

Legislative - Academic Reflections 2014

KEY:

CGH: Dr Cathy Gormley-Heenan

RW: Professor Rick Wilford

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RW: The 108 member Assembly deals with all primary legislation which has been devolved to Northern Ireland that's across all the Departments. Those powers were transferred back initially in 1999 and then in 2010 when Northern Ireland secured justice and policing as well, that was the most recent addition to the range of powers that the Assembly and the Executive enjoys. So it's responsible for taking for all the stages of the legislation that either emerged from within the Assembly, in the form say of a Private Members' bill, or in dealing with the legislative agenda which is set by the Executive. That doesn't mean the Executive actually, as it were, manipulates or controls the Assembly, really it's up to the Assembly to make its own collective mind up about the worth or otherwise of particular set of legislative proposals, and of course they also have the opportunity to amend legislation as well.

But it's not only about the volume of legislation it's actually about the substance of it, or the content of legislation as well. So I think one has to be relatively open minded in assessing and evaluating the extent to which the legislative agenda in Northern Ireland has improved the day and daily lives of its citizens. I think that's the way to look at it. Certainly there have been disappointments in some major areas where policies have been frustrated and that in turn has frustrated legislation. For example, if you look at the Education and Skills Authority which has yet to materialise, or the policy proposals in relation to the Maze and Long Kesh which would have required enabling legislation. But nevertheless I think one has to be mindful of the constraints that parties impose and it is fair, to say that the legislative agenda that the Assembly faces is to a very large extent structured by what the Executive itself can agree.

So in that sense the Assembly is something of a kind of supplicant to the Executive. It's not controlled by the Executive but its agenda is structured by it. On the other hand of course, when we've seen increasing evidence of this, individual members are increasingly likely to introduce Private Members' legislation; their own bills. And I think there is a bit of a gap which has been created because legislation has been relatively slow in coming forward since the last Assembly election and some of that slack has been taken up by Private Members' bills. Some of which I think have exerted particular effects on the condition of Northern Ireland if you think about the Carrier Bag bill, the SpAd bill that Jim Allister brought most recently to the Assembly and that created a great political furore but nevertheless it can demonstrate what a single member can achieve provided he or she can carry the Assembly with him or her.

So the legislative opportunities available to members are, as great as they are, in other legislatures. The difficulty here though, is that too many members are really rather subservient to their party whips and you don't get the sense here that there is a kind of independent mindedness amongst members that you would find, for example, in the House of Commons or the Dáil in Dublin. And I think that's something to be regretted that there isn't that kind of assertion of independent mindedness or relative autonomy, and I think that's one area where our Assembly as a Parliament can be found wanting.

CGH: I think the criticism that tends to come in relation to the legislative process is perhaps, that the general public don't necessarily see that some of that legislation is for their benefit and the media particularly will point to the fact that a lot of the legislation that has been passed is not within our gift to do anything else with, so legislation that has to be enacted because it's EU legislation and we just have to follow through on that rather than things that are home-grown.

So I think a distinction needs to be made between that legislation which is home-grown and the legislation which has been passed, of which there is quite a lot, that is not related to the wishes of the Executive or the broader Assembly. And people will point to things like the Caravan Act and the High Hedges Act, and the Plastic Bag Tax and say is this what it was all about? We can pass legislation on things that are fairly marginal in many ways but we can't deal with something as fundamental as welfare reform.

RW: Indeed all politics is local and you have to take a view and an assessment, and an evaluation or some sort of judgement about the worth of the legislation in the round. And there are other things that the Assembly must get through in any session, not the least of which of course are the budget bills, without which everything would be brought to a grinding halt.

So we have to have I think, a measured appraisal of the legislative contribution that the Assembly has made and as Cathy has said, I think you might, one might regard some of the legislation as being relatively minor. But yet legislation does effect the day, caravan owners are affected directly by the Caravans Act. People who have an issue with leylandii hedges, are directly affected by that legislation. It may seem parochial but that's part and parcel of the Devolution settlement.

CGH: And it may be changing human behaviours because I was in England recently and I just assumed that everybody had a plastic bag tax now so the first time I went into a shop in England and was not asked would you like a bag was quite a revelation that we're actually ahead of the game in some issues so that was nice to see.

RW: Out of small acorns great oaks will grow, especially if they turn into paper bags. But Cathy is right, in that there are areas where we have made some advances. There are other strategically sensitive areas I think, which touch on inter-communal relations where it's been much more difficult to secure a consensus and agreement. I suppose the Haass talks are the most obvious evidence of that because the proposals dealing with the past would have required legislation.

We ain't there yet but nevertheless who knows we could have taken one or two steps on that particular road. But we should not be skewed in making our judgement by these high level strategic failures when there are lots of little, smaller, seemingly minimalist measures which nevertheless do exert a profound effect on some sections of the community.

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