

Power to the People?

Assessing Democracy in Ireland

04.04.2007

Address by Emily O'Reilly, Ombudsman and Information Commissioner at Launch of TASC Report

Firstly let me thank you for inviting me here today to speak at the launch of Power to the People - question mark. I congratulate TASC at the completion of both a mammoth and a daunting piece of work and commend the generosity of both the Joseph Rowntree Charitable Trust and of Atlantic Philanthropies for funding the project. I also express my gratitude that TASC has acknowledged the work and role of the Office of the Ombudsman in this democracy by inviting myself this year and my predecessor Kevin Murphy last year to participate at the launch and now the publication of this work.

The worth of this report to this Irish society will be calculated only by reference to the regard that our decision makers give to it. While much of its findings are based on empirical fact, it is not of course completely free of subjective opinion.

It offers nonetheless a snapshot of the state of our democracy at a particular critical point in time. After more than 15 years of unparalleled economic growth, we are given a chance to take a breath, and, as the conclusion states, debate and discuss the direction in which our country is moving and identify the key points where the ongoing reform of public life needs strengthening.

My own impression is that the holders of political power in this State will not be displeased at the overall tone and general findings of this audit. At several points, it is noted that Irish people, in contrast to our close European neighbours, are very positive about the state of our democracy. The authors convey this information in commendably neutral terms yet can't avoid the suggestion of a certain head-scratching bewilderment about this when they put those findings against other findings in relation to the state of key public services, notably, health, education and transport.

Irish people, the authors conclude, profess a belief in an individual's ability to influence political decisions and in the duty to vote. Irish people have an egalitarian concept of democracy and support the realisation of social and economic rights through Irish law. A high degree of consensus, moreover, exists around attitudes to democracy across social class, gender and age.

The head-scratching begins at this point in the narrative. However, state the authors, the belief in an egalitarian society combined with the high level of satisfaction with how Irish democracy works, is rather a paradox in view of the very high level of inequality in Irish society by comparison with our European neighbours.

There is nonetheless a suggestion that the feel good factor in relation to people's attitude towards the quality of our democracy may have as much to do with the

thickness of the national wallet at this point in time as with any deeper analysis, understanding of or indeed concern about the fault lines identified in this report that lie beneath.

No doubt the holders of political power might bristle at TASC's remarks about inequality, yet the authors are careful to take their data and conclusions from the National Economic and Social Council, a Government funded body, and chaired by the Secretary-General to the Department of the Taoiseach. Much of NESC's analysis of our society underpinned the latest social partnership agreement.

TASC rightly points to the great economic and indeed social benefits that have accrued since the start of our economic boom and rightly praise all of those involved in the realisation of those benefits. It also praises the perceived success of social partnership - while acknowledging certain opposition party and other unease about that process. It notes approvingly the enforcement of the rule of law, media freedom, the country's interaction with international organisations, and other fundamental democratic markers that have developed since the foundation of the state. In TASC's views, all of these are positive signs of a healthy democracy.

Yet in its commentary on what it describes as a high level of social inequality, it directly quotes a 2005 NESC report which stated that *"a significant gap remains between what social actors see as necessary and what is accomplished in practice."* Social policy, paraphrases TASC, is not sufficiently aligned with the economic policies being pursued by the State. Or indeed, as ICTU noted some years ago, economic progress is not a guarantor of social progress.

I take from this, that TASC concludes, that while many of what the NESC describes as social actors including trade unions and business interests are all in favour of a just, humane and equal society, the mechanisms that would actually serve to realise this are either not in place or do not function as they should.

Much of the rest of the book is devoted to examining why that is (insufficient long term planning would appear to be a key one, a factor identified as far back as the 1970s through the Devlin report) and in the course of that examination other paradoxes are thrown up. How can we, the report wonders, on the one hand create and develop a highly sophisticated economic infrastructure, one which is either envied or attempted to be emulated by many countries throughout the world, yet fail to deliver adequately on basic public services. How can we make a success of the Northern Ireland peace process yet struggle with much simpler tasks?

Despite the apparent public satisfaction with the quality of our democracy and with their personal engagement with that democracy, is there a growing mismatch between both public and political intentions in the broadest sense and actual policy outcomes.

I call it the *"how did that happen"* effect. I would suggest that the stronger the democracy the less often its citizens will have to say *"how did that happen"* because in a fully functioning democracy the citizens would know exactly why certain things happened, and that is because they wanted them to happen.

The Taoiseach - reportedly - had one of those "*How did that happen*" moments last week when he visited a rural town and discovered that in a road comprising of 16 brand new houses, only one was occupied. Not best pleased - again reportedly - he asked "*How did that happen*" and was told that the empty 15 houses had been bought by speculators, people who neither wanted a holiday or a rental property but just a house that would accumulate in value. The recent census report suggests that this was not an isolated incident. The boom in house prices made this phenomenon virtually inevitable yet was it ever anyone's intention that our beautiful landscape would be pockmarked by housing developments built for no other purpose but to make money?

No doubt many of you will have your own "*How did that Happen*" moments, whether it be the M50, electronic voting, decentralisation, bouncers on the Blasket islands, a tile shop on Dartmouth Square, the decline of the rural pub, the closure of rural post offices. A free market naturally delivers on the law of unintended consequences as indeed do exemplary policies such as mandatory breath testing and the smoking ban, yet are we beginning to see the creation of a society that is beginning to no longer resemble the society that many of those interviewed by TASC for this project fondly imagine it to be? Are those who are supposed to be the constitutionally mandated instruments of democracy being sidelined either deliberately or otherwise in favour of others whose influence is outside the normal clutches of democratic control? Or is the market economy the single greatest political actor of them all, driving relentlessly on, changing the social fabric of the society in ways that were never intended either by the politicians or indeed the people.

I live in Howth in North Dublin. In January last year, all of the last remaining petrol stations on the Howth Sutton peninsula closed down, many of them to make way for apartment developments. Sutton Castle Hotel is gone - to make way for apartments - Howth Lodge Hotel is gone - to make way for apartments. The St. Laurence Hotel is gone - to make way for apartments. The Marine Hotel is rumoured to be closing - to make way for apartments - and even the famous Summit Inn is going to convert part of its premises into apartments. A large private nursing home in Sutton Cross closed its doors last week - to make way for apartments. The only hardware shop closed a few months ago - to make way for apartments and other developments. There are constant fears within the community about the possible sale of other services. The one Bank in the village is long gone.

All of those places were sites of many individual social interactions, the sort of interactions that bind a community and give it its soul. I celebrated my first Mother's Day in Sutton Castle Hotel, every Christmas I bought Blu Tack and string from the hardware shop to hang decorations. I bought my papers in the petrol station across the road from the harbour. My children learned to swim in the little leisure centre attached to the Howth Lodge Hotel. A relative went for occasional respite care to the nursing home. I now get my petrol at the anonymous Tesco outlet in Coolock; I buy my hardware requirements in an equally soulless retail outlet in an industrial estate. My children swim in a franchised leisure centre several miles away and should my relative again be in need of respite care, she is unlikely to receive it close to her own home. But at least I can drive and buy my way out of the inconvenience caused by the closure of those services. Those without cars, those on low incomes, will find their ability to manage their lives increasingly difficult.

So, as the constitutionally mandated prime actors in our democracy, did I or my neighbours feel we had a say in how our community developed over the last number of years? Isn't that the true test, the degree to which you believe you can have a say in your own place. I think the honest answer would probably be no. Yes, the planning process allowed for objections appeals, etc. but I think that most people would believe that little was going to override the lure and the power of the development buck, let alone the right of hotel and petrol station owners to sell up if they felt that it was in their interest to do so. A further point is that many of those who have made money from the transformation of services into building blocks are people who themselves live in the community.

I should say at this point that despite the impact that unprecedented levels of speculative development is having on the social fabric, much of the public does not appear to mind. Those who have made a mint from property speculation - and that grouping is not just confined to the well heeled middle classes - won't be too concerned about the aesthetics of empty estates at the outskirts of rural towns or the role that developers play in shaping economic policy with consequent social effects - both positive and negative.

In relation to public services, in these affluent times, those who can buy their way into some of the stunning new private hospitals won't lament the slightly shabbier conditions of the public hospitals they perhaps used to go to. Anyone who has been slickly processed through one of the new private A and E units won't be lending their voices to a Joe Duffy phone in on overcrowded public A and E units.

The rising tide lifts all boats philosophy, is now so widespread and has indeed lifted so many boats that the splintering and dilution of the traditional democratic process identified in this report is actually of little practical or personal consequence to them, at least at this point in time. The increasing privatisation of public services - particularly in the health area - has clear and obvious appeal to many people and arguably, the politicians are doing the people's will.

Yet is it really the public will that the following potential scenario, identified by the NESC, in a 2005 report, be realised. It stated "*The ability of existing public sector providers in Ireland to satisfy users and retain the confidence of the public has come under unprecedented strain and there is a real danger that public services will be reduced to a residual role within the state with all the attendant implications for a two-tiered society: those who can afford to purchase services privately and those who are entirely reliant on public provision.*"

I doubt if any political actor is actively seeking that outcome, and may well be appalled if it did happen, yet the law of unintended consequences may apply. As more people, understandably are attracted to private hospitals in particular, their growth will increase, the middle classes may become less vocal about the state of the public services, and nothing short of strong political determination to keep the public hospitals, as they say, fit for purpose will make them so.

To quote David Begg from 2002, "*While all boats have been lifted, some of the yachts have been able to loose their moorings and sail to the Bahamas.*"

Writing in yesterday's Irish Times the head of education at NUI Maynooth, Professor Tom Collins, said: *"The privatising of what were former public services has led to an increased segregation of social groups and to a decline in the visibility and prominence of poverty in the national consciousness. As affluent people desert the public services, teachers and healthcare professionals are increasingly becoming the main occupants of those zones where poverty becomes a public problem."*

I want to turn now to another phenomenon identified in this and indeed other reports. That splintering and diluting of traditional democratic institutions has been going on for very many years and not just since the start of the boom. It is perhaps an inevitable side effect of an increasingly wealthy, sophisticated and complex society that the relatively simple structures that were put in place in the 1930s to organise and run a much more simple society, will begin to creak. While our Constitution quite clearly lays down the delegation of executive control and function within that democracy much of it seems almost quaintly out of synch with the reality. We elect 166 legislators, in reality it is the Cabinet who decides which laws will be enacted. The power of the opposition, or even of the government backbencher to play a significant sustained role in this process is minimal.

While the increased power of the executive over parliament has been a feature of most parliamentary democracies in the 20th and indeed 21st century, it seems that in Ireland this balance shift has been more extreme than elsewhere. Comparative research cited in the 2005 report of Democracy Commission has rated the Irish parliament among the least powerful of legislatures.

So, two questions -

1. Has the side-lining of parliament reached a critical stage and
2. Does this side-lining matter given the success we have enjoyed in recent years.

Or, to adapt the famous statement attributed to Garret Fitzgerald even if it works in practice, should we be concerned that it also works in theory.

On the first question let me give you two small examples of what I'm talking about. Last week the national press carried advertisements to fill some senior positions in the Health Information and Quality Authority (HIQA) including the very important role of Chief Inspector of Social Services. The problem is, that at the time the ads were carried, HIQA did not exist as a statutory or corporate entity. The ads mention that the said Chief Inspector will transfer to HIQA " *when it is commenced on a statutory basis on enactment of the Health Bill 2006.*"

Note that it is not a question of IF the Bill is passed by the Oireachtas; rather, it is taken for granted that the Oireachtas will do as expected - or as it is told - and pass the Bill. The sub-text here is that the Oireachtas is irrelevant, a mere rubber stamp.

Another example, and again it is a relatively small matter in itself, arises from a recent experience of my own with the Joint Oireachtas Committee on Finance and the Public Service. In very brief terms, the Joint Committee was considering whether certain non-disclosure or secrecy provisions in legislation should be made

subservient to the Freedom of Information (FOI) Act; that is that the secrecy rule would not apply if release under FOI were possible. I submitted a very detailed report to Committee and appeared before it. Ultimately there were 36 instances of secrecy clauses in which it was now the view that the FOI Act should be determining consideration, but where the relevant Minister was opposed to this approach. It was down to the Joint Committee to decide whose view should prevail although - of course - their views would not be binding on the Ministers.

It was clear to me that the Committee members - across the party political divide - agreed with me on at least a majority of the recommendations. Yet, in the end, for the first time ever, the issue went to a vote and the Committee split along party lines, the Government majority supporting the relevant Minister in every single instance. Commentators suggested that a "*whip*" was imposed on certain Committee members after, as one member explained, they had made 'an error' of judgement in their initial assessment. Whatever the reality, it is clear that wider forces were at play and that some Committee members may not have felt themselves free to decide on the basis of their own assessments. Again, the lesson from this would seem to be that Oireachtas members are expected to rubber stamp decisions taken elsewhere.

So, does this sidelining of parliament, witnessed also through the transposition of EU directives effectively into Irish Law and the embedding of Social Partnership as the mechanism through which social policy is agreed and delivered, actually matter particularly when both of those entities do appear to have delivered genuinely positive results for this society. The short answer to this question is YES. There is something inherently dangerous in paying lip service to a constitutionally determined set of arrangements while with clear knowledge and full consent, acting in a way which undermines those arrangements.

If we choose to disregard the Constitution in one area - because those Constitutional provisions are perceived to be out of date or unworkable - then we place the entire edifice of the Constitution at risk. If the Oireachtas is to be side-lined, then why stop there? Perhaps there are aspects of how the courts do their work that are not of our liking? Perhaps some of the personal rights found in the Constitution are sometimes troublesome.

I hope I am not being too dramatic but I do feel that in Ireland we sometimes have too much of a willingness to turn the blind eye and avoid the searching question. It is now, arguably, a fact of political life that the Secretary General of ICTU, the Director General of IBEC and Fr Sean Healy of CORI wield far more political power than virtually any elected member of the Oireachtas outside of the Taoiseach and his Cabinet. Is this what the Constitution envisages? No? Is this what the people want? Again, arguably yes they do, seeing perhaps within the model a greater possibility of actual, hands on, democratic engagement with the process, than through the more conventional methods.

The sidelining of the Oireachtas has not gone unremarked - former Finance Minister Charlie McCreevy commented on this as far back as 1987. More recently Senator Feargal Quinn wrote an Irish Times article under the heading "*Oireachtas returns, But who Cares?*"

I should emphasise that I am not arguing against Social Partnership and this report clearly sees Social Partnership as a strong democratic instrument. What I am arguing is that some of our current Governmental arrangements may be out of line with the Constitution and that this may have negative implications in the longer term. Ideally what we need to do is amend the Constitution to give recognition to the practice of Government as it is now - to make the system work in theory as well as in practice. It might also be useful - and democratic - if some of the partnership negotiations be made more accessible to the general public.

Nonetheless, while traditional forms of accountability have declined, new forms have emerged and it is to the credit of the political system that they have done so. We have seen a growth in Ombudsman schemes and of particular note is the creation of the Garda Ombudsman Commission. Also of note is the creation of the Human Rights Commission. It is critical however that Governments realise that it is not enough to create these schemes but that they have to be nurtured, supported and developed over time. It is now ten years for example since an Amendment Act to the original Ombudsman Act was promised - an Act, which, should it ever see the light of day, will make many more public institutions accountable to the public they serve. In an earlier report, TASC noted the huge volume of state agencies that have emerged in recent years, many of whom are not subject to the usual accountability structures. Placing such critical state agencies such as FÁS, the Health and Safety Authority, the Blood Board, the Environmental Protection Agency, the National Roads Authority, the Rail Procurement Agency and others under the remit of the Ombudsman would make them much more accountable to the public that they serve.

Equally it is now time, past time, for the Garda Síochána to be made subject to Freedom of Information legislation. It is also important that schemes are not duplicated, owing to the public popularity of a particular scheme. Too many regulators, too many complaint handlers frequently leads to poorer administration, not better, and a very confused public.

A true democracy values and supports a people's participation in that process. The Freedom of Information Act, now almost ten years old was enacted precisely for that purpose. Since that time it has been restricted in its reach, fees have been imposed which have severely dampened the public's enthusiasm for using it, and the mildest appeals for some relief from those burdens go unheeded. There are many political quotes in this book about how staunchly our politicians support a person's right fully to engage in the democratic process. Could I suggest however that talking the talk simply isn't good enough; true participation involves the administration taking its hand away from its homework and letting us all have a look.

The legislation overseen by the Standards in Public Office Commission of which I am a member comes in for some criticism. I am not going to take up your time by attempting to analyse why that is so. Suffice it to say that the legislation is complex and that there is much dancing around on the heads of pins when it comes to decoding what it actually says. An ethical breach, may sometimes look like an ethical breach, talk like an ethical breach, walk like an ethical breach, but on occasion when you root down into its DNA - the legislation that tells you what an ethical breach actually is - you'll emerge with an ethical donkey.

On this issue, I cannot do any better than quote my predecessor Kevin Murphy, when he said *"In particular, a tradition of focusing on the letter and not the spirit of the legislative requirements is both readily evident and inimical to the anti-corruption reform process. This tendency to parse the law is particularly exemplified by the strict definition of certain statutory terms to the detriment of their wider ethical implications. Legislative regulation, no matter how stringent or fine tuned, is no substitute for strong ethical standards or values."*

Profile of Ms Emily O'Reilly, Information Commissioner

Ms Emily O'Reilly was appointed as Information Commissioner on 1 June, 2003 by the President of Ireland, Mrs Mary McAleese. This followed her nomination by both Houses of the Oireachtas (the Dáil and Seanad). She was appointed as Ombudsman on the same day. Ms O'Reilly's roles as Ombudsman and Information Commissioner are entirely separate and distinct.

The Information Commissioner's main function is to conduct reviews of decisions made by public bodies under the Freedom of Information Acts. She also reviews the operation of the Freedom of Information legislation and works to foster an attitude of openness across public bodies.

As Ombudsman, Ms O'Reilly's principal role is to investigate complaints from members of the public who feel they have been unfairly treated by government departments, local authorities, the health services and An Post.

More information is available at

www.ombudsman.gov.ie