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Governance and Parliamentary Accountability

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Introduction

Governance has emerged rapidly as a term to describe both the multi-faceted nature and structure of the modern decision-making process (Rhodes 1997; Pierre and Peters 2000; Kooiman 2003). However, as the literature on the concept expands, so too has the necessity to develop in tandem our understanding of accountability as a core element in modern governing arrangements (Papadopoulos 2003). Indeed, modern governance would appear to be 'accountable' governance, such has been the emphasis on creating multiple accountability relationships in contemporary politics and public administration. In particular, the challenges posed to traditional governing and accountability relationships by new institutional and regulatory frameworks require considerable analysis. After all, democratic accountability cannot function successfully unless it is clear to all within the polity who is accountable for what and to whom.

Parliamentary accountability is central to the successful functioning of the democratic system yet has received remarkably little attention in Irish academic literature. This is in contrast to the significant literature that has emerged on the issue of parliamentary accountability in other Westminster-type legislatures such as Britain and Australia, following high-profile cases of political corruption and malpractice. In brief, it refers to the obligation of the executive to reveal and defend its decisions (both ex-ante and ex-post) to the elected representatives of the people. Key to this process is the need for those representatives to have adequate tools at their disposal to uncover and interpret the activities of the executive. However, as is the case in most European legislatures, the reality of party politics has blunted the effectiveness of such tools. In Ireland, the failure of mechanisms of parliamentary accountability has resulted in a period of tumultuous change, including the creation of a new accountability superstructure for both political and administrative activities (MacCarthaigh 2005).

The proliferation of new regulatory and oversight institutions is one of the most striking features of contemporary Irish governance, and coincides with a breakdown of traditional structures and hierarchies in both public and private spheres. In many areas of Irish public policy making, from electronic communications to

asylum seeking, aviation to consumer affairs, there is a discernible trend towards the establishment of institutions in response to a particular policy or political or crises. Indeed, a common justification for establishing many of these new institutions is that they ensure greater 'accountability' and increase the quantity of information available concerning activity in their respective policy field. However, the ever-increasing complexity of accountability relationships, combined with an emphasis on consulation and network governance as a method of problem solving, arguably creates as many difficulties as it tries to solve.

This is particularly evident in the creation of new institutions to be examined here. These are entities established to monitor and regulate the activities of political actors and provide more information concerning the policy-making process. In this chapter, it is proposed that not only do the Standards in Public Office Commission and the Office of the Freedom of Information Commissioner respectively bypass the constitutional forum for political and administrative accountability – Dáil Éireann – but their experiences to date draw attention to the paradoxes of multiple accountability relationships. In particular, it is argued here that ever-increasing demands for direct public access to information can potentially lead to a less effective accountability regime.

Governance and Accountability in Ireland

Accountability has emerged as one of the most ubiquitous concepts in contemporary Irish political discourse. It seems that whatever the institution, there can never be too much accountability; and lack of accountability is frequently identified as the root of institutional inadequacy. However, as accountability is increasingly used in a variety of environments and situations, so too has its meaning been widened. Also, there is a significant emphasis on institutions rather than behaviour in the examination of accountability in a European context. As Mulgan argues, the proliferation in the use of the term has coincided with the growth in literature on governance, and from its roots in administrative law, accountability now encompasses issues of control, responsiveness, responsibility, audit, liability and blameworthiness (Mulgan, 2000, 2003). Many contemporary conceptions and models of accountability have emerged from organisational theory and the structure of

accountability regimes (particularly reporting mechanisms) also forms a large part of contemporary literature on corporate governance (Bovens 1998: 50-1; Procter & Miles 2003; Sternberg 2004).

Traditionally understood, accountability implied a set of agreed rules between actors, in which an external principal reserves the power to sanction an agent for failing to act in the principal's interest. Indeed, the much vaunted principal-agent model has been used to describe the theoretical nature of accountable government, with citizens as the ultimate principals (Strøm 2000). As deLeon argues, this distinguishes it from the concept of responsibility which referred to internal controls inspired by professional or personal ethics (deLeon, 2003). Chains of accountability are traditionally viewed as hierarchical and only ever as strong as the weakest link in them. However, accountability relationships today encompass a much wider variety of interpretations, and are frequently understood by reference to contrasting dichotomies e.g. political versus administrative accountability, internal versus external accountability, and centralised and devolved accountability (Thomas, 2003). The difficulty with this expansion in interpretation is that the more relationships that accountability is meant to define, the less it actually represents.

Indeed, the catchphrase of increasing the 'openness, transparency and accountability' of public bodies and decisions has become a legitimating factor in much of public sector reform in Ireland since the early 1990s. For example, the Strategic Management Initiative, launched in 1994, envisages that the Irish public administration would become more directly accountability to the public as consumers of its services. As with New Public Management style reforms elsewhere, there is an emphasis in Ireland on improving public sector performance through formal structures of accountability that make direct links with the public, thus addressing the much maligned impersonal and 'one-size-fits-all' nature of traditional bureaucracy. Accountability has also been a prominent feature of the development of the State's involvement with the private sector in the delivery of large infrastructure projects (particularly Public-Private Partnerships) and the outsourcing of specialist functions to consultancies. However, the concern with accountability has not rested solely in the administrative sphere. As a result of several corruption scandals and the subsequent desire of governments to be seen as responsive to public concerns, the

accountability of political parties and actors has never been subject to as much scrutiny as it has been in the last number of years. This has been made possible through the introduction of new legislation and institutions designed to regulate the activities of political actors and public access to information concerning the decision-making process, as will be discussed below.

The introduction of new institutions designed to deliver better accountability is based on the premise that more accountability is in fact better accountability. However, the contrary is often true. As with many issues concerning institutional design, unintended consequences are common and may produce a result which is the opposite of that desired. For example, Dubnick argues that the greater the use of administrative accountability mechanisms in a bureaucracy, the less bureaucrats will behave responsibly, ethically and professionally (Dubnick, 2003). Behn also notes this 'accountability dilemma' (or paradox) faced by those involved in devising and implementing policy (Behn, 2001).

Though subject to considerable criticism, parliamentary accountability is the most fundamental element of government in democratic (parliamentary) polities. As the only directly elected public institution in most democracies, parliaments are tasked with ensuring that optimal standards of political and administrative accountability are consistently achieved. The growth of the 'executive state' in recent years has made this role increasingly difficult to realise in most Western states, and has resulted in internal innovations such as committee systems. As demonstrated below, how a parliament functions is significantly dependent on the institutional environment in which it is manifested. Unlike many new accountability arrangements affecting modern governance processes, from financial compliance to professional codes of conduct, parliamentary accountability is at the heart of democratic governance in many Western democracies. In theory, it involves the subjection of the executive to scrutiny by the representatives of the governed, with the ultimate threat of sanction and dismissal. In this respect, parliamentary accountability involves substantial transfers of information, and requires string elements of trust and honesty in order to maximise its effectiveness

While its effectiveness in Ireland has been undermined through a combination of adversarial parliamentary politics and domination by the executive of the parliamentary agenda, parliamentary accountability is fundamentally challenged by the emergence of alternative sources of executive oversight (MacCarthaigh 2005: 52-93). Indeed, a key development in Irish and other Westminster-style parliamentary politics in recent years has been the attempt to move away from the traditional chains of accountability – exemplified by the doctrine of ministerial responsibility – to more direct forms of scrutiny (Flinders 2001). An example of this in Ireland is the power granted to parliamentary committees to question public servants or the boards of state agencies directly, made possible by the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities) Act, 1997. These shifting accountability relationships reflect the changing institutional relationships which characterise the shift elsewhere described as a move from government to governance.

Parliamentary accountability is also challenged by the NPM-inspired reform of the Irish public administration. Despite the increased resources available to the Irish legislature to engage in its oversight function[1], and the embeddedness of the parliamentary committee system, scrutinising the activities of an increasingly complex and growing public service is not possible. In particular, the explosion of non-departmental bodies or agencies[2] at local and national level, and the varying degrees of autonomy which accompany their functions presents accountability challenges for parliament (McGauran et al 2005, Clancy and Murphy 2006). So too does the increased focus on the separation of policy from implementation activities within Ministries.

Table 1 below adapted from MacCarthaigh (2005: 23) describes the development of supplementary mechanisms of accountability alongside existing mechanisms in both parliamentary and non-parliamentary or 'public' arenas.

[1] In 2004, the Houses of the Oireachtas assumed control of their own budget for the Department of Finance. Monies are now paid over in three-year envelopes and it is largely at the discretion of the Houses as to how that money is to be spent.

[2] Defined by Pollitt et al. (2001: 271) as 'an organisation that stands at arms length from its parent ministry or ministries and carries out public functions'

Table 1: Parliamentary, judicial and public mechanisms of accountability

		Mechanism	Used to hold whom to account?	Accountable to what institution :
Parliamentary Accountability	Old	PQs, Debate, Motions and Resolutions	Executive (including the public administration), individual Ministers and parliamentarians	Dáil Éireann
	New	Parliamentary Committees	Executive (including the public administration), individual Ministers and parliamentarians	Houses of the Oireachtas
Public Accountability	Old	Ombudsman	Public Administration	-*
		Comptroller and Auditor General	Public Administration	Independent office by virtue of constitutional guarantee
	New	Freedom of Information	Executive (including the public administration)	-*
		Electoral Acts, Standards in Public Office Commission	Political parties, public representatives	Houses of the Oireachtas

* While the Ombudsman and Freedom of Information Commissioner are appointed by the Houses of the Oireachtas and present reports to both Houses, they are in fact independent of those Houses and not accountable to them.

This chapter uses the case studies of the Standards in Public Office Commission and the Office of the Freedom of Information Commissioner to demonstrate the difficulties of foisting new accountability mechanisms on existing arrangements. The creation of both offices followed considerable criticism levelled at the decision-making process in light of sustained revelations of political corruption and administrative malpractice during the 1990s, a period of considerable economic and social transformation in Ireland. In this chapter, it is proposed that while these new institutions provide for considerably more information on the activities of the political and administrative spheres in Ireland, they do so at the expense of traditional parliamentary mechanisms of executive oversight. While the ineffectiveness of these parliamentary mechanisms may have been a significant contributory factor to the necessity for new modes of executive oversight, it is proposed that creating multiple accountability relationships may not achieve better or more accountable forms of governance.

The Standards in Public Office Commission

The first institution we wish to consider is the Standards in Public Office Commission. Its origins lie in the 1995 Ethics in Public Office Act, which updated the law on the prevention of corruption and provided for the annual registration of interests by people in key public positions. These include parliamentarians and members of the Cabinet, senior civil and public servants, state agency board members and senior executives of commercial state enterprises, as well as special advisers to ministers. Reflecting the fact that the parliamentary committee system was not fully embedded by this stage, committee chairmen were not specified under the Act. It did oblige members of the Oireachtas, when speaking or voting on an issue, to make a formal declaration if the issue involves a potential conflict of interest; as well as to provide a written account of their interests to the Clerk of either House. The veracity of these statements of interest is not in fact checked by any of the staff of the Houses and the only incentive for members to declare their assets is the potential negative publicity for not doing so.

The Act also provided for the establishment of a Public Offices Commission, whose role was to monitor compliance with the provisions of the Act by the public office holders mentioned above. Its members were the Ceann Comhairle (Speaker) of Dáil Éireann, the Comptroller and Auditor General, the Ombudsman, and the Clerks of Dáil and Seanad Éireann. Following recommendations made by the final report of a Tribunal of Inquiry[3], the Ethics in Public Offices Act was amended by the Standards in Public Office Act, 2001. The most notable feature of the new Act was the creation of the Standards in Public Office Commission, which replaced the Public Offices Commission. The Standards in Public Office Commission did not include in its membership the Ceann Comhairle. Instead, he or she was to be replaced by a member of the judiciary appointed by the President on the advice of the government, and who would fulfil the role of Chairperson. The new legislation also allows the Commission to appoint another member of its choosing, and it appointed a former minister to that position.

The Commission is principally concerned with attempting to provide a level playing field in the political process by regulating and monitoring the financial activities of the political parties. The remit of the Commission extends from the Electoral Acts 1997 to 2002, and the Oireachtas (Ministerial and Parliamentary Offices) (Amendment) Act, 2001. These Acts give the Commission the power to monitor the disclosure of political donations, the limiting of election expenditure, public funding of qualified political parties, as well as the reimbursement of expenses incurred by certain election candidates.

The Commission's work in disclosing the levels of expenditure by the political parties during elections and the identification of those private interests who donate money to the party has been significant. Its very existence undoubtedly deters potential corruption of the electoral processes, and introduces a culture of financial accountability which was previously absent from the political process. Since its enactment, the focus of the standards in public office legislation has broadened considerably. It has advanced from a position where disclosure of interests and reporting of possible conflicts of interest were the principal features, to a more

[3] The 1997 Dunnes Payments Tribunal, better known as the McCracken Tribunal after its chairman, Brian McCracken

prescriptive mode which includes certification of tax clearance for public service appointees or adherence to codes of conduct.

Members of the Oireachtas who are not office holders as defined under the Acts are responsible to the Committees on Members' Interests of the Dáil or Seanad. The Ethics in Public Office Act (and later Standards in Public Office Act) established these committees to monitor the implementation of their recommendations, as well as to sanction members who broke the guidelines established by the legislation. This was a considerable development as it introduced a new mechanism of oversight *within* the Oireachtas and empowered its members to make decisions concerning their peers. However, as will be detailed below, the committees have encountered several difficulties in fulfilling their remit.

Also, members of the Oireachtas must now provide a statement of registerable interests each year. The completed Register of Interests is then laid before the Houses. Oireachtas members who are members of the government must also provide an annual statement of additional interests (i.e. relevant family interests). In addition, in certain circumstances they must provide a statement of material interest when debating or voting on a matter.

The Commission also has a function in respect of the bureaucracy, insofar as elected members may make complaints against public servants to it. This is an important development, as it allows parliamentarians to circumvent a key element of ministerial responsibility which designated the appropriate Minister to be 'responsible' for the activities of civil servants. Thus the Commission offers another alternative to Dáil Éireann in terms of administrative oversight.

Freedom of Information Act and the Office of the Information Commissioner

While the Standards in Public Office Commission has introduced a new element of regulation and accountability to the political process, it has been matched by an initiative to provide for direct public access to the decision-making process.

The Freedom of Information Act was introduced in 1997 and initially applied to central government and related departments. However, the range of public bodies under its remit has grown substantially since then. The Act provided for extensive powers of disclosure to the public of documentation which previously would not be released until a period of thirty years had elapsed under the 1986 National Archives Act. This new legislation drew on best practice from other Westminster-style democracies including Canada, Australia and New Zealand, and was created to allow citizens have rights of access to information held by public bodies as of April 1998. There is no Freedom of Information Act in Britain, although the Labour party has advocated the creation of one since 1974 (Flinders: 312). At the same time Ireland's Freedom of Information legislation had to ensure citizens' rights of privacy and to ensure that fair procedures were followed. The legislation provided for the establishment of an Information Commissioner and this role was subsequently given to the Ombudsman.

The Information Commissioner was presented with substantial powers under the Act, such as the ability to authorise the release of information that may previously have been withheld in response to a citizen's request. In brief, the legislation created three new statutory rights:

- A legal right for each person to access information held by public bodies
- A legal right for each person to have official information relating to him/herself amended where it is incomplete, incorrect or misleading
- A legal right to obtain reasons for decisions affecting oneself.

The Information Commissioner derives his or her legitimacy from the fact that their appointment is made by the President on the advice of the government following a resolution of both Houses of the Oireachtas. The decision to make the Ombudsman also hold the Office of the Information Commissioner was made on the basis that the Ombudsman's office had considerable expertise in the area of disclosure of public records. Indeed, the Ombudsman/Information Commissioners offices share their premises with the Standards in Public Office Commission.

Combined, the Standards in Public Office and Freedom of Information legislation have significantly increased the volume of material available on the administrative and political processes in Ireland. They also offer an alternative to the traditional source of information on the work of the bureaucracy which allowed Ministers to act as veto players on the release of such information. However, whether or not the new institutions introduce more accountability to the decision-making process is a different matter.

The Standards in Public Office Commission and Office of the Information Commissioner are manifestations of the institutional response to concerns with ethics and accountability in public life. However, while they deal with the symptoms of accountability deficits including corrupt payments and poor administrative procedures, it may be argued that they do not address its root cause i.e. the failure of existing mechanisms of oversight. It is necessary here to consider the inadequate ability to pursue political and administrative accountability within the principal oversight forum in the state - Dáil Éireann.

Why is parliamentary accountability weak?

In modern Westminster-style parliamentary democracies, the principal feature is the power-hungry nature of the executive, and its accumulation of influence at the expense of the legislature which elects it. The Lower House of the Irish parliament, Dáil Éireann, displays a particularly strong example of this dynamic, and, more so that even Westminster itself, the government controls the parliamentary agenda with ease (Döring 2004: 149; Gallagher 2005). Indeed, the executive maintains a practically unassailable veto over the various parliamentary procedures, such as the legislative process, the voting of monies and the format of debates, and is easily able to insulate itself from opposition scrutiny. However, as originally conceived, Dáil Éireann was designed to allow for opposition party input into the work of the executive, and the parliamentary accountability of the executive was expected to be upheld through various innovative mechanisms. For example there was provision for 'extern Ministers' in the Cabinet who would be accountable to the chamber rather than the government. However, by the 1960s the House had evolved into one that had a significantly diminished role in the policy process. Why this has occurred is due to

a combination of the dynamics of the party system, and the standing orders or rules of the House.

The use of a proportional electoral system in post-independence Ireland was expected to return coalition governments. However, by the 1930's PR-STV was consistently returning two large political blocs more typical of majoritarian electoral systems. On one side, the populist Fianna Fáil refused to form anything other than single party governments when the opportunity arose, thus forcing the two principal opposition parties, Fine Gael and the Labour Party, into unlikely coalitions at different periods. From 1932 until 1989, therefore, Irish politics revolved around a 'Fianna Fáil versus the rest' adversarial dynamic which encouraged the government of the day to exclude the opposition parties from the decision-making process within the legislative arena.

In a Westminster-style parliament, the party or parties in power have little incentive to grant the opposition parties opportunities to investigate their activities. For the opposition, the most productive course of action is to attack the government at any given opportunity and to criticise their lack of input into the decision-making process. However, when in power, that same opposition will find it prudent to insulate itself from scrutiny. This pattern of behaviour characterises the traditional nature of Irish parliamentary politics, but the advent of coalition government since 1989 has presented increased opportunities for the non-government parties to inquire into government activity.

A good example of this development was the first coalition between Fianna Fáil and the Labour Party in 1992. As part of the agreement, the government established a comprehensive set of departmentally aligned committees, which allowed backbenchers on both sides of the House to engage more constructively in the policy process (O'Halpin 1997). The committees allowed Dáil Éireann to increase its economy of operation, by facilitating parallel debate over legislation and increased oversight of the public administration. However, the committees' composition reflected that of the plenary and did not allow the opposition members to successfully challenge the prerogative of the executive, a point returned to below.

The coalition governments that have existed since 1989 have contributed to a certain 'opening-up' of government insofar as there has been a strong emphasis on achieving greater public access to information concerning all public institutions. While a detailed examination of this phenomenon is not possible here, there would appear to be a strong relationship between the existence of multiple veto players within the executive and the use of extra-parliamentary mechanisms of oversight. Such a development is unlikely to have occurred under a situation of single-party government, where the incumbent party is not inclined to impose obstacles to its agenda-setting capacity. All Tribunals of Inquiry investigating issues of political and administrative malpractice (below) have occurred during the period of successive coalition governments beginning in 1989. Similarly, the Electoral Act which established state funding for political parties (as well as spending and donation limits for them) and the Freedom of Information Act, were both promulgated by the same three-party coalition government in 1997. This was the 1994-7 'Rainbow Coalition' government which consisted of the centre-right Fine Gael party, the social democratic Labour Party, and the socialist Democratic Left party.

The other principal factor in explaining the weakness of parliamentary oversight is the configuration of the rules governing the behaviour of the parliamentary parties. In every democracy, the legislature will operate by a set of procedures which determine the entitlements of government and non-government representatives to the most valuable legislative commodity – parliamentary time. Without parliamentary time, questions cannot be asked, debates cannot proceed and governments cannot be held to account. In Dáil Éireann, the existing 171 'Standing Orders relative to Public Business' provide distinct advantages to the government in its control of the agenda. For example, the time allotted to the opposition to control the floor of the Chamber is minimal, at only 6 hours per week, and there is virtually no chance of non-government legislation progressing being approved without government permission. There have been many amendments to the standing orders since the early 1920s but the principal dynamic has been one of ensuring efficiency for executive business rather than effective oversight of that work.

This combination of adversarial parliamentary politics and rules that protected the ability of the executive to dominate the House inhibits the effectiveness of the

traditional mechanisms of parliamentary oversight, including parliamentary debate, questions and more recently the committee system. While at first glance there appear to be a multitude of avenues available to members to hold the executive to account in respect of both political and administrative matters, closer examination reveals that this is not necessarily true. The standing orders ensure that invariably, the executive is able to use its parliamentary majority to limit the effectiveness of these mechanisms.

MacCarthaigh (2005) examines the difficulties faced by non-government members in pursuing executive accountability in the legislature. However, while the ineffectiveness of these mechanisms of oversight had long been identified and criticised, events in the late 1980s and early 1990s brought them into sharp relief. The inability of parliament to adequately deal with allegations of maladministration and political corruption resulted in a watershed for the concept of accountability in Irish governance. From this period forward, a process emerged of resorting to extra-parliamentary mechanisms of oversight to deal with issues concerning the political and administrative realms, and this dynamic has had a significant influence of the shape of modern Irish governance.

Tribunals of Inquiry

Prior to 1991, Tribunals of Inquiry were concerned with specific incidents such as a fire disaster or particular economic issue. Post 1991, Tribunals are concerned with governance issues, and particularly matters concerning administrative failure and abuse of public office. In most cases, the Tribunals were created when parliamentary mechanisms of accountability failed or were not able to deal with the issues under question. Indeed, the subtext to many Tribunals of Inquiry is that the matters before them were raised at parliamentary level, but the oversight mechanisms detailed above were incapable of providing for a satisfactory resolution to the issues which were exposed.

In many respects, the first Tribunal of the era under consideration, the Beef Tribunal[4], encapsulates two principal issues which were to feature in subsequent Tribunals. Firstly, there was concern about the conduct of those in public office, and particularly with respect to the clientelist networks between Ministers and prominent business figures, which were not subject to external accountability. Secondly, there was a concern with the structures of accountability within elements of the administrative system.

As well as suspicion of improper practices within the Beef Industry which were not dealt with by the Department of Agriculture, the Tribunal was concerned with allegations that ministers had not provided proper answers to parliamentary questions. These questions concerned issues which were later exposed by investigative reporters. During the late 1980s, opposition members had raised questions concerning the awarding of export insurance cover to one company chaired by an individual with close personal ties to government members. However, the answers to the questions were evasive and the questioning member had no recourse to mechanisms which would provide more satisfaction. Indeed, during the course of the Beef Tribunal's work, the chairman noted that,

> I think that if the questions that were asked in the Dáil were answered in the way they are answered here, there would be no necessity for this inquiry and an awful lot of money and time would have been saved. (Cited in O'Toole 1995: 241).

The Beef Tribunal led directly to the promulgation of the Ethics in Public Office Act (above). However, the Beef Tribunal report did not deal with the issue of how members of parliament did not appear to respect the oversight role of the Oireachtas. This issue was returned to in a subsequent Tribunal of Inquiry – the McCracken Tribunal. It was established in 1997 and was concerned with the issue of financial payments by a prominent businessman to senior politicians from the three main political parties. While it did not propose changes to the mechanisms of parliamentary accountability outlined above, it did note that false declarations of

[4] The official title for this inquiry was the Tribunal of Inquiry into the Beef Processing Industry.

interest by members of parliament should be considered a criminal offence (McCracken 1997: 75).

The report of this Tribunal resulted in the establishment of a further Tribunal of Inquiry – Moriarty – in 1997. This Tribunal is ongoing at time of writing and is inquiring into the financial affairs of two senior political figures from the two main political parties. Its establishment coincided with the creation of the Flood Tribunal to investigate allegations of corruption in the planning process, and specifically that certain public figures were bribed by property developers. The Flood Tribunal has been of particular significance as its second interim report (released in 2002) identified certain payments to politicians as 'corrupt', the first time the term had been used in any Tribunal. Indeed, a former Minister who received corrupt payments denied that he had done so to the Dáil in 1997, again demonstrating the ease with which member mislead the chamber without fear of sanction. The work of the Moriarty and Flood Tribunals acted as catalysts for anti-corruption legislation, as well as the Standards in Public Office Act in 2001.

With regard to issues concerning the public administration, Tribunals have also been instrumental in identifying considerable lapses in accountability within state agencies and government departments. The Lindsay and Finlay Tribunals uncovered significant lacunae in the Department of Health in respect of blood products. Furthermore, at time of writing, the Barr and Morris Tribunals are investigating the activities of the Garda Síochána – an arm of the State that is legally accountable to the Minister for Justice. As these inquiries proceed, the government has decided to introduce a new Garda inspectorate to oversee the work of the force and its senior officers. Furthermore, the reports of the Beef and Finlay Tribunals contributed to and coincided with the processing of the Freedom of Information Act through parliament.

It is clear, therefore, that the deficiencies in the political and administrative realms uncovered and investigated by the Tribunals of Inquiry contributed to the impetus for the establishment of several new regulatory and oversight institutions[5].

[5] This is mirrored by events in Britain where a series in public scandals and concern over standards in ethics in public office resulted in the establishment in 1994 of the Committee on Standards in Public Life under the Chairmanship of Lord Nolan. Since then, the committee has published several wide-

While each Tribunal involves a unique set of events and personalities, the issues of political and administrative oversight are common to almost all of them. However, the political pressure to be seen to react to these public scandals has resulted in these lengthy and expensive quasi-judicial inquiries becoming part of the contemporary Irish political landscape. In the process, it is forgotten that political and administrative oversight is one of the principal functions of parliament, and employing alternative institutions inevitably serves to reduce the efficacy of parliamentary accountability.

What are the difficulties with the new institutions?

As we have seen, the Offices of the Freedom of Information Commissioner and the Standards in Public Office Commission are comparatively new institutions. While some of the difficulties they have encountered in fulfilling their remit may be considered as 'teething' difficulties, others point to a fundamental dilemma with attempting to regulate either the political process or the activities of political actors[6]. As with so much of institutional reform, there have been unintended consequences which have served to undermine the intentions of the institutions themselves.

Difficulties with SIPO

In June 2003, the Commission released details of spending by candidates during the 2002 general election, the first to be held during the Commission's short existence. It found that 56 of the incoming 166 TDs had overspent their quota as established under the Electoral (Amendment) Act, 2001, amongst them the Taoiseach and indeed most of the Cabinet. Some of this overspending was the result of a court decision on the eve of the election, which held that Oireachtas members must count in their spending estimation services such as mail and secretarial services. Bye-elections in two constituencies during 2004 also exposed flaws in the remit of the SIPO's work. The money spent by candidates in parliamentary elections is only counted from the time that such an election is called. However, there is nothing to prohibit parties spending money on canvassing in advance of this date and what money is spent need

ranging reports concerning issues such as ethics in the public service, party financing and the accountability of non-departmental public bodies.

[6] See also the discussion concerning these issues in the final report of the democratic audit of Ireland being undertaken by the think-tank TASC, 2007.

not be included in the final figures submitted to the SIPO. Also, the Commission has no practical method of taking into account the activities of party activists and the value of their efforts. While political actors are technically adhering to the requirement of the legislation, the practice post-enactment would appear to be to find ways to work around its stipulations.

The 2003 Annual report also noted a high level of technical contraventions of the Act, particularly in relation to tax clearance certificates, but noted that this was not a significant issue. Also, it noted the Commission's concern that the Minister for Finance had not updated the list of public bodies which should fall under the remit of its work (Standards in Public Office Commission *Annual Report 2003* (Dublin: Standards in Public Office Commission, 2004, p.11, 16). More important was the inability of the Commission to censure a deputy who had returned a false tax clearance certificate. The Commission noted that the legislation governing its work required that for it to take action, a complaint must be made against a TD and as none had been made, it had been left with no option but to refer the matter on to the Dáil Committee on Members' Interests (below) but it did not take any action and referred the matter back to the Commission. However, by this stage the time limit within which the Commission could take action had been reached and it could not therefore pursue the matter further itself.

Also, an incident in 2004 occurred where a conflict of interest was suspected in the case of a Minister awarding a public relations contract to a consultant with whom he had a close political relationship. The matter was deemed serious enough for the Taoiseach to remove from ministers the power to directly employ public relations consultants. Despite the fact that the issue appeared to be one for which the Commission was created to investigate, its annual report brushed over the matter, arguing that:

> The evidence before the Standards Commission did not establish a *prima facie* case which would have warranted an investigation within the terms of the legislation in question. In that regard, the grounds for possible investigation by the Standards Commission could not extend beyond the scope of the relevant legislation. Standards in Public Office

Commission *Annual Report 2004* (Dublin: Standards in Public Office Commission, 2005, p.16).

However, there are more fundamental problems with the Commission's attempts to regulate the activities of political actors. In order to support the work of the Commission within the Oireachtas, the 1995 and 2001 Acts both provided for the creation of Committees on Members' Interests in both Houses. In fact, the Dáil Committee on Members' Interests is the only select committee of that chamber with a non-government majority. The chair was, however, held by a member of the government. Neither committee has the power to alter, revise or otherwise change the findings of the Standards in Public Office Commission. The principal role of the committee is to implement the Standards in Public Office legislation in respect of those members of wither House who are not office-holders.

While the role of the committees is to provide support within the legislature for the provisions of the Ethics Act, to date there have been difficulties recruiting members to them. During the latter stages of the 1997-2002 government, the Dáil Committee on Members' Interests were asked to investigate the actions of two members, Ned O'Keeffe and Denis Foley. In both cases, the issue before the Committee was that the TD did not declare an interest during a debate. The Committee's recommended suspensions in both cases, but not before committee members voiced their displeasure at the nature of their work. Indeed, in both cases the issue of members' mandate to represent his or her constituency and the democratic dilemma of allowing members to remove their peers from the House deserve further scrutiny.

Furthermore, the functions of the Standards in Public Office are not all encompassing with respect to the activities of political actors. Indeed, one of the most conspicuous aspects of the political-business interface is the work of political lobbyists, and it remains the case that despite the revelations at the various Tribunals concerning the activities of lobbyists – particularly the Flood Tribunal where former Fianna Fáil press officer, Frank Dunlop, admitted bribing local councillors on behalf of property developers – this sector remains unregulated. An unusual situation also exists in the electoral expenditure legislation in that unlike for general, European and

Presidential elections, there is no limit to how much a candidate may spend in local elections. Oireachtas committee chairmen are also not included as named officers

Questions have also been raised over the accuracy of the Register of Members' Interests and allegations emerged during 2006 that members of the Government had not declared substantial property portfolios in which they had an interest. One of the members, a Minister of State, eventually resigned from his portfolio.

Some of the problems encountered by the Standards in Public Office Commission must be understood in the context of the fact that it is a new body charged with an onerous task. Nonetheless, its work to date demonstrates the difficulties of attempting to regulate political competition as well as the imposition of new accountability arrangements onto an existing accountability structure in response to a crisis. Indeed, there are likely to be further difficulties in demarcating the jurisdiction of Dáil Éireann in censuring its members, and the work of the Commission. The Commission has tried to expand its powers by asking in its 2004 annual report for the Government to allow it appoint an 'inquiry officer' which would investigate issues initiated by the Commission itself. This request was rejected by the Minister for Finance in July 2006 and the Commission therefore still relies on parties external to it to request such action before it can so. The experience to date would suggest that members are reluctant to complain about the colleagues.

Difficulties with Freedom of Information

The 1997 Freedom of Information Act was regarded as among the most progressive of its type, and as representing a substantial step in the development of public accountability in Ireland. A consultancy report on the Strategic Management Iniative, which, as part of its remit, considered the progress of the Freedom of Information Act found that it '…has generated additional workloads across Departments/Offices, but it has undoubtedly improved the accountability of the civil service to the wider public' (PA Consulting 2002: 88). The Act was due for review after five years in operation.

Following their re-election in 2002, the Fianna Fáil / Progressive Democrat government decided to amend it and established an ad-hoc committee of five senior civil servants to consider revising certain clauses in the original Act. While the government insisted that it was amending the Act in light of experience gained since the introduction of the Act, more political reasons were suspected. These suspicions were enhanced when it transpired that the executive did not directly consult the Information Commissioner or users of the legislation such as academics or journalists, over the proposed amendments. The amending legislation was rushed through both Houses of the Oireachtas, causing great consternation in the media and opposition benches.

The principal amendments to the Act included:

- Extension of the period after which public could access Government records from 5 to 10 years
- Extension of the type and number of official documents to which the original Act could not apply
- The non-application of the FOI Act to parliamentary briefing records, including records created for the purpose of briefing in relation to the answering of parliamentary questions
- The introduction of fees for all FOI requests

The amendments substantially extended the scope of records that fell under the title of 'Government papers', and included sub-committees or other advisory bodies which government could designate as 'Government'. The amending Act significantly curtailed the effectiveness of the original act, and was subject to considerable criticism by the Information Commissioner and the Council of Europe. The Office subsequently initiated an investigation into the operation of the Act in light of these changes. The investigation looked both at the types of request now being made and at the extent to which FOI is now being used. Its principal findings were:

- Overall usage of the Act had fallen by over 50% while requests for non-personal information had declined by 75%.

- The media are now less likely to use the Act and usage by journalists declined steadily throughout 2003.
- Between the first quarter of 2003 and the first quarter of 2004 the number of requests fell by 83% and still continues to decline.
- Other users of the Act, individuals and representative bodies, use the Act far less than before to access information on decisions that affect them directly or indirectly (Office of the Information Commissioner 2004).

As well as the curtailment of the remit of the office, however, there has been some debate over whether or not there would less recording and documentation of information by the civil service, particularly in its upper echelons, as a result of the legislation. The Office of the Information Commissioners Annual Report for 2003 noted that 'some in the public administration continue to view FOI with suspicion, and hold genuine beliefs that that it can act as an impediment to good government' (Office of the Information Commissioner 2004: 6). The report also noted that statistics provided to the Office by public bodies regarding FOI usage 'were not always reliable' and that this was related to the fact that there was no statutory obligation on such bodies to compile such annual information.

In his memoir, former Government Press Officer Frank Dunlop noted the tendency of civil servants to write their comments on 'post-it' notes which can be removed from files if necessary (Dunlop 2004: 141). In a similar vein, a former Government adviser turned Senator informed an Oireachtas Committee early in 2006 that because of FOI, he had 'come across a situation where a top-level committee which previously had minuted discussions and views of particular departments changed its recording arrangement to simply setting out agreed conclusions' (Wall, 2006). The Freedom of Information Commissioner also pointed out at the same meeting that a recent report on clinical malpractice had recommended that the Department of Health protect clinical governance records and risk-management clinical incident reports from the application of the FOI Act. It was argued that unless these documents were outside the scope of the Act, they were likely to be created and opportunities for learning from mistakes would be lost (Wall, 2006).

Naturally, the Office of the Information Commissioner has attempted to demonstrate the benefits of full extension and implementation of the legislation. An investigation by the Office into the progress of the new regulations found that the fear of weak recording of decisions was unwarranted (Office of the Information Commissioner 2001). Nonetheless, the report did express concern that the standard of record-keeping was inadequate in some departments, and queried the subsequent 'ability of public bodies to conduct their business efficiently', noting that this 'also has implications for accountability'. At time of writing, the Freedom of Information Act does not cover all sectors of the public service, and a common feature of the annual reports of the Office of the Information Commissioner is for the office's remit to be extended. In July 2006, the Joint Oireachtas Committee on Finance and the Public Service was asked to consider recommendations from the Information Commissioner to allow almost 50 non-disclosure provisions to be subject to the Freedom of Information Act. However, the government majority voted against the proposals. It remains the case that many areas of the public service remain outside of the remit of the Information Commissioner, including An Garda Síochána.

Competing Accountabilities

As contemporary Irish governance continues to broaden its network of stakeholders and institutions, and further entwines market principles with those of the public sector, so too does the meaning of accountability become more complex. 'Government without boundaries', 'hollowed-out states' and government 'in the shadow of hierarchy' all require fundamental changes in how we understand the accountability of the government to the governed. However, political expediency and incremental change often characterise the nature of public sector institutional reform, and little attention is paid to those core values which inform accountable governance.

As this chapter has demonstrated, events during the 1990s have resulted in substantial institutional reconfiguration within the sphere of government. The implications of these reforms of the core mechanisms of accountability – and particularly democratic accountability – have yet to be more fully explored. The role of the Oireachtas, and particularly Dáil Éireann in the midst of these changes is an

uncertain one, yet the introduction of new extra-parliamentary accountability mechanisms clearly have consequences for its work.

In terms of the issue of the accountability of political actors, both individually and collectively, there is good reason to believe that personal ethics rather than formal compliance and reporting requirements and financial audits can deliver a truly fair political game. A culture of respect for parliament, so often a feature of feature of ministerial resignations in Britain, can play a part in this development. Parliamentarians must appreciate the symbolic import of activities that undermine public faith in institutions of government. The Standards of Public Office Commission, while it can play an important role in producing more information on the activities of political actors, can only serve to supplement the ultimate accountability of those same political actors to parliament.

Similarly, Freedom of Information legislation has certainly provided for greater public access to information concerning the decision-making process. It has also resulted in higher standards of record-keeping in those offices which are subject to its stipulations. However, as Zimmerman points out, the legislation breaches the 'corporation sole' doctrine which places each minister as solely responsible for his or her department (Zimmerman 2001: 79). Therefore, as with the Standards in Public Office Commission, it challenges the existing parliamentary structures, and creates more links in an increasingly diverse web of accountability relationships that characterises modern Irish governance.

Like many concepts, accountability is often noted by its absence rather than its presence. A perceived failure of parliamentary accountability has contributed to the Irish state's most significant period of institutional reform since independence, including the establishment of an accountability regime that has expanded to a point where it may be self-defeating. It is a curious feature of the changing relationship between political parties and modern government that the democratic legitimacy of new oversight bodies is often gauged with reference to their lack of political personnel (Mair, 2006). Granting non-elected bodies the power to perform important functions of accountable government does not necessarily increase the democratic legitimacy of a governing system. Also, as noted above, more information does not

mean more accountability and the role of established parliamentary accountability mechanisms is worthy of more detailed consideration. As the only body charged with providing for both political and administrative accountability, it may be time to bring parliament 'back in' to our discussions of accountable governance.

Conclusion

As increasingly complex frameworks emerge to explain the institutional development of the modern Irish state, there is a tendency to overlook the essential role of those established institutions which shape the political and administrative agenda. In particular, the role of the legislature and parliamentary accountability need to be reconsidered in the context of competing accountability relationships. The contention of this chapter is that many of the new oversight institutions tackle the symptom and not the cause of both abuses in public office and poor administrative practices within the bureaucracy.

A relentless pursuit for ever greater accountability is not without cost, and more efficient ways of ensuring that agents are performing as principals desire are constantly sought. In any event, no accountability mechanism is perfect, and issues of trust and personal responsibility must also be factored in to any discussion of accountable governance. Parliamentary accountability faces challenges from many quarters other than new oversight institutions, including the demands resulting from EU membership. The ultimate responsibility for accountability has to reside with public institutions such as national parliaments and policy choices made by governments must still be legitimised thorough conventional means (Peters & Pierre 2006: 216).

At the core of policy-making is the subjection of all executive decisions to parliamentary accountability, yet the new networks and institutions of accountability that have emerged create tensions within that practice. Indeed, it may be argued that the role of Dáil Éireann in the public policy-making process has been undermined by the recourse to extra-parliamentary mechanisms of oversight. While the House has always been considered weak when compared with other legislatures, it remains the only public institution with the legitimacy to hold the executive accountable.

The undermining of traditional mechanisms of parliamentary oversight by successive governments has culminated in a period of tumultuous change in recent Irish political life. However, the response has been to create a network of regulatory and oversight mechanisms, the remit of which remains unclear for many. While the institutions examined above as case-studies produce much information about political and bureaucratic processes, it is open to debate as to whether there is more 'accountability' per se. Strengthening existing parliamentary mechanisms of oversight rather than creating new extra-parliamentary ones has not been seriously considered despite evidence to show that many of the issues before Tribunals of Inquiry could have been addressed at an earlier stage within the Oireachtas.

By their very nature, legislatures are the most difficult institutions to reform and fear of unintended consequences acts as a deterrent for any incumbent government to engage seriously with the matter of parliamentary reform. Nonetheless, as Papadopoulous points out, democracy is impoverished if new networks of governance come to supplant democratic channels for effective decision-making (Papdopoulos, 2003: 493). Despite its many failings, the system of parliamentary accountability in Ireland is key to the functioning of the political and administrative systems. New conceptions of accountable governance must not see the legislature as peripheral to the decision-making process, but rather as an integral part of it.

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