

COLLECTIVE FOLLY

ARTICLE FOR SUNDAY INDEPENDENT

BY MICHAEL MC DOWELL S.C.

Over a period of six months the Irish people witnessed a car crash in slow motion which resulted in the departure from office of the Confidential Recipient appointed under the Garda Síochána Act, and the Commissioner of An Garda Síochána, and, lastly, the Minister for Justice and Equality, Alan Shatter.

The events that gave rise to this sequence of events are still shrouded in mystery. A series of inquiries has been unleashed but Dáil Éireann has been denied any real explanation as to how and why these events occurred.

Part of the cosmetic “*quick fix*” solution offered by the Government was a knee-jerk decision to establish an “*independent police authority*”. There was no prior debate as to whether this was a wise decision or whether such an “*independent*” body was workable or feasible in the Irish context.

Instead, over the protestations of Alan Shatter at the cabinet table, the Government committed itself in principle to the establishment of an “*independent police authority*”.

This is not the first time that such a proposal was made. In the year 2005, in the context of the Morris Tribunal Inquiry into the gardaí in Donegal, a similar suggestion was made.

Its desirability was carefully considered at that time.

Having carefully examined the case for an “*independent police authority*”, we came to the conclusion that it was not simply impracticable but that it could do a lot of damage to the Irish State and to the principle of parliamentary accountability by Government for the executive power under our Constitution.

An Garda Síochána is not some “*regional constabulary*” as exists in the United Kingdom; it is a national police force whose statutory function is “*to provide policing and security services for the State*”, charged with preserving peace and public order, protecting life and property, vindicating the human rights of each individual, protecting the security of the State, preventing crime, bringing criminals to justice including by detecting and investigating crime.

It combines the function of State security service with those of ordinary policing/constabulary activities.

Some countries divide their security services from their policing services. But no country of which I am aware whose system of democratic government is remotely comparable to the Irish one has ever taken the wholly extraordinary step of taking control of the national police and/or security service away from government and handing it to a body independent of government.

If we look around the world, the national police in Australia, New Zealand, Canada (the RCMP), the US (the FBI) and South Africa (the SAPS) are always under the control of the elected democratic government which is accountable to the people through their elected public representatives for the manner in which those services are managed and conducted.

Why is Ireland to take a unique and unprecedented step away from democratic accountability of the national policing service to Dáil Éireann as envisaged by the Constitution?

One only has to remember the West Midlands Constabulary to understand that regional policing authorities established in the United Kingdom are no guarantee that police services will behave well.

Governance is provided under the Garda Síochána Act 2005, and is in line with best international practice. The Government appoints a Commissioner, as is the practice right across the common law world. The Commissioner is responsible to the Minister for Justice (or Home Affairs).

The Minister is expressly prohibited from becoming involved in micro-management of An Garda Síochána. The Commissioner of An Garda Síochána is given the express role of advising the Minister (and through him the Government) *“on policing and security matters”*. Democratic control is ensured by vesting in the Minister (with the approval of the Government) of power to issue written directives to the Commissioner.

Such directives are laid before Parliament and may never be used *“to limit the independence of a member of the Garda Síochána in performing functions relating to the investigation of a specific offence or the prosecution of an offence”*.

The Garda Commissioner is *“accountable to the Minister for the performance of the Commissioner’s functions and those of the Garda Síochána”*.

The appointment of a Commissioner is not ministerial, but one to be made by the entire Government. The Commissioner may be removed from office only for stated reasons as are set out in the Act. The power of removal is circumscribed and the Commissioner cannot be summarily removed on a unilateral basis.

Our Constitution provides that *“the executive power of the State shall, subject to the provisions of this Constitution, be exercised by or on the authority of the Government.”* It also provides that the Government shall be *“responsible to Dáil Éireann”*.

The policing function of the State is a central executive function of Government, as is ensuring State security.

These are not theoretical considerations. Any Minister for Justice since the foundation of the Irish State has had the function and duty of exercising, on behalf of the Irish Government, control and responsibility over the policing function of the Irish State including the security of the Irish State.

The phrase “*independent*” begs the question: “*Independent of whom?*”

If it were a good idea to remove governmental and ministerial accountability and control from the policing function and to transfer it to an “*independent body*”, how come this has not happened in relation to any similar national police force or security service operating in any similar system anywhere in the World?

Are we faced with a situation where the Gardaí use excessive force in a riot in Dublin and Dáil Éireann may not ask the Minister to account for that behaviour? Is the most that Dáil Éireann can do is to summon the members of some “*independent authority*” to inquire as to why police stations are being closed in rural Ireland or why particular forms of crime are on the increase or whatever?

Who would compose such an “*independent authority*”? Would they be Government appointees? Would service by judges on the Garda Authority be a good thing? Would party political representatives be allowed serve (as they do in the case of the Northern Ireland regional police authority)? How would an independent authority deal with “*State security*”? Would government have to ask the permission of the police authority to direct An Garda Síochána to carry out some particular functions?

It is only when we consider the implications of an “*independent police authority*”, that the problems become clear.

Nobody has addressed the issue as to whether it is constitutional to divest the Irish Government of its constitutional right and duty to be directly accountable for the most important aspect of the “*executive power*” of the State – namely the policing power.

Because former Minister Shatter seemed to lose the plot in his handling of the policing function, there is no reason to divest government of that function. The government itself was aware of the problems which had arisen in recent times. The government meets and acts as a collective authority. Within cabinet, it should have sought and should have exerted its influence so as to prevent the recent policing governance debacles. If Alan Shatter wasn't up to the job, Enda Kenny should have acted earlier and more decisively. If there were any grounds for removing the Commissioner (and we have no reason to believe that there were at this point), the government should have acted more speedily. Indeed, we now know that the

government was never aware of the grounds upon which the Taoiseach sent the Secretary General of the Department of Justice to advise the Commissioner to consider his position until after the Commissioner had indicated that he was going to resign. Why was the government, as a collective authority, unaware of these issues? Why was the Commissioner led to believe that a government which hadn't consider the issue at all was, in some way, concerned about his behaviour? The Taoiseach is not the government, although he may be the head of it.

Nor have we heard why the Confidential Recipient, Oliver Connolly, was removed from office.

Instead of the knee-jerk reaction which gave rise to a snap decision to create an "*independent police authority*", the Irish people needed explanations and needed (if necessary) to take steps to prevent any recurrence of the Shatter debacle.

I believe that an "*independent police authority*" would not be able to control An Garda Síochána and would lose control of the force to the top management of the force. Such an authority would not have the clout which the Government has (backed by the mandate from the people) to exercise its authority over the manner in which the policing function is carried out as part of the executive power of the Irish State.

Now is the time yet again to blow the whistle and shout "*stop!*"

ENDS