Ireland is concerned the only ethnic group that might be covered by this Article is the travelling community. Some of the bodies representing travellers claim that members of the community constitute a distinct ethnic group. The basis of this claim is somewhat unclear. However the Government of Ireland accepts the rights of travellers to their cultural identity, regardless of whether it may properly be described as an ethnic group. In any event there is no legal restriction on any such group ‘to enjoy their own culture, to profess and practice their own religion or to use their own language’ as outlined in Article 27 of the Covenant”.

The position adopted here can be seen as formally agnostic in that it does not explicitly affirm or deny Travellers ethnicity while arguing that the protection required for members of ethnic groups under the Covenant would in any case be available to Travellers. It is notable in that it makes no reference to the Oireachtas treatment of the ethnicity issue in passing the Incitement to Hatred legislation nor to the broader academic and policy literature debates on this matter.

Insofar as they considered Traveller issues, this formally agnostic position was maintained in Ireland's initial report under the International Covenant on Economic, Social and Cultural Rights in 1997 and Ireland's second periodic report under the International Covenant on Civil and Political Rights in 1998. Ireland's first report under the Council of Europe's Framework Convention on National Minorities in 2001, while maintaining the same formal agnosticism, gave much greater emphasis on Travellers' distinct identity:

“In a range of legislative, administrative and institutional provisions, the Government has recognised the special position of Ireland's Traveller community, in order to protect their rights and improve their situation.

While Travellers are not a Gypsy or Roma people, their long shared history, cultural values, language (Cant), customs and traditions make them a self-defined group, and one which is recognisable and distinct. The Traveller community is one whose members, like the Gypsies in other countries, travelled from place to place in pursuit of various different traditional vocations. Despite their nomadic origins and tendencies, the majority of the Traveller community now live in towns and cities.

Their culture and way of life, of which nomadism is an important factor, distinguishes the Travellers from the sedentary (settled) population. While Travellers do not constitute a distinct group from the population as a whole in terms of religion, language or race, they are however, an indigenous minority who have been part of Irish society for centuries. The Government fully accepts the right of Travellers to their cultural identity, regardless of whether they may be described as an ethnic group or national minority.”

Ireland ratified the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 2000 and submitted its first report in 2004. In CERD the term 'racial discrimination' is defined as meaning

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which as the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any field of public life.”

In this report the Government – for the first time – explicitly stated its belief that Travellers are not an ethnic group. The final version of the report sets out the Government's position as follows:

“The Government’s view is that Travellers do not constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin. However, the Government of Ireland accepts the right of Travellers to their cultural identity, regardless of whether the Traveller community may be properly described as an ethnic group.” (2004: 13)

An appendix to the report discussed initiatives taken to combat discrimination against Travellers and stated:

“Irish Travellers (population 24,000) are an indigenous Irish community with a shared history of a nomadic way of life and cultural identity. Some of the bodies representing Travellers claim that members of the community constitute a distinct ethnic group. The exact basis for this claim is unclear [A footnote at this point states “According to Tovey and Share ‘A Sociology of Ireland’ (Dublin 2002), P 470, the claim that Irish Travellers constitute a distinct ethnic group is controversial within academic research.]” (2004:90)

Following its consideration of this report the UN Committee on the Elimination of Racial Discrimination commented on the Government’ position in its concluding observations as follows:

“Recalling its General Recommendation VIII on the principle of self-identification, the Committee expresses concern at the State party’s position with regard to the recognition of Travellers as an ethnic group. The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the Convention (article 1 and 5).

Welcoming the open position of the State party in this respect, the Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group.”

Late in 2005 the Government’s position was restated and elaborated at a number of points in Ireland’s second report under the Council of Europe Framework Convention for the protection of National Minorities. In its response to a specific request to provide comments regarding the question of recognising Travellers as an ethnic group/national minority, the report states:

“In the course of drafting the CERD report, the question of whether to include Travellers arose. Travellers do not appear to fall within the definition of racial discrimination

adopted by the convention in that they do not appear to constitute a distinct group from the population as a whole in terms of race, colour, descent or national or ethnic origin. The Government recognised that Travellers have a distinct cultural identity and that Travellers suffer discrimination and exclusion. It was decided, therefore, that a report on the position of Travellers would be included as an appendix to the convention report. This means that the CERD can consider the situation of Travellers and question the Government on its treatment of Travellers”

and:

“The Government is committed to challenging discrimination against Travellers and has defined membership of the Traveller community as a separate ground on which it is unlawful to discriminate under equality legislation. This was not meant to provide a lesser level of protection to Travellers compared to that afforded to members of ethnic minorities. On the contrary, the separate identification of Travellers in equality legislation guarantees that they are explicitly protected. The Government notes that the Durban Declaration and Action Plan recognised the need to develop effective policies and implementation mechanisms for the full achievement of equality for Roma/Gypsies/Sinti/Travellers.

However, the Government was not prepared to conclude that Travellers are ethnically different from the majority of Irish people. The point also needs to be made that the Government is not alone in making this assessment. The 1995 Task Force report on the Traveller community, which consisted of Government Departments, civil society, political parties and Traveller representatives, did not recommend that Travellers should be identified as an ethnic minority. Contrary to the impression given by some Traveller organisations, academic opinion is also split on this issue. For example, in *A Sociology of Ireland* published in 2002, two leading sociologists, Hilary Tovey and Perry Share pointed out that the claim that Travellers constitute a distinct ethnic group is controversial within academic research. Some Traveller organisations have argued for the ethnicity of Travellers only since the mid-1980s.”

Finally this report also includes the following comments:

“In a range of legislative, administrative and institutional provisions, the Government has recognised the special position of Ireland’s Traveller community, in order to protect their rights and improve their situation.

While Travellers are not a Gypsy or Roma people, their long shared history, cultural values, language (Cant), customs and traditions make them a self-defined group, and one which is recognisable and distinct. The Traveller community is one whose members, like the Gypsies in other countries, travelled from place to place in pursuit of various different traditional vocations. Despite their nomadic origins and tendencies, the majority of the Traveller community now live in towns and cities.

The position of the Government is that the assertion that Travellers are ethnically different from the majority of Irish people has not been proven. Whatever the rights and wrongs of that argument, and whatever the merits of deciding it one way or the other, Travellers must be protected on an analogous basis. This is why the Government included material on the situation of Travellers, is applying the protections of ICERD and the FCNM to Travellers.

In the light of the discussions on this ethnicity issue at the UN Committee on the Elimination of Racial Discrimination on Ireland's 1st and 2nd Reports under ICERD, the Minister of State at the Department of Justice, Equality and Law Reform has invited Pavee Point Traveller Centre to submit a written presentation of the agreements (sic) for such recognition."

Concluding Comments

The above account has demonstrated that policy thinking on the status of Travellers as a group in Irish society has moved to a position of strongly affirming the distinct culture and identity of Travellers. Furthermore, since the 1980s the arguments about legislative protection of Travellers as a group have been specifically framed in terms of meeting Ireland's international human rights obligations and in particular in fulfilling the terms of the International Convention on the Elimination of All Forms of Racial Discrimination. Throughout these debates over many years, there has been growing agreement that failure to specifically protect Travellers would not meet the Convention's requirements in regard to the protection of ethnic groups. On the evidence of the Oireachtas debate, the naming of Travellers as a protected group in the Incitement to Hatred Act was put forward as a way of ensuring that from the outset Travellers would be guaranteed the protection that the CERD provides for ethnic groups. Further the incorporation of an ethnic definition of Travellers in the equality legislation was specifically understood by the Oireachtas as

removing any doubt as to whether Travellers were encompassed by the CERD's requirements for protecting ethnic groups.

The position taken recently by the Government, in explicitly denying that Travellers should be recognised as an ethnic group in the context of the Convention is therefore surprising, and the basis for this assertion has not been made clear. The Government has argued that the Task Force 'did not recommend that Travellers should be identified as an ethnic minority'. However as we have seen above the Task Force's arguments regarding Travellers culture, identity and ethnicity are interrelated and the Task Force specifically argued that "it is important that Equal Status legislation in specifying its protection of ethnic groups would also specifically name the Traveller community as being protected". The Government has also supported its denial of Traveller ethnicity with the claim that the suggestion that Travellers are an ethnic group is "controversial within academic research". The next Part of this report examines this issue.

Part Three

Academic Literature on Traveller Ethnicity

On a number of recent occasions the Government has stated that it does not recognise Travellers as an ethnic group, and has in part based its position on the claim that Travellers status as an ethnic group is controversial within academic research. To clarify what is at stake here, this Part provides an overview of the principal academic literature on Travellers ethnicity. The first section briefly considers the conceptualisation of ethnicity and in particular introduces some key ideas from anthropology that have shaped the literature on Travellers. This is followed by a general overview of the main academic arguments on Travellers ethnicity, a specific discussion of the controversy cited in Government statements in support of the claim that academic opinion is divided, and a brief conclusion.

Conceptualising Ethnicity²

Initially the anthropological approach to ethnicity focused on attempting to define the 'cultural content' that defines an ethnic group. The publication of the collection, *Ethnic Groups and Boundaries – the Social Organisation of Culture Differences* (Barth ed., 1969) and, in particular Fredrik Barth's introductory essay on 'Ethnic Groups and Boundaries'

² There is an enormous literature on these issues. Some particularly useful studies which have informed the discussion in this section are Jenkins, 1997; Cornell and Hartman 1998; Eriksen, 2002; and Fenton 2003.

signalled the emergence of a new approach which strongly influenced subsequent work in anthropology as well as sociology and other disciplines.

Barth notes of the earlier literature:

“The term ethnic group is generally understood in anthropological literature (cf. e.g. Narroll, 1964) to designate a population which:

1. is largely biologically self-perpetuating
2. shares fundamental cultural values, realized in overt unity in cultural forms
3. makes up a field of communication and interaction
4. has a membership which identifies itself, and is identified by others, as constituting a category distinguishable from other categories of the same order.”
(Barth, 1969:10-11)

According to Barth, his ‘quarrel’ is not so much with the substance of these characteristics which as an ideal type definition is “close enough to many empirical ethnographic situations” (1969:11). However he suggests that that while shared cultural traits are important, they only become so as ethnic groups are formed through a social process of boundary creation and maintenance. This means that the fourth point listed above – how groups come to define themselves and be defined by other as a distinct ‘people’ – should be seen as the ‘critical feature’ and the other points – the ‘cultural stuff’ – become diagnostic of ethnicity only insofar as they become bound up with the process of boundary maintenance. This change of focus turns out to have many important consequences for the understanding of the phenomenon of ethnicity in the world and inevitably for how research on ethnicity is understood.

According to Barth, the traditional view has, wrongly, “allowed us to assume that boundary maintenance is unproblematical and follows from the isolation which the itemised characteristics imply: racial difference, cultural difference, social separation, language barriers, and spontaneous and organised enmity” (1969:11). It has relied on the assumption that ethnic groups must always have been separate or distinct populations and further that in modern societies, insofar as previously separate groups interact with others, the natural outcome is acculturation – in effect the dissolution of specific ethnic group identities into the formation of wider social identities. However neither of these assumptions is necessarily true.

The shift in emphasis from an inventory of group traits to boundary maintenance also potentially brings a much wider set of issues concerning social action and social construction into the research frame. Two such issues should be noted here. First, in broadening the research focus to include the interaction of groups, it has highlighted the significance of majority representation (or misrepresentation) of minority ethnic groups and research on ethnicity has increasingly been directed towards these issues. Second, in focusing on the actions of groups (rather than simply group traits) it focuses attention on the determinants of action (for example whether the actions involved are governed by a narrowly instrumental rationality, whether they are structured by inherited norms and so on) and on the analysis of ethnic mobilisation.

Academic Work on Irish Travellers as an Ethnic Group

We saw earlier that the Report of the Commission on Itinerancy stated that, in its view, Travellers did not constitute an ethnic group. This view was also taken as a given by Patricia McCarthy in her unpublished – but widely cited – Masters Thesis on ‘Itinerancy and Poverty – a Study in the Sub-culture of Poverty’ (McCarthy, 1972).

“It is a basic assumption of this study that the Irish travellers are not gypsies and do not constitute a separate ethnic group with an entirely separate tradition and culture. Poverty is considered to be basic to itinerancy in this study.” (McCarthy, 1972:6 quoted in Ní Shuinéar, 1997:44)

McCarthy suggested that there is confusion between Travellers and Gypsies and that the latter but not the former “constitute a separate ethnic group with a separate ‘secret’ culture” (McCarthy, 1972:12 quoted in Ní Shuinéar, 2002:187). McCarthy’s thesis was particularly influential in policy debate. Therefore it is important to note that the author now completely rejects the views on Traveller ethnicity outlined there. In a 1994 paper reflecting on the earlier study she said:

“The data for this study were collected by means of participant observation in a Travellers site... The data are still valid today and the study is one of the few of Irish Travellers that was based on first hand knowledge...However the major problem with the study was its theoretical framework. Titled ‘Itinerancy and Poverty – a Study in the Sub-Culture of Poverty,’ it was very much a product of thinking and concepts in sociology at the time. The concept of a culture or sub-culture of poverty was

fashionable... the theory was never relevant to Irish Travellers or any Travellers for a number of reasons which I will now identify.

In the first place, economic poverty is not the central issue as far as Travellers are concerned. Every economic level can be found among Irish Travellers ranging from small groups of very wealthy families to groups of very poor families. This is an important fact because it demonstrates the viability of the Traveller way of life despite the serious structural obstacles it faces.

Secondly, Traveller culture is not a sub-culture of Irish society but a culture in its own right, which has more in common with Gypsies, Travellers and economic nomads worldwide than it has with settled people of any nationality. Travellers identify with each other across national boundaries and divide the world into Traveller and non-Traveller, Gypsy and gadje.

Thirdly the sub-culture of poverty theory does not deal with the issue of nomadism. Nomadism, however, is central to the understanding of Travellers and of their way of life and their relationship with the settled society.

Finally the issues of separate language, separate norms and value systems are not addressed by the sub-cultural theory.” (1994:121-123)

Around the same time that McCarthy was carrying out her research, two American cultural anthropologists – Sharon and George Gmelch – carried out their initial fieldwork with Travellers in Dublin and in the following years they produced a series of related academic and popular publications (see e.g. G. Gmelch 1975,1977; S. Gmelch 1975,1989; Gmelch and Gmelch 1974,1976). In their work the Gmelchs specifically identified Travellers as an ethnic group. Their main arguments on this issue were summarised in a 1976 article on ‘The Emergence of an Ethnic Group: The Irish Tinkers’ (Gmelch and Gmelch, 1976).

At the outset they note that ethnic groups in any society are not necessarily of foreign origin and that indigenous ethnic groups – many of them similar to Travellers – can be found in a number of European societies³:

3 The Commission on Itinerancy had also noted the existence of groups similar to Travellers in many countries (see Section II.2), although they did not see them as ethnic groups.

“Ethnic identities which distinguish members of one group from the rest of society are generally based on differences in skin color, language, religion, national origin, or a combination of these factors. Occasionally, however distinct ethnic groups emerge from within culturally homogenous populations. Numerous itinerant populations in Western Europe such as the Swedish Tattare, Norwegian Tater, Finnish Zigenare, Dutch Reiziger, and Scottish Travellers represent ethnic groups which are both indigenous to their country of residence and identical to its people in terms of colour, language and religion.” (1976:225)

They then went on to argue that according to accepted anthropological definition – and here they refer specifically to the four part framework of Narroll (1964) quoted by Barth above – Travellers (whom they refer to here as Tinkers) form a distinct ethnic group within Irish society:

“At present there are approximately 9,000 Tinkers in a population of three million settled Irish. Like the sedentary population they are white, English-speaking, Roman Catholic, and indigenous to Ireland. Yet, according to accepted anthropological definition (cf. Narroll, 1964), they form a distinct ethnic group within Irish society.” (1976:226)

They then take each of the four elements in the Narroll framework and outline its application to Travellers:

“First, Tinkers are biologically self-perpetuating. Of the 160 marriages for which we have data, 141 or 90 percent were contracted between Travellers rather than with members of the settled Irish community...

Secondly, Tinkers share cultural features and behavior patterns which distinguish them from settled Irish. As a group, they possess a unique material culture including colorful carts and wagons, tents, and piebald ponies; and they practice marginal trades and services which are not generally pursued by other Irish...

Thirdly, Tinkers have a separate field of communication and interaction. The fact that they live on the periphery of population centers, physically segregated, means communication with the house-dwelling population is restricted. Most interaction is confined to asking for alms and second-hand goods and to institutional settings such as the courtroom and hospital. Such encounters are typically brief and highly stylized...

Finally, Tinkers identify themselves and are identified by others as a separate cultural group.” (1976:226-227).

Also in the early 1970s Judith Okely – an English social anthropologist, later Professor of Social Anthropology at Hull University – began her fieldwork with Traveller-Gypsies in England. Again Okely has published widely in this field (see e.g. Okely 1975, 1983, 1994, 1997, 2005). Following Barth, she develops her arguments about Gypsy-Travellers ethnic identity in an interactionist framework:

“The word ‘culture’ can be variously defined to cover the totality of the Gypsies’ social and economic organisation or be restricted to beliefs and rituals. In either case, the group’s culture is not self-contained. The Travellers’ economy is directly dependent on the wider economy, even though self-employment gives a measure of freedom from non-Gypsies, mobility and flexibility. The group’s beliefs and rituals are not an abstract totality floating separately from the material circumstances and relations of production with non-Gypsies. Moreover the Gypsies beliefs and rituals should also be seen in the context of their ideological relations with the wider society. Since Gypsies are not a separate society, they can hardly be attributed with an autonomous culture. This absence of autonomy should not preclude the understanding that the group’s beliefs and practices have coherence and form a meaningful whole. The coherence comes also as a response to the dominant society and ideology.

In order to protect themselves as a distinct group within a society which is always trying to assimilate or destroy them, the Gypsies uphold specific ethnic boundaries. They are based on the principle of descent, the practice of self-employment, a commitment to certain values, an ideology of travelling and pollution taboos. Their ethnic identity and beliefs are neither a passive nor a random construct, but a coherent system which when affirmed as daily practice both reflects and reinforces the boundary between Gypsy and Gorgio.” (1983:33-34)

She argues that this view is an important corrective to much of the earlier literature on the history and culture of Gypsies or Travellers in Britain which emphasises their exotic character:

“At this stage I remain sceptical concerning some of the exotic criteria for identifying the real Gypsies, I question the implicit assumptions that an ethnic group needs to be defined on the basis of its claims to foreign origins and claims to and vestiges of

‘exotic’ culture’. An ethnic group’s right to self-determination should not have to rest on that kind of romance.” (1983:15)

And:

“Evidence of the persistent adjustments by Gypsies to changes in the larger society confronts those who uphold the images of a ‘traditional’ and isolated Gypsy culture. Those of the exoticist tradition have tended to construct a minority remnant of ‘real’ Gypsies from the past and disown the others, perhaps the majority, who also call themselves Gypsies or Travellers.” (1983:32)

Thus she rejects the claim that you have on the one hand ‘real Gypsies’ who have a distinctive ethnic identity and on the other hand Travellers – Irish or otherwise – who do not, which as we have seen was assumed by the Commission and McCarthy. Rather Okely argues that there is a great deal of common ground in the experience of all Traveller groups in the British Isles:

“The Travellers or Gypsies do tend to identify themselves according to one of the four national divisions of the British Isles, but this does not mean that one is more ‘Indian’ or ‘Romany’ than the other...The term ‘Traveller’ does not imply a drop-out from the sedentary society, as is so often supposed by outsiders, but full membership of an ethnic group using the principle of descent. The term emphasises a travelling, nomadic identity. Those Travellers who associate themselves with Ireland or Scotland tend not to adopt the nomenclature ‘Gypsy’.”(1983:18)

She further elaborates on this in a 1994 paper on ‘An Anthropological Perspective on Irish Travellers’:

“What do the English or Welsh Gypsies and Irish or Scottish Travellers have in common? They share a resistance to wage labour, a multiplicity of self-employed occupations, often a need for geographical flexibility and an ideological preference for trailers or caravans...

Among English, Scottish, Welsh and Irish Travellers membership is based on descent. A person has to have at least one Traveller or Gypsy parent to claim membership...

English, Scottish, Welsh and Irish Travellers also share pollution beliefs... I found pollution beliefs among English, Irish and Welsh Travellers in England. There is also evidence of the same pollution beliefs among Travellers in Ireland.” (1994:8-9)

Since the 1980s, this anthropological work has been complemented by renewed work in socio-linguistics on Traveller language which is referred to by Travellers as Cant or Gammon and by – some – academics as Shelta (see Binchy, 1994; O’Baill, 1994; and the collection edited by Kirk and O’Baill, 2002). In this literature there is general agreement on the facts of the use of Cant among Travellers:

“...Travellers in Ireland all speak a language spoken by no one who does not belong to their group. Irish Travellers in Britain and North America speak the same language.... In its present form, it consists of a vocabulary which is used in a somewhat simplified grammatical structure. Much of the vocabulary consists of Irish words which have been transformed or disguised, using a number of regular changes. Children generally learn the language in infancy, as a joint first language and they are told not to tell outsiders anything about the language.” (Binchy, 1994:134)

While the existence of Cant is generally recognised as an important marker of Traveller ethnicity, there are ongoing debates on Cant/Gammon’s appropriate formal linguistic definition (see O’Baill, 1994) and related questions about its historical origin and development. Browne, noting that “All theories on the origin of Cant are tentative, since records of it are scant and recent” (2002:72) summarises the current debate on this issue as follows:

“O’Baill (1994) and Harper (1969) rely on evidence from the more recent recordings of the syntactic structure of Cant. They claim that, since Cant is essentially English in its grammatical structure with an extensively altered Irish lexicon, Cant must have been formed at a time when its speakers were bilingual in both Irish and English. This theory dates the origin of Cant to around the middle of the seventeenth century when English was introduced into Ireland. While these authors discuss the vocabulary of Cant, they do not include in their deliberations any consideration of the age and origin of vocabulary. It is surprising that they failed to take account of earlier preliminary conclusions on vocabulary.

The comparison that I have drawn [earlier in this article] between the salient features of Hiberno-English and present-day Cant shows that the structure is that of modern Hiberno-English. However there is a thread that leads us to a more distant past. There is some evidence to posit that Cant may have been spoken in an Irish grammatical framework at an earlier period in its history and that its present-day structure is the result of convergence with Hiberno-English syntax.” (2002:72-73)

Research on Cant is also more directly relevant to an understanding of Traveller history. The fact that Cant is shared by Travellers in Ireland and by Irish Traveller communities in the US which have been established there since the mid- nineteenth century, suggests that Travellers must have been a distinct group for some time before then. However establishing the early history of Travellers presents particular difficulties. Ó'Síocháin et al. note that they:

“would have liked to include [in their conference] a paper by a historian drawing on all available historical sources to reconstruct the history of Travellers in Ireland. Unfortunately, that history has yet to be written; even the relevant sources have yet to be identified.” (1994:xiii)

A number of studies address more recent Traveller history, particularly over the twentieth century, including work by McLaughlin (1995), Helleiner (2000), Crowley (2005) and by Breathnach (forthcoming 2006).

For earlier periods occasional recognisable references to Travellers appear in historical studies and sources. For example Cronin (2001) in his history of the Cahirmee horse fair in County Cork cites references to Travellers at the fair in newspaper reports of 1870 and 1885, Hugh Dorian's (2000) account of social life in Donegal, written in 1890, recounts the visits of 'tinkers' to his home place during his childhood before the famine (he was born in 1834) and Asenath Nicholson's (2002) contemporary account of travelling in Ireland in 1844-5 refers to tinkers selling asses at a fair at Urlingford. The Gmelchs, in the 1976 paper cited earlier, noted that evidence to the Royal Commission on the Poor Laws in the 1830s identified tinker families as a distinct and recognisable group.⁴ In a brief entry on 'tinkers' in *The Oxford Companion to Irish History*, the editor, S.J. Connolly, notes that:

“The Poor Inquiry of the 1830s distinguished between tinkers and other kinds of vagrant. Their longer term origin remains unclear despite fanciful attempts to link them to a specialised caste of wandering metalworkers in early medieval times.” (2002:572)

4 This paper, and many subsequent commentators, also notes the many references to tinkers and pedlars in Tudor poor laws and a number of studies (e.g. Slack, 1974; Beier, 1985) have examined material on these groups in the court and related records of this period. However this material essentially refers to the situation in Britain and it is unclear what, if any, relevance it might have to Ireland.

While such references, which appear in various recent publications, are obviously of interest, their interpretation would require investigation by professional historians. However, the limitations of historical sources on Travellers are generally recognised. As these examples indicate, Travellers are typically referred to incidentally in accounts whose main focus is elsewhere. Thus, while it is likely that similar references exist in other published or unpublished sources, it is not clear how they might be systematically identified and analysed. There are collections of Traveller related historical and other material at the University of Ulster, for example, and more recently at the University of Limerick. In regard to the former Ní Shuinéar reports that the earliest source in the Irish Travellers Resources Collection at the University of Ulster “is the account books of a County Antrim vicar (kept from 1672-1680) containing frequent references to ‘tinklars’ or ‘tinkers’ and of transactions with them” (Ní Shuinéar,1994:64). Nevertheless, to date, very little historical work on Travellers has been carried out.

Academic Controversy on Traveller Ethnicity?

In Part Two we noted that on a number of recent occasions the Government has argued that the claim that Irish Travellers constitute a distinct ethnic group is controversial within academic research and has in particular cited comments in Tovey and Shares’ important textbook *A Sociology of Ireland*.

Tovey and Shares’ comments occur in the context of their discussion of the Irish Traveller movement as a new social movement. This is one of the examples they discuss in their chapter on the sociology of social movements which, as the authors note “has been one of the fastest growing areas of sociological research in recent years” (2003:449). They suggest that pressure to adapt to Ireland’s growing diversity comes both from elements of majorities and from minority groups themselves and note that: “One of the most significant sources is the Traveller movement: does this make it a new social movement and, if so, what are the implications of NSM [New Social Movement] theory for an understanding of the changing position of Travellers in Irish life?” (2003:469).

They then consider how Traveller issues have been interpreted to date and in that context they note that:

“It is widely recognised that there has been a radical transformation of how the position of Travellers has been interpreted over the past twenty-five years; from subgroup of the poor or subculture to a distinct ethnic group...

The claim that Irish Travellers constitute a distinct ethnic group is controversial within academic research. Where Ní Shuinéar (1994) argues strongly for recognising Travellers as a distinct ethnic group, McLoughlin (1994) responds just as strongly that this is not a useful or productive way to understand their experience. We pause briefly here to discuss how *ethnicity* has been conceptualised in these debates and suggest that a NSM approach could add important dimensions to our understanding of social change in this area” (2003:470 emphasis in original)

Here we examine in some detail the specific controversy referred to by Tovey and Share. We return at the end of this section to their own comments on the issues raised.

In 1991 the Anthropological Association of Ireland organised a conference in Dublin entitled ‘Irish Travellers: History, Culture, Society’. The conference contributions were later published as May McCann, Séamus Ó’Síocháin and Joseph Ruane eds. (1994) *Irish Travellers: Culture and Ethnicity* which includes the papers of Ní Shuinéar and McLoughlin cited by Tovey and Share above. Before looking at this exchange in some detail it is useful to situate it in the context of the overall volume. This volume also includes the 1994 papers by Okely, McCarthy, Binchy and O’Baioill, discussed earlier. The editors note that:

“There exists a small but rapidly growing research literature on Irish Traveller society and culture and on Traveller-settled community relations...Like many other research areas it is marked by controversy. Concepts and theories once widely used and accepted as self-evident are now strongly contested; some are rejected altogether. New concepts are revolutionising the field.

One of these concepts is ethnicity (see below). The concept has radical implications for the study of Irish Travellers because it approaches Traveller culture as distinct and valuable in its own right with its own historical path of development, rather than as a short term adaptation to poverty or marginality. The concept has led to a new understanding of Irish Travellers, their culture, and the policies appropriate to resolving conflicts between them and the settled community. It has identified the need for policies which respect cultural differences, rather than ones which seek to erode them in the name of the settled community’s image of ‘social improvement’ or its administrative convenience” (1994:xi-xii).

They further note that:

“The widespread use of the concept of ethnicity is the clearest example of new thinking in relation to Irish Travellers. The concept is systematically applied to the case of Irish Travellers by two of the contributors to the present volume (Ní Shuinéar and O’Connell) but it permeates the thinking of most contributors.” (1994:xiii)

Ní Shuinéar’s paper in this volume is entitled ‘Irish Travellers, ethnicity and the origins question’. In line with the particular focus here we concentrate on Ní Shuinéar’s discussion of ethnicity in the first third or so of her paper where she argues that “Irish Travellers meet all the objective scientific criteria of an ethnic group” (1994:54). Ní Shuinéar is an anthropologist and, as with Gmelch and Gmelch, she again takes the Narroll framework which she cites from Barth. She also discusses a number of related characteristics: racial difference, cultural difference, social separation, language barriers, and spontaneous and organised enmity.⁵

In her discussion Ní Shuinéar covers much of the ground covered earlier by the Gmelchs and Okely. Her main arguments can be summarised as follows:

- *biological self perpetuation*: Travellers typically marry within the group and group membership is determined by descent;
- *shared fundamental cultural values and its concomitant cultural difference*: shared Traveller values include self-employment, occupational flexibility priority of social obligations based on kinship, and nomadism. Travellers also have distinctive pollution beliefs;
- *overt unity of cultural form and the social separation implied*: there are distinctive Traveller versions of a wide range of observable phenomena including accommodation, dress and grooming, speech patterns, religious and other group rituals and artistic expression;
- *own field of communication and interaction and the implication language barrier*: interaction and communication between Travellers and settled people are broadly limited to business or formal settings. Not only do Travellers have their own language – Gammon or Cant – they also have a distinctive – and shared – use of English.

5 In Ní Shuinéar’s presentation these latter characteristics are also cited from Barth. Note that she slightly misquotes him at this point. For the specific context in which these latter characteristics are mentioned by Barth see this discussion of his work above.

– self-ascription (*‘a membership which defines itself’*) and outside ascription (*‘is defined by others’*) and the implication spontaneous and organised enmity: “Travellers have a name for themselves as a group and they know exactly who does and does not belong to it, and why. Non-Travellers also have names for Travellers as a group, and they know exactly to whom they apply and (by criteria which are very different from Travellers own) why.” (1994:59). Manifestations of enmity towards Travellers are widespread in both individual behaviour and institutional practice.

As we have seen, all these attributes are widely accepted. She also, more controversially, argues that:

“An implication of the first criterion is *racial difference*. Physical distinctiveness in the broadest sense is not synonymous with identity, but intra-marriage tends to keep the two pretty closely linked. Travellers are physically distinctive from the settled population. Ask any Traveller who, scrubbed and combed and decked out in all new gear, has been refused entry to a pub disco without even getting a chance to open his mouth and you will find that physical distinctiveness not only exists but exists in very practical ways. Ask any bouncer or security guard and you’ll get the same answer. Genetic studies corroborate this popular perception by confirming differentiation between the Traveller and settled Irish populations (Crawford and Gmelch, 1974; Crawford, 1975).” (Ní Shuinéar 1994:55; emphasis in original)

While it is often asserted that Travellers are visibly recognisable as such, it is not at all clear in what sense this is the case. In addition such recognition – where it occurs – may be a function of situational and/or cultural markers rather than distinctive physical characteristics. Indeed later in the same article, Ní Shuinéar comments that “Travellers here are not racially striking” (1994:61). The research on genetic structure in Ireland cited by Ní Shuinéar above suggests that while Travellers ancestry is similar to the Irish population as a whole, there is some differentiation, suggesting their separate existence as a population over an extended period (see also more recently North, Martin and Crawford, 2000). However, such evidence does not directly support Ní Shuinéar’s claim that Travellers are physically distinctive and more generally research in this area is relatively limited. Indeed Ní Shuinéar, in a later piece (2004) notes the small samples on which this genetic research is based.

McLoughlin's article is entitled 'Ethnicity and Irish Origins: Reflections on Ní Shuinéar'. She makes it clear early on that she believes that arguments about Traveller ethnicity are politically conservative:

"Ultimately, the claim of some Travellers that they constitute an ethnic group is a most conservative claim. None of the structures, institutions and practices within Irish society which serve to perpetuate inequality, poverty, lack of access and its corollary of social exclusion are addressed in this assertion. Equal participation in the bounty of the state (such as it is) should be available to all Irish citizens and not on a special claims basis."(1994:79)

Throughout her article, arguments about whether Travellers are an ethnic group are entwined with her views on the legitimacy or efficacy of Traveller activists' political assertion of ethnicity. While these may (or may not) be related in practice, only the former are relevant to the current discussion.

In response to Ní Shuinéar's article she suggests that: "The ethnic status of Travellers thus hinges on their racial distinctiveness, a shared set of cultural values, social separation, language and finally, spontaneous and organised enmity" (1994:79-80) and discusses each of these in turn.

First she equates the argument about ethnicity with claims of 'racial distinctiveness' and rejects such claims as inaccurate and dangerous. In her opening paragraphs, following a reference to the American civil rights movement she suggests that:

"This utilisation of the concept of race as the basis of group identity, coupled with a set political and social agenda, is from another context, another people and another time. In a thirty year timewarp, it now seems fashionable to apply it to Travellers in the Irish context. Not only is the concept inaccurate, it is also detrimental to the cause of Irish Travellers and should be discarded altogether." (1994:78)

Later commenting under the heading of 'A distinct race' she says:

"A grave sense of ease is generated when any group makes an assertion to racial distinctiveness. Apart from being very difficult to prove, the historical claims for 'pure' races, unblemished by 'outside' influences, have supported a eugenics movement this century, as well as tragedy, violence and long-term negative repercussions on a global scale. Biological theories of race are a dangerous starting point in any group's search for identity and solidarity." (1994:80)

However, while true, this bears little relation even to Ní Shuinéar's questionable discussion of 'racial difference' and no relation at all to the arguments actually made in the literature about biological self perpetuation or indeed to the interpretation of ethnicity more generally.

Second she argues that Travellers social separation is a function of poverty. She argues that societies in general exhibit social hierarchy where mixing across the levels is difficult and there is little contact between the poor and the wealthy and "The social separation felt by many Travellers is part of a larger *class* separation. Their feelings of exclusion, marginality and social isolation are replicated within many poor communities" (1994:81 emphasis in original). However this seems obviously empirically false. Clearly poor Travellers share some experiences of poverty and exclusion with settled people who are poor. But not all Travellers are poor and social separation features between Travellers and settled people who are at the same material level – however defined. More theoretically this seems to be invoking the questionable notion that class interests (as determined by the social structure) are necessarily more consequential for social consciousness than other forms of social division.

In addition she argues that Travellers do not choose social separation and do not see it as desirable and that therefore social separation "cannot constitute an element in establishing a claim for ethnicity. Travellers want to participate fully in Irish society... If they did not want to fully participate in the dominant culture then various charges of discrimination would not arise" (1994:82). Her final point here is odd in the extreme. More generally she is equating social separation with social exclusion and simply doesn't address the issues of cultural difference – in respect of values, beliefs and material culture – on which the ethnicity argument relies. It is true that Travellers do not choose social exclusion but they can and do choose to be different and these differences certainly are relevant to their ethnicity.

Third in respect of each of the three other attributes she has chosen to discuss she simply asserts that they are not unique to Travellers and that therefore they cannot support a claim to ethnicity. To summarise she argues that:

a shared set of cultural values: groups that share cultural values – like religious orders – are not necessarily ethnic groups and not all the Traveller cultural values are unique to Travellers.

language: while accepting that having their own language is “a very distinctive and important element to their group and individual identity” this “cannot be used as a basis to assert a claim of ethnicity”. In making this assertion she simply refers to the fact that native Irish speakers do not claim to be an ethnic group.

spontaneous and organised enmity: she acknowledges that Travellers face widespread prejudice and discrimination but so do many others and “not all the venom in Irish society is reserved for the Traveller community” (see 1994:83).

However if one substitutes the name or any other minority ethnic group in any country for Travellers in the above claims, the flawed nature of these arguments becomes clear. No ethnic group could or would claim that all of its cultural values were unique or that all the venom of a society was uniquely reserved for its members. It is therefore hard to see how any group could meet these criteria for recognition as an ethnic group. Again McLoughlin simply doesn't engage with the academic literature about ethnicity in general or about Traveller ethnicity in particular.

Finally McLoughlin asks how the ‘claim to ethnicity’ can:

“...be sustained considering that the National Council for Travelling People is split on the issue? Can half the Travellers of Ireland be considered an ethnic group and the other half not? Ethnicity is an all embracing term. It cannot be selectively utilised or reserved for parts of groups.”(1994:79)

At best this confuses the issue of political mobilisation around ethnic claims with the arguments about the ethnic status of a group. As we have seen earlier a group's self ascription of ethnicity has little or nothing to do with whether it describes itself as an ethnic group per se. It is, as Ní Shuinéar and other have made clear, in recognising or naming themselves as a group – in this case Travellers – and knowing exactly who does and does not belong to it and why. On this criterion Travellers, qua Travellers, would be an ethnic group even if no Traveller or supporter campaigned for official recognition of this fact.

Overall then McLoughlin's arguments do not constitute a convincing challenge to the wider body of anthropological and other academic work discussed above that supports the argument for recognising Travellers as an ethnic group.

Finally here we return to Tovey and Shares' comments on the issues raised in this discussion. It is important to note that they do not directly address the substantive issue of Traveller ethnicity, but rather they are concerned as noted above to "discuss how ethnicity has been conceptualised in these debates and suggest that a NSM [New Social Movements] approach could add important dimensions to our understanding of social change in this area" (2003: 470) and in that context they draw attention to many of the same issues touched on the discussion of Barth above. They note that: "For Ní Shuinéar ethnicity is a matter of possession of objective social and cultural characteristics that can be used as criteria to decide , in relation to any social group, whether it is an 'ethnic group' or not..." (203:470) and they go on to suggest that:

"There is an alternative way understand ethnicity that has received attention from sociologists and anthropologists. It focuses on the subjective dimensions of ethnic group membership rather than on an objective possession of racial or cultural characteristics. Here, ethnicity resides:

- in the belief by members of a social group that they are culturally distinctive and different to outsiders
- in their willingness to find symbolic markers of that difference (food habits, religion, forms of dress, language) and to emphasise their significance
- in their willingness to organise relationships with outsiders so that a kind of 'group boundary' is preserved and reproduced" (2003: 470-471)

These are essentially the distinctions introduced by Barth that we discussed earlier. Tovey and Share then note the distinction between ethnicity and the political mobilisation of ethnic claims which (by analogy to the nationality/nationalism distinction) they dub 'ethnicism': "By analogy it might be useful to use the term 'ethnicism ' to talk about how groups make claims based on cultural differences and 'ethnicity' to refer to observable cultural differences" (2003:471). On the basis of this ethnicity/ethnicism distinction they suggest examining the Irish Travellers movement as a case study of an ethnicist new social movement.

Concluding Comments

On a number of recent occasions the Government has stated that it does not recognise Travellers as an ethnic group, and has claimed in support that the argument that Travellers constitute a distinct ethnic group is controversial within academic research.

We have tried to answer this claim by providing a general overview of the main academic literature on Traveller ethnicity. Overall it has been shown that since the 1970's academic work on Travellers has increasingly identified Travellers as an ethnic group, drawing in particular on anthropological and socio-linguistic research. In addition there is some historical evidence that identifies Travellers as a recognisable group in earlier centuries although very little historical work on Travellers has been carried out to date.

We have also examined in some detail the academic controversy referred to. In particular we have argued that the arguments set out in McLoughlin (1994) do not convincingly challenge the wider body of anthropological and other academic work that supports the case for recognising Travellers as an ethnic group. In conclusion it is important to note that McLoughlin's article, which was published over ten years ago, appears to be the only significant contribution in the academic literature arguing explicitly against the recognition of Travellers as an ethnic group⁶ and this, rather than the coherence of its arguments, may explain why it continues to be referred to in this context.

6 Other recent academic literature, with some bearing on the issues discussed here, includes further anthropological work by Helleiner (2000) and Griffin (2002a and b) and work on the representation of Travellers in many areas including in media discourse (e.g. Ní Shuinéar, 1997; McVeigh, 1998; Breathnach, 1998) in literature (e.g. Delaney, 2001; Burke, 2002); in the Irish Folklore Commission's Traveller questionnaire of the 1950s, (O'hAodha, 2004), and in public policy more generally (Fanning, 2002; O'Connell, 2002). Additionally there are policy studies that consider the implications of the ethnicity perspective for public policy in areas such as education (including in particular Kenny, 1997 – which also includes an important review of the wider ethnicity literature – and O'Sullivan, 2005) housing and accommodation (Norris and Winston, 2004). It should be noted that many of these studies take Travellers' status as an ethnic minority as a starting point.

Part Four

Conclusion

This report highlights an evolution over time of understandings of ethnicity in public policy literature and in academic literature. The work of Fredrik Barth is seminal in regard to the academic literature in establishing the contemporary understanding of ethnicity. This understanding of ethnicity put forward by Barth is reflected in the national policy debate on Travellers even where the term ethnicity is not used. From 1976 and the work of Sharon and George Gmelch there has been a clarity in relation to Traveller ethnicity in academic literature with only two dissenting voices identified. The national policy debate has moved from the conclusion of the Commission on Itinerancy in 1963 that Travellers do not constitute an ethnic group to the introduction of a definition of Travellers in the Equal Status Acts that effectively recognises Traveller ethnicity.

The Concept and Language of Ethnicity

Anthropological approaches to ethnicity have evolved over time. The work of Fredrik Barth is seminal in this regard. Barth highlights previous work in anthropological literature that understands ethnicity to designate groups which

- are largely biologically self perpetuating;
- share fundamental cultural values;
- make up a field of communication and interaction;

- have a membership which identifies itself and is identified by others, as constituting a category distinguishable from other categories of the same order.

Barth emphasises this latter part as the critical feature - groups defining themselves and being defined by others as a distinct 'people'.

It is relevant to note how this understanding of ethnicity is reflected in the national policy debate in relation to Travellers even where the term ethnicity is not used.

As outlined in Part Two, *The Report of the Travelling People Review Body* (1983) refers to Travellers as "an identifiable group of people, identified both by themselves and by other members of the community (referred to for convenience as the 'settled community') as people with their own distinctive lifestyle, traditionally of a nomadic nature but not now habitual wanderers. They have needs, wants and values which are different in some ways to those of the settled community."

The National Council on Travelling People *Charter of Rights of Travelling People* (1984) sets out that "Travellers as individuals and as a group have a right to realisation of their own cultural identity."

The Report of the Task Force on the Travelling People (1995) recommended that "the distinct culture and identity of the Traveller community be recognised and taken into account." It highlighted that "Traveller nomadism, the importance of the extended family, the Traveller language and the structure of the Traveller economy all provide visible or tangible makers of the distinct Traveller culture" and "the Traveller culture lies in the values, meanings and identity that the Traveller community shares." It also noted that "for the purposes of British Law it is clear from these judgements that the Traveller community could be identified as an ethnic group."

The Traveller community in the Equal Status Acts is defined as "the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions, including historically, a nomadic way of life on the island of Ireland."

Ireland's first report under the Council of Europe's Framework Convention on National Minorities (2001) stated that "while Travellers are not a Gypsy or Roma people, their long shared history, cultural values, language (cant), customs and traditions make them a self defined group, and one which is recognisable and distinct."

Academic Literature

From 1976 and the work of Sharon and George Gmelch there has been a clarity in relation to Traveller ethnicity in academic literature. The Gmelches stated that “according to accepted anthropological definition they form a distinct ethnic group within Irish society.” May McCann, Seamus Ó Síocháin and Joseph Ruane, the editors of *Irish Travellers: Culture and Ethnicity* (1994) which includes a wide range of papers from a 1991 Anthropological Association of Ireland conference, highlight that “The widespread use of the concept of ethnicity is the clearest example of new thinking in relation to Irish Travellers. The concept is systematically applied to the case of Irish Travellers by two of the contributors to the present volume (Ní Shuinéar and O’Connell) but it permeates the thinking of most contributors.”

The academic literature has applied the understanding of ethnicity set out by Barth and others in the anthropological literature to Travellers highlighting:

- biological self perpetuation in that Travellers typically marry within the group and group membership is determined by descent;
- shared fundamental cultural values in Traveller values in relation to self employment, occupational flexibility, priority of social obligations based on kinship, nomadism and distinctive pollution beliefs;
- a field of communication and interaction in that Travellers have their own language;
- a distinguishable category in that Travellers have a name for themselves as a group and know who belongs and does not belong to it, just as non Travellers have names for Travellers as a group and know to whom these names apply.

Only two significant dissenting voices are found in the academic literature. McCarthy in 1972 presented an analysis of Travellers as a subculture of poverty. However in a later paper in 1994 she rejected her earlier views and stated that “the theory (subculture of poverty) was never relevant to Irish Travellers.” McLoughlin in 1994 argues against an ethnic status for Travellers. However her arguments are critiqued in Part Three as being flawed with the conclusion that McLoughlin simply doesn’t engage with the academic literature about ethnicity in general nor about Traveller ethnicity in particular.

National Policy Debate

National policy debate has evolved significantly in its understanding and knowledge of Travellers since the *Report of the Commission on Itinerancy* stated that “Neither do they (Travellers) constitute a separate ethnic group.” By 1995 the *Report on the Task Force on the Travelling Community* had recommended that “the distinct culture and identity of the Traveller community be recognised and taken into account.”

Oireachtas debates, particularly in relation to the Incitement to Hatred Act 1988, show most of those arguing in support of the need to include Travellers in the protection of this legislation argued that Travellers were an ethnic group (including spokespersons for Fine Gael, the Labour Party and the Progressive Democrats as well as a number of independents). It was in this legislation that the strategy of naming Travellers in legislation already referring to ethnic groups emerged. It is clear from the Oireachtas debates that this did not reflect a denial of Traveller ethnicity but was done to avoid any possible difficulties during implementation of the legislation in relation to the legislation affording protections to Travellers.

The emergence of legislation to address needs that are specific to the Traveller community marks another important evolution in the national policy debate on Travellers and Traveller ethnicity. This is most evident in legislation dealing with housing and started with the Housing Act 1988 which included the first legal definition of Travellers.

The definition of Travellers introduced into the Equal Status Acts alongside the capitalisation of the T in Traveller in the Acts however, mark a defining moment in the national policy debate. The definition identifies Travellers “as the community of people who are commonly called Travellers and who are identified (both by themselves and others) as people with a shared history, culture and traditions including historically, a nomadic way of life on the island of Ireland.” This definition has accurately been described by Professor Gerry Whyte as representing “the successful culmination of a campaign by Travellers to be recognised as a distinct ethnic group, as opposed to an economically deprived, group in Irish society.”

These elements of the Equal Status Acts were introduced by way of amendment. The argument put forward for their inclusion was that they were required to ensure Ireland could ratify the UN Convention on the Elimination of All Forms of Racial Discrimination. It is ironic that it was in the first Report of the Irish Government under the UN Convention

on the Elimination of All Forms of Racial Discrimination that the Government for the first time explicitly stated its belief that the Travellers were not an ethnic group.

Following its consideration of this report from the Irish Government the UN Committee on the Elimination of Racial Discrimination made the following observation:

“Recalling its General Recommendation VII on the principle of self - identification the Committee expresses concern at the State Party’s position with regard to the recognition of Travellers as an ethnic group. The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the Convention (article 1 and 5). Welcoming the open position of the State Party in this respect, the Committee encourages the State Party to work more concretely towards recognizing the Traveller community as an ethnic group.”

Recommendation

This report validates the position of the Equality Authority in recognising Travellers as an ethnic group. It is recommended that the Government should now recognise Travellers as an ethnic group and that this recognition should be reflected in all policies, programmes and institutional practices that impact on the Traveller community.

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The Equality Authority
2 Clonmel Street
Dublin 2

Public Information Centre
Lo Call: 1890 245 545

Tel: (01) 417 3333
Business queries: (01) 417 3336
Text phone: (01) 417 3385
Fax: (01) 417 3331
Email: info@equality.ie
www.equality.ie



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