

Text of an Address
by
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at
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I would like at the outset to sincerely congratulate Frances Fitzgerald firstly on her appointment as Minister for Justice and Equality and to take this opportunity to wish her every success in that position.

Last year, I was lucky enough to be invited here, and despite Joe Mulholland's earnest plea to the contrary, I did avail of the opportunity to speak against the abolition of the Seanad, something I had also done in 2012. The defeat of the abolition proposal by the people in a referendum allows me this year to do what Joe asks and to address an entirely different topic – the future of policing in Ireland.

The series of events that in part led to Minister Fitzgerald's most welcome appointment are the subject of a recently established Commission of Investigation chaired by my good friend and former colleague, retired Supreme Court Judge, Nial Fennelly.

But from what we do know, it appears that earlier this year as a result of a conversation with or briefing by the Attorney General, the Taoiseach, without informing, and without any reference at all to, the then Minister for Justice, Alan Shatter, asked the Secretary General of the Department of Justice to visit the former Garda Commissioner, Martin Callinan, with a view to having him consider his position and tendering his resignation.

In any democracy, such events are hugely important. In any democracy worth its salt, the people and their political representatives would be entitled to an immediate explanation as to what had happened and why. In Ireland alone are the public still left in the dark

The executive power of the Irish State is supposed to be accountable, under our Constitution to Dail Eireann. That principle of accountability is a cornerstone of the independent Irish democratic state. It is not something that can be postponed to a statutory Commission of Investigation.

The Taoiseach, in my view, as a matter of solemn constitutional duty, owed Dail Eireann and its relevant Committee an immediate, comprehensive explanation as to what he did, why he did it, and why he acted through the civil servant who was administrative head of the Department without informing and involving the relevant Minister.

The then Minister, Mr Shatter as a member of the Executive, also owed Dail Eireann a solemn constitutional duty to account immediately for his role in those events and an explanation as to why he was left out of the loop.

So also the Secretary General owed an immediate explanation to the Justice Committee of the Dail to explain what he did and why he did it and why he acted without informing or consulting his Minister.

If, as we were told, the Garda Commissioner was informed that the Government was concerned by the situation, some explanation is due as to why even the members of the Government, including the then Minister for Justice, were kept in the dark about the matter.

It is entirely wrong and unacceptable that Dail Eireann has been refused accountability on these issues and that the Irish people still do not know why the Commissioner, the person under law entrusted with day to day management of our policing was abruptly persuaded to tender his resignation.

The idea that the main actors in this matter could remain silent and refuse to be publicly accountable in the manner provided in the Constitution simply because an inquiry established by Government – and not by the Oireachtas – might otherwise than in public later address the same issues is risible. A truthful answer could not compromise a later Commission of Investigation.

That a majority of Irish parliamentarians might, by use of the Government whip in the Dail and its committee, deny and over-ride the wishes of a minority who properly demanded immediate public accountability is profoundly disturbing – and profoundly wrong.

The right of members of Dail Eireann to an immediate public explanation from those exercising the executive power of the Irish State simply does not take second place to the right of the Government to establish a Commission of Investigation to consider such matters in private.

Yet again, we have clear evidence that our parliament is not permitted to do what the Constitution requires it to do – keep the executive power accountable to the people. Yet again, the Government through the culture and power of the whip denies TDs the truth – even its own TDs.

It is then, a strange irony, that the Government in the same populist spirit that caused it to attempt to abolish the Seanad now wishes to establish a so-called “independent police authority”.

Like the Seanad abolition proposal, it sounded plausible until - that is - it is probed.

This proposal raises the profound question: “Independent of whom?” Do we mean “independent of the Government and Dail”?

The policing function is a central component of the executive power of the Irish State. And it always will be.

It must, as part of the executive power of government, be accountable to Dail Eireann.

Neither in principle nor in fact is policing a democratic state a function “independent” of democratic accountability. It is a function of government.

The Government must on our behalf remain in overall control of the policing function. It cannot become an “independent republic within the republic”.

The Garda Siochana is not some local or regional constabulary; it is a national police force which is our intelligence and security agency. It is the frontline of our border and immigration control. It is our anti-terrorism and counter-terrorism agency.

Through the Minister for Justice and the Taoiseach it informs the Government and takes instruction on matters of state security and matters which centrally affect our international relations.

No democracy, anywhere gives governmental control of these functions to an “independent” board or authority.

In Canada, the RCMP is the national police force under the control of a Commissioner under the direction of the Public Security Minister.

The same principles apply to the FBI and the CIA in the US.

New Zealand has a national police force under a Commissioner accountable to a justice Minister. It has a separate security agency also under governmental control.

Australia has federal police and a separate security agency both directly accountable to government.

The Home Office in the UK is in charge of the Met. Their security agencies are under government control.

The idea of simply giving control of An Garda Síochána to an “independent” authority is simply misconceived, impractical and contrary to the spirit of our constitution.

It was considered and rejected in 2005 for very good reasons which still hold good today.

I note that the Government has made a decision in principle to be followed by a consultation process designed to give rise to detailed proposals. This of course is wrong-headed.

The idea of an “independent police authority” should first be worked out in detail as to how it might work, how it would work with and under Government, who would compose it, how it would be accountable, who could fire it, and how it would discharge national security functions in secret and in harmony with Government and how disputes between it and Government would be resolved.

Then and then only should a decision be made as to whether such an authority would be an improvement which would work better than the present model or some tweaked working of the present model.

The Garda Síochána Act of 2005 was put in place in the light of and in accordance with the Morris Tribunal’s recommendations arising out of matters which came to light in Donegal but which we know and knew then were not confined to Donegal.

I do not want to personalise matters. But I will say that I was shocked and dismayed and sometimes revolted by the way in which the relationship between the Garda Síochána and the Executive developed in recent years.

I think that personal rather than institutional factors were chiefly to blame. I also believe that short term electoral issues lay behind the departure in rapid succession of the Confidential Recipient, the Commissioner and ultimately of the ill-starred Minister himself.

I hope that these short-term considerations will not now become the backdrop for a greater political catastrophe for policing in Ireland.