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Paddy Smyth

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Through a Glass, Darkly - Reflections on Secrecy and Censorship in Ireland

Paddy Smyth is a journalist with *The Irish Times* and one of the organisers of the 'Let in the Light' conference on censorship, secrecy and democracy, January 1993.

Paddy Smyth

Colour pictures produced in the minds of people,
Especially in the minds (if any) of young people,
A serious distortion of reality;
Colour pictures showed reality to be rich and various
Whereas reality in point of fact was the opposite...

Paul Durcan, 'Irish Hierarchy Bans Colour Photography'

Censorship, whether justifiable or not, is first and foremost a denial of a part of reality. In Ireland traditionally, it has been about the denial of the sensual. Today, less so. Our censors in 1993 are concerned predominantly with the consequences of sex and the causes of political violence. Above all, they are driven by the conviction that supposedly unshakeable value systems will fail the test of contact with the harshness of real life, and that people are so weak-willed, that they, like children, must be protected from their baser instincts, for their own good. People must be protected from making 'wrong' decisions. But, the tide is turning, and, to a great extent, the 1992 election could be interpreted as an appraisal on the charmed, closed, golden circles of our rulers who have looked into their hearts and known what the Irish people 'really' wanted.

Our censors are not only those who take a blue pen to books or scissors to a film. They are not confined to the bureaucrats who tell us whom we may or may not listen to on the radio. They are also the politicians and the businessmen who conceal from ordinary people the true relationships of power, the inner workings of government, and the great institutions that rule our lives. That is why the inevitable corollary of freedom of speech is freedom of information, and why the issue of freedom of information has become central to the Irish political agenda.

The Fianna Fail-Labour Party Programme for Government (1993-1997) promises new registers of interests, new ethical guidelines for politicians, new legislation on abortion information, possibly a review of Section 31, and an examination of the feasibility of a freedom of information bill. These proposals have emanated from a series of public scandals which would have been sufficient to bring down a government elsewhere. They involve allegations of misappropriation of public and corporate funds, political influence, corruption, and the 'sectarian' basis of legislation, involving, inter alia, Dublin's planning and development process, the Allied-Irish Bank/Insurance Corporation of Ireland (1985), Greencore/formerly Irish Sugar Company (1991), Telecom (1991), Goodman International and the subsequent Beef Tribunal (1990-1993), the banning of abortion information, the 'X' case involving a thirteen year old rape victim seeking an abortion in Britain (1992), and missing Galway diocesan funds (1993). In most cases, freedom of information, or more accurately, the lack of it in major institutions has become a central issue.

In the US, protection of freedom of the press afforded by the First Amendment of the Constitution has been interpreted broadly. US courts have clearly seen that protection of a journalist's sources are crucial to the functioning of a free press. In sharp contrast, Irish courts and the Law Reform Commission have indicated that they see no such connection. The Beef Tribunal, which has raised a plethora of related issues and owes its origins to the work of an investigative journalist casting light into dark recesses, has

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ended up threatening the prosecution of that same journalist for doing what her professional code tells her - refusing to reveal sources. Nevertheless, journalists, for whom confidential relationships with sources are an indispensable, routine part of everyday work, will continue, unlike any other profession, to teach students that it is not only right but their duty to defy the courts over a central tenet of their professional ethics.

The courts' and the politicians' view of journalistic privilege reflects a deep antipathy to the media which are seen as an essentially parasitical and prurient force whose grubby presence must be tolerated, but no more. Such a view finds its expression in contempt of court rules, defamation, gagging writs, in camera rules, and bureaucratic secrecy surrounding court documents. An important decision early in 1993 against *The Irish Times* has now removed the protection of privilege from the reporting of preliminary summons. Newspapers will now not be able to publish allegations made in documents which form the basis of legal proceedings until the paper itself is satisfied that it can prove the allegations in a court of law or the allegations have actually come before a court. Otherwise, they face the threat of an action for defamation.

While the reasoning of the court is understandable, and its purpose worthy - to remove the protection of privilege from those who want to make wild allegations that they do not really intend to pursue in court - the effect of the ruling is once again to shift the balance against the rights of the press, and more importantly, the public's right to know. Given the slowness of the courts in civil matters, the result will almost certainly be to postpone public knowledge of scandals - and thus to protect the authors of wrongdoing. In this case, as in others, the real remedy lies with the courts and the legislature. By speeding up the process of trial and introducing some deterrents to vexatious summonses, the courts could achieve the desired result without undermining public access to their workings. But, the easier solution is always to put the onus on the press to hush things up.

In 1991, frustrated by the supposed effects of opinion polls on voters, the Government sought to ban them in the run-up to elections. There were suggestions from the same quarter that TDs would be able to decide how much of their proceedings should be reported. The instinct to shoot the messenger runs very deep in Irish life. Likewise, following revelations about irregularities in the beef industry, several politicians suggested that it was unpatriotic to write disparagingly about the industry. Ultimately, however, the Tribunal may prove to be a watershed in opening up Irish society. Apart from the case of Susan O'Keeffe - the journalist who exposed wrong-doing on the ITV programme *World in Action* - it has also exposed the scandalous inadequacy of the laws governing the disclosure of political donations and brought about an absurd ruling on Cabinet confidentiality (routinely broken by politicians, at their own whim, in the political lobby, but not where they might be seriously questioned, as at the Tribunal).

At stake is far more than the ability of journalists to do their job properly. It concerns the transparency of transactions entered into by politicians or business people or even clergy on behalf of ordinary citizens, shareholders, employees or church members. These issues of censorship and information are not disparate ones but part of a single issue. For too long, arguments such as those against Section 31¹ have been seen to be made largely by those against whom it is intended while the case against restrictions on abortion information has been supported mainly by those who favour the right to choose abortion. It is, however, quite consistent to argue that one does not have to approve of the disruption of church services in order to disapprove of the barbaric use of 19th century legislation to imprison a harmless, sad woman for three months for shouting at Mass. It is also quite consistent to argue that although the military campaign of groups in Northern Ireland may be repulsive, the articulation of their viewpoint, unpleasant as it may be, should be allowed.

Salmon Rushdie has argued that the test of an open democracy is to allow the airing of the difficult, even the unpleasant. Such tolerance strengthens democracy, even if it

1. Section 31, Broadcasting Act 1960, 1976.

causes affront, precisely because it exposes people to a reality they may not wish to confront - the reality of people holding such views, not necessarily their correctness. Rushdie has further asserted the right to call for his own assassination as long as it was not done when he was in the room. The crime was to plan or carry out the assassination not the misguided and inflammatory call.

Yet, even such an extreme libertarian position accepts that there are some limits. The vast majority of people accept the need to protect children and to prevent someone from being allowed falsely to shout 'fire' in a crowded room. But this complexity also makes the ground dangerously subjective. Is not a call from the former 'Birmingham 6' Paddy Hill, in Derry, to send British soldiers home in boxes akin to shouting fire in a crowded room? Perhaps. But the case against censorship and for freedom of information is not that there should be *no* limits, but an argument about where the limits are now drawn. In a huge range of areas, it is too restrictive and paternalistic.

Rather, the debate is about setting *new* limits, a more difficult job than that faced by traditional human rights groups like Amnesty. Either one is for or against torture - to argue for less torture is patently absurd. But to make the case for an alternative to the existing Section 31 poses such a question: interpreting it more liberally, total repeal, replacement with another clause, or self-regulation by a broadcasting authority. The latter combined with the use of existing anti-incitement legislation might provide the optimum solution.

A similar complexity applies to abortion information, freedom of information and to the disclosure of political donations, etc. In the latter case, Fintan O'Toole has speciously argued in *The Irish Times* that simple disclosure will in fact do more harm than good as politicians will then know for certain who has contributed to their party (as if they do not already). He suggests instead that there should be a complete ban on substantial donations to parties and for state funding.

The debate on pornography is even more divided. The existence of a causal connection between violence against women and pornography is still debatable. But even if established, it begs a whole range of questions. We accept that cars on our roads will kill hundreds of people every year, yet do not ban them. Society makes a crude calculation of the acceptable number of deaths and then sets speed and safety limits accordingly. The argument, again, is about where to draw the line when conflicting rights or rights and convenience clash.

These positions reflect an increasing view among many in Irish society that the days of secrecy are over, that people must be allowed to take decisions or make mistakes for themselves, that we have acquired the maturity to live with the unpleasant or shocking, resisting the simplistic, often comfortable, paternalism both of the old order and of its new 'politically correct' adherents. In the words of Joseph Pulitzer:

There is not a crime, there is not a dodge, there is not a trick, there is not a swindle, there is not a vice which does not live by secrecy. Get these things out in the open, describe them, attack them, ridicule them in the press and sooner or later public opinion will sweep them away. Publicity may not be the only thing that is needed, but it is the one thing without which all other agencies will fail.

The road ahead will be bumpy.