Family policy in a decentralized political system – comparative analysis and lessons for Poland

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Background & Points of Departure

Political crisis and societal divide in Poland

In search of a remedy – Questions:

(A) [prosperity] what constitutional framework is best suited to boost country’s growth and enhance the quality of public services in Poland?

(B) [values] how to manage the diversity and how to handle the growing societal (tribal) divide among the Poles (conservatives vs liberals)?

These two questions are linked with two dimensions of family related issues as a part of public policies and moral choices made by the societies (political groups, such as nations or regional communities).
(A) Family policy

- Family policy as a part of public services provided by public authorities at a federal (central) or state (regional/local). This includes childcare, family allowances, child benefits, maternity leave (or broader – leave terms for parents), maternity protection in labour relations.

- These are services and benefits offered as a part of a broader system of public services.

- The scope and quality of these services is dependent on two factors: (A¹) the amount of financial resources at the disposal of a given creator of public policy / supplier of public services (A²) the regulatory and cultural factors – legal framework, institutional culture etc.
(B) Family-related moral choices

- Choices that any society needs to make on family related issues, such as **abortion**, **marriage**, **adoption**, **fertility** etc. These choices are translated into laws in the course of a political process.

- Depending on
  - the degree of homogeneity of an given society,
  - the features and peculiarities a political system in a given country,
  - the discrepancies between moral values and legal system may vary.
Decentralisation

- Decentralisation, and specifically federalism is a tool developed by lawyers and political thinkers to manage diversity. Philosophical assumption: coping with differences instead of trying to eliminate them (*united in diversity*).

- Forms of decentralisation
  - autonomous regions (e.g. Spain, UK)
  - federation (e.g. US, Germany, Austria)

- Difference between (i) and (ii):
  - special status for some (i) *vs.*
  - equal treatment for all within a common framework (ii) → level playing field
Legal borrowing and policy transfers in decentralized system

**Legal borrowing** – use of policy initiatives in different jurisdictions by looking at the potential for innovation by cross-national (cross-regional learning).

**Legal borrowing in family policy context** – use of family policies in different jurisdictions in creating family policies as a family allowances, child care, maternal leave or maternity protection.

**Legal borrowing in decentralized system** – use of family policies developed in another regions (states etc) to create regional efficient policy. In the decentralized system legal borrowing could be horizontal (policy transfers between regions) or vertical (central government adopts policies tried out on regional level)
Working hypothesis (A)

[growth/family policy]

(A\(^1\)) decentralisation, if understood as delegating down the tools (including legal) to develop public policies, leads to regulatory innovation, quality improvement and mutual learning and spill-overs in the family policy, exemplified by improved childcare, family allowances, child benefits, maternity leave etc. [Y/N?].

(A\(^2\)) decentralisation helps finding optimum strategic units capable of designing successful economic policy around a strategically integrated goals and taking account of unique sets of assets and local conditions [Y/N?]
Working hypothesis (B)

(values)

(B) **Interference** by the central/federal authorities with areas determined by the **values** to which local/regional communities adhere, **threatens** the **political cohesion** of the union/federation, as it is capable of undermining the foundations of a union/federation. [Y/N?]
Empirical verification (A$^1$)

Paid maternity leave in the US
Family Leave and Medical Leave Act (FMLA) of 1993 requires granting of 12 weeks of unpaid leave for mothers of newborn or newly adopted children under certain conditions.

This is a minimum standard – states are allowed to go beyond the federal minimum threshold.

Paid maternity leave:
2002 (effective as of 2004) – California enacts law allowing 6 weeks partially paid family leave. In 2016 law was further expanded – California as a leader of change in the US.

2008 – New Jersey follows the suit by adopting a similar law (6 weeks partially paid) as California.

2013 – Rhode Island enacts law allowing 4 weeks partially paid family leave.

2016 (effective as of 2018) – New York: 8 weeks partially paid family leave. (to be extended to 12 weeks from 2021).

“State innovation can lead to national progress. For example, 23 states had passed FMLA laws for private sector workers prior to the 1993 enactment of the federal FMLA. And more than a dozen states had created rights for nursing mothers at work prior to the 2010 adoption of a federal standard” (National Parnership for Women and Families 2016)
Empirical verification ($A^2$)
Empirical verification ($A^2$)

Israel GDP per capita, PPP

- GDP per capita values from 15,000 to 35,000
Empirical verification ($A^2$)

Finland GDP per capita, PPP


Y-axis: GDP per capita (PPP)
Empirical verification ($A^2$)
Empirical verification ($A^2$)
Germany - TFR and public spending on families 1990 - 2013

- Total Fertility Rate
- Public spending on families - services
- Public spending on families - cash
Poland - TFR and public spending on families 1990 - 2012

TFR

Public spending on families - services

Public spending on families - cash

YEAR


% OF GDP

0,00 0,50 1,00 1,50 2,00 2,50

1,00 1,20 1,30 1,40 1,50 1,60 1,80 2,00 2,20
Empirical verification (B)

SUPREME COURT CONFIDENCE

Roe vs Wade 1973

Obergefell vs Hodges 2015

Supreme Court confidence
Empirical verification (B)

Supreme Court Job Approval, by Political Party

% Approve

- Democrats
- Independents
- Republicans

GALLUP

Obergefell vs Hodges 2015
Legal Status of same-sex marriage prior to Obergefell vs Hodges

- **Current legal**
- **Status of same-sex marriage is**
  - Disputed
  - Decision overturning same-sex marriage ban, stayed indefinitely pending appeal
  - Same-sex marriage banned, despite federal Circuit Court of Appeals ruling ban unconstitutional
  - Same-sex marriage banned

The map shows the legal status of same-sex marriage in the United States prior to Obergefell vs Hodges.
Public opinion of same-sex marriage in the United States of America by state, federal district, or territory (19 March 2013)

- A poll shows at least a plurality, and possibly a majority, of that state's population supports same-sex marriage
- A poll shows at least a plurality, and possibly a majority, of that state's population opposes same-sex marriage
- A poll reports a significant finding that a majority of that state's population opposes same-sex marriage
- No polling data
Empirical verification (B)

Case study – anti-abortion laws in the US

Roe vs Wade (1973) legalized abortion in the United States.

Even though nationwide the majority is in favour of abortion, there remain states where majority opposes abortion.

These states adopted laws that in fact limit the access to abortion, e.g.:
• Mississippi – 99% of counties have no abortion clinics
• Texas – 97% of counties have no abortion clinics
• Arkansas – 97% of counties have no abortion clinics

States with regulations resulting in actual ban have more conservative communities in general.
Do you think abortions should be legal under any circumstances, legal only under certain circumstances or illegal in all circumstances?

- % Legal under any circumstances
- % Legal only under certain circumstances
- % Illegal in all circumstances

GALLUP
Thinking about how the abortion issue might affect your vote for major offices, would you -- [ROTATED: only vote for a candidate who shares your views on abortion (or) consider a candidate's position on abortion as just one of many important factors (or) not see abortion as a major issue]?

<table>
<thead>
<tr>
<th>Registered voters</th>
<th>Candidate must share views</th>
<th>One of many important factors</th>
<th>Not a major issue</th>
<th>No opinion</th>
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<tbody>
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<td>20</td>
<td>51</td>
<td>27</td>
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<tr>
<td>2015 May 6-10</td>
<td>19</td>
<td>49</td>
<td>28</td>
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<td>2014 May 8-11</td>
<td>19</td>
<td>49</td>
<td>27</td>
<td>4</td>
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<tr>
<td>2012 Sep 24-27</td>
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<td>23</td>
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<td>2000 Mar 30-Apr 2</td>
<td>14</td>
<td>52</td>
<td>32</td>
<td>2</td>
</tr>
<tr>
<td>1999 Apr 30-May 2</td>
<td>19</td>
<td>52</td>
<td>26</td>
<td>3</td>
</tr>
</tbody>
</table>
Case study – anti-abortion laws

22 states are extremely hostile to abortion

2006

2016

- Green: Supportive
- Orange: Middle-ground
- Teal: Hostile
- Dark teal: Extremely hostile

gu.tt/statetrends2016 ©2017
Empirical verification (B)

- **Poland** [anecdotal evidence, no public opinion polls known]
  
  - Attitude towards the EU influenced by the discussion on the *Convention on preventing and combating violence against women and domestic violence* (even though the Convention is not a product of the EU, but of the European Council)
  
  - ECHR in *Taddeucci & McCall vs Italy* stated that deprivation of same-sex couple (which according to state legislation could not be legally married) of benefits – legally due to traditional marriages – violates the prohibition of discrimination in private life.

- Would a successful strategic litigation lower the trust of Polish to EU? (ECHR is often confused with EU institutions)
Same-sex marriage support in EU
Empirical verification (B)

• In vitro on local level in Poland:
  • 1 July 2016 – government stops in vitro fertilization financing in Poland.

• Municipalities:
  – Częstochowa
  – Łódź
  – Sosnowiec
  – Dąbrowa Górnicza
  – Poznań

launched or plan to launch local programs.
Findings

(A¹) improved family policy through mutual learning and competition in a decentralised system? inconclusive

(A²) decentralisation as a tool to better define optimum strategic units for economic growth - yes
but – increased spending does not necessarily translate into birth-rates

(B) federal/central preemption threatens cohesion of the union/federation/country - yes
Lessons for Poland
Elections 1993
Elections 1997
Elections 2001
Elections 2005
Elections 2007
Elections 2011
Constitutional referendum 1997

- TAK >60%
- TAK >50%
- NIE >50%
- NIE >60%
- NIE >70%
Polish EU referendum 2003 (YES voters).

> 84%
> 80%
> 75%
> 70%
> 65%
> 60%

Zagranica i statki: 88,7%
GDP per capita in voivodeships
Conclusions and recommendations for Poland

- Decentralisation could help overcome societal divide (values) as well as develop fitting (region-specific) development policies. The latter should boost Poland’s growth.

- Yet, it is not obvious that such a growth will directly translate into changes (improvements) in regional family policies nor is it conclusive that economic growth will result in positive change in the birth rate (on average a reverse correlation can be established).
Thank you for your attention!

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