Working Notes Issue 45:
Social Partnership: Is it a Just Structure?

Working Notes Issue 45 Editorial

on Thursday, 10 April 2003.

Ireland for the first period in its history is experiencing substantial immigration. Eugene Quinn in his article \'Integration: What\'s done? A lot more to do\' assesses the policy response to date. He questions whether there is a disjuncture between the policy rhetoric and the practice. Two areas of particular concern are the scope of integration policy, it currently excludes the broader migrant population, and the negative consequences for integration of dispersal and direct provision policies.

Peter McVerry SJ examines how the homeless have fared during the Celtic Tiger years in \'A rising tide...but no boats to lift". Against a backdrop of a chronic shortage of accommodation he examines the options now open to the homeless. He questions why, after five years of economic prosperity, the problem ofhomelessness has become so critical.

The issue of Clerical Sex Abuse and the response of the Catholic Church is considered in an article by Brian Lennon SJ entitled \'The Contradiction of Justice\'. As an institution that advocates justice for the weakest and most vulnerable in society he argues that the same standards of justice must apply within the Catholic Church.

Edmond Grace SJ in his article on \'Politics, corruption and Europe\' reflects on the growing alienation of ordinary citizens from politics and politicians, and the danger this poses to the democratic process. He points out that democratic politics is not just about winning elections but about including all the people in the process of government. Electoral politics is geared towards majority rule, which, if unchecked, becomes unresponsive to the rights of minorities. A more inclusive style of democratic politics is needed and the European political arena, which badly needs to demonstrate its own democratic legitimacy, may provide a way forward.

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Eugene Quinn Director, Centre for Faith and Justice

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Issues of Justice, Leadership and Authority in the Church

Written by Cathy Molloy on Thursday, 10 April 2003.

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The church has a long tradition of engaging with issues of social justice. We have come to expect that it will be an advocate for the disadvantaged and those excluded or on the edge of society and will criticise structural injustice wherever it comes to light. The recent uncovering of injustice of the most appalling kind within the church diminishes, for some, even the prophetic voices and actions of those most committed to justice. It disheartens everyone, lay and priest alike. This article touches on some issues relating to justice, leadership and authority in the church and considers some signs of hope for a way forward.

It gave great heart to see and hear the participation of Bishop Kirby in the recent anti-war demonstration in Dublin. Whether or not you agreed with his position, there was no doubt about where he stood and why. The exercise of leadership by an appointed church leader in this way - being with people and speaking publicly on an issue concerning them in great numbers - was appreciated by many.

People are often surprised to learn that bishops were not always virtual strangers to their communities. Church communities did not always first become acquainted with their leaders via a photo or CV in the newspaper, or on radio or television. Dutch theologian Edward Schillebeeckx, describing the practice in the third century tells us: 'All the local community with its clergy chooses its own bishop, and the person who is called must in principle accept the choice of his own free will. This happened, for example, to Ambrose and Augustine.'i

Seeking Justice.

Today in Ireland the sense of moral outrage about the issues connected with clerical sexual abuse among Catholics is palpable.ii There cannot but be anger and hurt in the face of the damage done to so many by those who held our trust. There cannot but be anger with those leaders who failed to take right action and, in some instances, actively covered up the wrong, compounding this in their treatment of victims who complained. The victims of clerical sexual abuse need to be heard again and again. And it needs to be repeated that what has defied understanding and blown down our notions of how we are in our church is not just the sexual abuse of children but the response of the appointed leaders of the community – our bishops. The question of those with authority being unwilling or unable to do the right thing remains at the core of the immense credibility gap facing the Irish Church today.

However, actively or passively causing hurt because of the absence of the will to do the right thing, or deliberately doing wrong, and incompetence resulting in wrong actions in the face of crisis are

not the same thing. For this reason to judge too quickly, or to condemn all our church leaders indiscriminately is merely to add to the injustices.

The courage of the victims who have come forward has been inspiring. Furthermore the service done by some investigative journalists is a debt that we cannot repay. Less than inspiring has been the contribution of some other journalists and commentators who have treated the issue in an irresponsible manner. Justice needs to be seen to be done by the church and by the state. There is no denying that the hierarchies in several countries, our own included, have been dragged, inch by painful and incredible inch, toward acknowledging responsibility and to the beginning of reparation. But you don't vindicate the rights of one person or group by trampling on the rights of another.

Priests and religious accused of such an evil as child sexual abuse have surely the same right to respond to the charges as any other putative criminal. And there have been cases of false accusations. The inciting of a kind of mob rule by inaccurate or accurate reporting, or the vilification and demonising of sick or simply bad persons, serves none of us well. Human beings capable of the most appalling evil remain none the less human. Like it or not we share more with them than would ever radically divide us. It is understandable that people, journalists included, want and need to express their anger. But even journalists must sometimes consider the possible outcomes of their use of words and images, and, if passionate belief in justice is really their motivation then this must extend to the person who may be wrongly accused – and no less to the one who is rightly accused and rightly convicted. This is the basis on which our society believes itself to work, and the standard to which most of us would want society to aspire were we ourselves accused of criminal behaviour, or indeed guilty of it.

Other issues of justice within the church should not be overlooked. For instance reports some two years of the Dublin Diocesan Women's Forum and of the Forum for Catholic Women (Belfast) recount how, for many women, the annulment process involves experience of rejection, alienation, and abandonment by the church they believe in and want to belong to. Individual stories, about how people have experienced the annulment tribunal, make pathetic listening as they recount long years of waiting for their case to be heard and their very real sense of injustice at the hands of our church.iii These people feel they are the forgotten ones, the marginalized. And we do well to remember that these are the voices of those who have begun to speak. This injustice too, within our church, is compounded by the fact that too many people have no voice. They have neither the possibility nor the capacity to become involved in lengthy costly and complex procedures, due to lack of money, or education or emotional or psychological strength or stamina or, most often, a combination of these factors.

Leadership.

There is a group which carries considerable responsibility in all of this, and who have for the most part avoided the limelight. The appointers of bishops are, to most of us, nameless. Without addressing the issue of the rightness or wrongness of the current system of appointment, its outcome, as experienced in the Irish Church, is far from satisfactory. This is not to suggest that Irish

bishops have no responsibility for their actions, but rather to acknowledge that those who appoint others to senior positions in any organisation carry a share of the responsibility.

Irish Catholics, lay and ordained alike, have for centuries shown great loyalty to their church and to its Roman central leadership, often in times of considerable hardship and at great personal and collective cost. This loyalty to the institution has been taken for granted in a seemingly cavalier way in recent years. It seems as though Rome has lost interest in the people who are the Irish Catholic Church. And, in response, many of those people have returned the compliment. In his book Changed Utterly: Ireland and the New Irish Psyche, Michael O'Connell, using several sources such as Eurostat Yearbook 2000, and the Eurobarometer Survey Series of the European Commission, points out several significant changes which have had a destabilising affect on society and on the church. Some examples are changes in demography, the decline in marriage, the increase in marriage breakdown, the increase in non-marital pregnancy, changing attitudes to sexuality and alternative lifestyles, the declining trust in religious institutions alongside the increased trust in business institutions. Yet the importance of religion, and attendance at church, although declining, is considerably higher among Irish respondents than it is among their European counterparts.iv Despite this it seems that we do not merit being taken seriously by decision makers in Rome, and that the appointment of leaders of our church community has had more to do with some notion of preserving a façade of something long gone than with the real situation of the people who are the Catholic Church in Ireland today.

Keeping in touch with our young, and not so young, people and offering any meaningful guidance through this time of change has been an extraordinarily challenging task for parents, teachers, politicians, and leaders in general. We need the best people we can get for the task in hand. The leadership in the Catholic Church, as presently constituted, has time and again shown itself to be unequal to the task. The bishops' handling of the scandal of clerical child sexual abuse has been the most shocking aspect of the whole terrible series of events. They have shown themselves to be either unwilling or unable to respond adequately to the reality, even at the fundamental level of relating to people in their care. Without doubt there are exceptions at the individual and personal level but this is not enough given the seriousness of the issue and the fact that the whole church is so deeply affected by it. It is a mater of considerable frustration that, over a period of thirty years or more, some of the most intellectually capable and morally courageous of our Irish priests have been sidelined, leaving the void in leadership that has proved so costly.

Priests who have been deprived of leadership in the church despite their obvious talents may or may not be aggrieved at their situation. Those of us who are deprived of their talents, intellectual or pastoral, feel aggrieved at our own situation, at the fact that we know we are deprived of much intelligent, compassionate and caring leadership which could and should have been ours. This has been compounded by the failure to allow lay leadership to emerge. The despair among many priests and lay people about the state of the church at the present time is frequently, if not publicly, articulated. Among many of those who remain in the church, there are concerns about a number of questions. They include the participation of lay men and women at more than consultative level (a

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revival of the deaconate for example), the ordination of women, sexual morality, marriage, divorce and annulment and who is excluded, and why, from full participation in the Eucharist. Many have simply stopped participating; the energy being drained from them by 'hanging in' is simply too much and the effort to try and be positive in such a climate is beyond many people of good will.

Authority.

In the New Testament we can see that among the reasons that people listened to Jesus and followed him was that he spoke with authority. 'The people were amazed at his teaching; unlike their scribes he taught with authority.' (Matthew 7,29.) The account of the cure of the paralysed man ends 'the people were filled with awe at the sight and praised God for granting such authority to men.' (Matthew 9,6) Later he called the twelve and 'gave them authority to drive out unclean spirits and to cure every kind of illness and infirmity.'(Matthew 10,1) What kind of authority was this? It can't have been based on a formal office of leadership since he belonged to no organisation. In the gospel accounts the authority of Jesus is not about keeping a system in place, keeping people in line or enforcing systems or rules. It was the authority of integrity, of truth, of understanding and of love. This is this kind of authority that we are invited to share.

What is this authority for? How should it be exercised? Jesus' view of authority could not have been expressed more clearly. 'You know that among the Gentiles the recognized rulers lord it over their subjects, and the great make their authority felt. It should not be so with you; among you whoever wants to be great must be your servant, and whoever wants to be first must be the slave of all. For the Son of man did not come to be served but to serve, and to give his life as a ransom for many.' (Mark 10, 42-45) Authority then, in the Christian understanding, is not for high-handed lording it over others, for making people jump to do what the one in authority orders. Clearly authority is for the service of others.

Service implies the meeting of needs or wants of others in some way, including challenging and inspiring them. In this context the person with authority will exercise the power invested in them to meet the needs of those they have undertaken to serve, perhaps especially the needs of the hurt, the weakest, and those who cannot easily present their needs. Surely it also implies the excluding of vested interests when exercising such authority? In the Christian understanding authority as service is not about an impersonal rendering of services. In John's Gospel, at the last supper gathering, (Ch.13), Jesus, the master of the disciples, washed the feet of each of them in turn, 'wiping them with the towel that girded him.' In telling his disciples to do likewise, to wash one another's feet, Jesus drives home the essential link between participation in the meal and the notion of service, and this mutual service is one key to understanding the church as a communion.

The absence of this sense of communion is evident in the way that priests, bishops and the pope often use a vocabulary of service accompanied by behaviour patterns of power and exclusion.v Obvious examples here are the experience of many women who are prevented from exercising particular talents on the basis of gender, or the experience of gay and lesbian Christians who are more often considered as objects of pastoral concern than subjects, active in and for the church.

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All Christians are called to service, but those in authority have the opportunity to be far more influential in the scope of their service – or in their failure to serve. In this context an article by Gordon Deegan in the Irish Times (22/03/03) is worthy of note. It points out that priests in the diocese of Killaloe have expressed misgivings over the mismanagement of the church. The newspaper report did not include details of whether others in the diocese, sisters, lay men and women, young people, shared their misgivings. None the less the short extracts from the draft, Pastoral Plan for Killaloe Diocese 2003, reproduced in this article suggest that the seeds of real change in the church may at last have taken tentative root. The Plan, according to Deegan, records how priests feel a sense of being 'abandoned and unsupported' by the church, and that the church 'has not provided the necessary leadership and direction to find a way forward'. They acknowledge that they have not received the formation to equip them for the situation they are in. Equally significantly, 'They know that they cannot deal with this issue on their own, and that the future lies in teamwork among priests and laity, but they do not feel equipped themselves to develop this to the level that is needed.'

Direct and public criticism of the leadership has not been a notable feature of the formal reflection of priests of any diocese, whatever may be known through the grapevine or the content of private conversations or contexts. Although we do not know the names of the priests who contributed to the plan I am grateful for their frankness. This too took courage. The stepping out from the silent acceptance of whatever the leadership puts forward must be welcomed by all who care about the fate of the Irish church, lay and priest alike. Their criticism is direct and public but it is also constructive and loyal to the teaching of Vatican Council II in its acknowledgement that the future of the church involves lay and ordained together, working as a team. This recognition of interdependence is a sign of hope for the future. Many poems and stories from the past in Ireland recount how people have needed their priests. Now some priests at least know that they need us too, and we all know that we need leaders, men and women, lay and ordained, who can bring us beyond the place where we are now. This could be the beginning of a new solidarity.

Solidarity: A Way Forward

Can we extend this solidarity to the leaders we criticise? I believe so. Being in solidarity with someone or some group does not mean that you agree with everything they say and do. It does not mean that you do not continue to voice objection to what you judge to be wrong or mistaken action, nor that you should not speak out in the face of it. You can be shocked at, and hurt by, and outraged at, and disappointed with someone, and still be in solidarity with them. Solidarity does mean that you let them know that basically you are for them and with them at the fundamental human level. And where they are obviously struggling it requires you to offer some practical support - something to help change the situation. It goes without saying that solidarity is at its best when it is reciprocal, when the parties realise that they are interdependent, that they need each other. The priests in Killaloe have set a new standard, which may progress from the grassroots upwards. Karl Rahner, one of the most renowned theologians of the last century, wrote in 1967 that the church of the future will be a 'church of the grassroots', 'a listening church'. We can hope that he will be proved right.vi

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One part of the way forward might be a Synod or Council of the Irish church in which as many as possible of the groups within the church would be represented. This would help to focus the resources of the local church on some of the burning issues of our time. It is likely that, if all groups within the church were invited to participate, new leaders both lay and ordained would emerge, and relationships between laity, religious and clergy would be enhanced by the very teamwork that the priests of Killaloe diocese are seeking. The combined expertise and experience of men and women, young and older, priest, religious and lay, discussing the issues of our time, and learning together, could then inform the authority of office in such a way that all might better serve in that spirit of humility and shared enterprise characterised by the one whose vision of justice, leadership, and authority is our model.

Notes

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i Edward Schillebeeckx, The Church With the Human Face, London: SCM Press, 1985, p.134.

ii See Angela Hanley, 'Moral Outrage – a Gospel Value?' in Doctrine and Life, Feb. 2003, p.78.

iii The reports of the Dublin Diocesan Women's Forum and of the Forum for Catholic Women (Belfast) are unpublished to date.

iv Michael O'Connell, Changed Utterly: Ireland and the New Irish Psyche, Dublin: Liffey Press, 2001, 59-73.

v See Remy Parent, A Church of the Baptized, New York: Paulist Press, 1987, p.83.

vi Karl Rahner, The Shape of the Church to Come, London/New York 1974

Sustaining Work, Prosperity and Fairness.

Tuesday, 18 February 2003.

Brendan MacPartlin, SJ

The social partnership process emerged in Ireland at a time of crisis and has been closely associated with recovery and transformation in the Irish social economy. The names of the six social partnership programmes of the past sixteen years suggest some of key concerns of the time – recovery, progress, work , competitiveness, partnership, prosperity, fairness and sustainability. The notion of fairness came more strongly into focus in recent years and the latest programme, Sustaining Progress, proposes in its vision for Ireland that the foundations of a successful society incorporates a commitment to social justice. If justice is that virtue that intends to give everyone his/her due then social justice is probably the virtue that gives everyone in society his/her due. It was clear in the run up to the agreement of Sustaining Progress that many did not think they were getting their fair dues. So clearly we are not in a position to claim that the outcomes are totally fair. In this article I will try to use traditional ideas about justice and make the case that social partnership is characterised by justice in its process to an extent that it is a practice worth maintaining and developing.

1. The Development of Social Partnership

Social partnership is a process that was grown by trial and error over the past fifty years out of the interactions, firstly of employers and employees, and secondly, of the state. Employers and employees traditionally made their deals about working together on the basis of market exchange. Labour was a factor of production, the value of which was determined by marketplace bargaining between employer and employee groups. The ideologies of voluntarism and liberalism dominated and the state did not involve itself in the affairs of business and production. The 'free-for-all' style of collective bargaining of post World War II Ireland was of this sort. Business and labour made their own deals and got on with providing the goods and services that citizens needed for the good life.

The business sector, however, was never very successful and the government intervened to direct its efforts. In the 1960s it set up joint committees of employer, government and employee representatives to deal with economic issues. By 1970 it had set up a joint labour conference to bring order into collective bargaining and influence the evolution of incomes. By 1980 it had involved itself in the political exchange of National Understandings whereby wage claims were

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restrained in return for deals on taxation and social expenditure. The National Understandings provided the know-how that facilitated the rise of Social Partnership agreements in the 1990s.

This rather brief account of the evolution of social partnership slides all to easily over the learning by trial and error that took place over long periods of time. Learning takes place through a cyclical process of analysis, planning, implementation and review in which new insights are gained, new practices planned and failed ones discarded. In so far as the developing process is a caring, intelligent, reasonable and rational approach to finding solutions to complex and many-sided problems it is an ethical approach and therefore just.

2. The Structure of Social Partnership

The parties to collective bargaining may be caring and rational but what they care about are their own interests. It is basic to the marketplace that people act in their own self-interest. Adam Smith tells us that it is not from altruism of the butcher, the baker or the candle maker that we can expect our dinner but from their concern for their self-interest. Aristotle begins his ethics with the assertion that all actions aim for a good and I would add that one's own interests are goods and therefore the objects of moral decision making. Collective bargaining is about parties' sectional interests. They enter the process to achieve their own objectives and are rightly dissatisfied if they do not achieve something they can live with. When parties conflict in their goals it is reasonable to modify demands and settle for a realistic compromise. Employers and employees are in a lose/lose situation if they cannot reach agreement. With agreement they can achieve a win/win. Therefore players respect the structure of collective bargaining even if it means that sometimes they lose.

A social structure is a recurrent pattern of interaction. It is recurrent because people enter into the interaction as a way of achieving desired outcomes. There are ways of behaving and conventions to be observed if the interaction is to issue in a successful outcome. The social structure of collective bargaining is an elaborate interaction that unfolds in stages. In the opening stage of bargaining positions are put forward, principles asserted and claims exchanged. If the parties can establish that the other side means business and can be trusted to carry it out in the right way they can move on to the next stage. In the next stage they reveal progressively more of the cards they in their hand in quest of a fit between their opponents' requirements and their own needs. If the contours of common ground appear they can then move on to the end game of contracting, finalising agreement and drawing up programmes for action.

Without the exchange of meanings, intentions and guarantees proper to each stage the basis for confidence is not reached and the talks break down. If one side lets the other down by not implementing what the other understands to be agreed the relationship is undermined and the cost to each side risking renewed trust may be too high. The purpose of the structured process is to ensure that the goods delivered by the agreement can be reliably delivered again and again. The integrity of the structure depends on the individual must have a level of understanding that enables him/her to realise that his greater and longer term good is bound up with recognition of the interests of the

other party. Thus collective bargaining is a social structure that in itself is a good of order. Social partnership is a similar but more complex structure.

3. Social Partnership as a Practice

O'Donnell and Thomas (1999) describe the model that was adopted for the negotiation of Partnership 2000. The parties to the negotiating process are the community and voluntary sector, the business sector, the trade unions and farming and rural interests. These pillars were assigned a 'room' each. A further 'room' was assigned to the peak organisations of the employers and trade unions, IBEC and ICTU respectively.
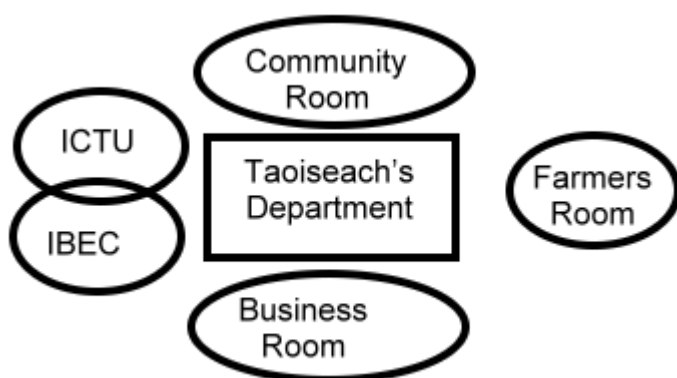
Formal discussions were conducted bilaterally between the "rooms" and the government's negotiating team.   IBEC and ICTU negotiated from their room with the government on the pay and tax elements of the agreement. Informal conversation was allowed between any of the parties. The government, the Taoiseach's department formulated the final document of the agreement.

This model suggests the roles and relationships of the pillars to social partnership negotiations. The agreed programme then directs each group in action. Is this a method of governance of the social economy? NESC describes the government as "having a unique role in the partnership process. It provides the arena within which the process operates. It shares some of its authority with social partners. In some parts of the wider policy process, it actively supports the formation of interest organisations" (Sustaining Progress, 2003:14). The state has a role in guiding the socio-economic groups to the production of this socio-economic good. A part of the economic good consists of citizenship rights that "encompass not only the core civil and political rights and obligations but also social, economic and cultural rights and obligations which…underpin equality of opportunity and policies on access to education, employment, health, housing and social services" (Programme for Prosperity and Fairness, 2000:4). The state also has a role in redistributing this common good so that each citizen has sufficient resources to help him achieve the good life. In this consists distributive justice, namely that there is a fair distribution of the benefits of the common wealth. The state has a role in this because it has authority to tax and redistribute in the public interest.

The production of the common wealth, however, is a responsibility of the producer groups. Even where the state is minimal or as in contemporary Argentina, hardly functioning, general justice obliges individuals, producer groups and society in general to create a common wealth. The state's

role is to co-ordinate their efforts effectively to the common good. It is perhaps an overly paternalist view that holds that the "state provides the arena within which social partnership operates". Those who find the political exchange between taxes and wages controversial express a similar concern from another angle. In a liberal democracy only the elected representative has the authority to decide on the use of the taxpayers money. Anglo-Saxon types of liberal democracies are not comfortable with such practice but interestingly German and Scandinavian democracies appear quite at home with it.

A move away from Anglo Saxon type individual market to a more neo-corporatist form of control might be read into the governments desire to "actively support the formation of interest organisations". It appears as a practical project in the context of the voluntary and community sector where co-ordination might serve their cause. The trade unions too have benefited from a certain amount of restructuring through mergers and will try to achieve further consolidation and representativity. But there are contradictions associated with the co-option of unions into a neo-corporatist system. A central purpose of social partnership has been wages control. Incomes policy is seen as part of distribution policy as though incomes are a cost to the exchequer in the same way as social protection expenditure. Wages are an investment in production and with developments in supply side measures they have more than justified themselves in the output and profitability achieved. Under social partnership unions are in danger of not delivering the one thing their members support them for – a reasonable share in the fruits of their labour.   On the other hand the standard of living of workers has increased under social partnership whereas it had decrease while nominal wages increased prior to social partnership.

What is good about the structure of social partnership is that it brings face to face the dynamics of each of these aspects of the whole structure. The roles of the various groups appear more clearly to each other along with their various entitlements and responsibilities. Through an intelligent and rational method of shared deliberation they identify problems, agree methods of analysis, reach consensus and guide the visible hand of implementation. In some aspects at least social partnership resolves the conflict between individual self-interest and the outcomes of the whole system. It enables the social partners to rise above sectional and short-term gains and, with some compromise, reach system gains that are more general and long term.   But not all would agree and this gives rise to a third level question about the value of this particular social structure. Is it a good one? Can it deliver adequate outputs? Is there a more effective structure for delivering the same of more desirable outputs? To what extent is justice done in achieving the ends of the social economy?

4. How Good is Social Partnership?

The more usual evaluation of social partnership is in terms of economic achievement. D'Art and Turner (2002) present a set of economic indicators that show the period since 1987, and particularly after 1994, to have been one of continuous and rapid growth in the Irish economy. Real national income increased by 54% between 1987 and 1996 compared to an increase of 7% between 1980 and 1987. Unemployment reduced from 17.5% in 1987 to 6.2% in 1999. The number of people at work increased by 41.7% between 1987 and 1998. In the same period the gross average earnings of

workers increased by 17.5%. When these trends are compared with the corresponding ones for the period 1980 to 1987 there is no doubt that social partnership has been associated with a remarkable improvement in national economic performance.

It is a common complaint, however, that the increased national wealth is not reflected in any easing of their economic burden for many people. D'Art and Turner surveyed trade union members for their perceptions of which groups benefited from the wage agreements of social partnership. The findings indicated that wage earners, the unemployed and low income groups were perceived to have benefited considerably less than employers, the self-employed and the government. Employers were believed to have benefited greatly. A majority believed that wage earners had received some benefits. Many believed that the unemployed and low-income groups had had experienced no benefit. A majority believed that the wage agreements had not been effective in giving workers a fairer share of the national cake.

In relation to distribution policy Turner (2002) compares the outcomes of social partnership in Ireland with those of Sweden, which is known for its achievements in the provision of social rights and in reducing the patterns of social inequality. Countries vary in the extent to which they redistribute wealth in favour of the less advantaged and provide for social welfare. Sweden and the United Kingdom, while both having a welfare system, have contrasting philosophies as to its function. In the liberal Anglo-Saxon model the state provides a basic minimum level of security. It has discretion to decide when to intervene on the basis of the need of a citizen. It is the compensator of last resort. Wealthier citizens can gain advantage through spending on health and education. The Scandinavian universal welfare model emphasises social rights. Every citizen has social rights in the area of welfare, health and education. The duty to meet these rights lies with the State and it may not compromise the delivery of services required by the rights by commercial considerations. The welfare system in Ireland is generally perceived to conform to the liberal Anglo-Saxon model.

Levels of social expenditure in Ireland are comparatively very low. Ireland was ranked last in the EU table of National Social Protection Expenditure. Sweden heads it up at 32.9% of GDP, the United Kingdom comes ninth at 26.6% and Ireland 15th at 14.7%. Health expenditure as a percentage of GDP ranks lower in Ireland, at 4.55% of GDP, than in all other OECD countries.

In relation to the percentage of its people living in poverty the UN Human Development Report (2002) ranked Ireland second only to the USA in a table of 17 industrialised countries. The proportion of households and the percentage of persons in those households below 40 per cent, 50 percent or 60 percent of mean equivalent household income all increased. Absolute levels of poverty, however, are declining and mean household income is growing. If benchmarked against its own history Ireland shows progress. A combined measure of relative income and deprivation shows a decline, particularly since 1994.

A term of comparison based on the size of household income is income inequality. Out of sixteen OECD countries Ireland ranked third highest in the level of income inequality with only the US and Italy having higher levels. CORI (2003:30) quotes a study that shows the gap between the top and

bottom 20% of households widening over the past eight years.

In addition, Ireland has a high proportion of low paid workers relative to other OECD countries. The proportion of low paid workers increased from 18 per cent in 1987 to 21 per cent by 1994 making Ireland second only to the US in terms of low pay.

Overall it can be said that Ireland has made some progress when compared to its own past in areas such as poverty, general standard of living and social expenditure. But it has not reduced the inequalities that have always existed in household incomes and individual earnings. And it has not improved its position in comparison with other Western countries.

Ireland's type of social partnership has been described as a liberal & competitive form. Its purpose is to maintain social cohesion and a cooperative workforce while the economy takes liberal measures to maintain competitiveness in the international market. The main winners are the best market performers. The overall effect is to preserve the existing social and economic status quo of society. By contrast, Sweden's type is a strategy informed by concepts of citizenship and civic rights and inspired by solidaristic values.

Some optimistically suggest that the Irish system is on the way to becoming more like the Swedish system. However, the system properties of Irish social partnership still include pronounced inequalities, no change to the status quo, a redistribution of industrial surplus in favour of profits over wages, inflation, and increased house prices, the latter being possibly fuelled by a redistribution of wealth in favour of the already well off. Class structure continues to be a determining factor for life chances. Basic issues such as citizen's rights in a social economy as against individual performance in a flexible market are at stake and make up the Boston versus Berlin debate.

6. Conclusion

Social Partnership has brought benefits. If the question of justice is about the distribution of burdens and benefits it must be asked who pays for and who benefits from social partnership. As a generalisation I would suggest that those who have carried the bulk of the burden and received a modest share of the benefits are workers. Those who have benefited least are some parts of the voluntary and community sector. Those who have benefited most are the large companies in the profitable sectors. The bias of benefit has been in favour of the better off. The fairness of the outcomes should and are being debated in detail and at length. The concern of this article has been about the justice of the process.

General justice is about the socio-economic effort and the generation of a common good. Social Partnership has contributed greatly to the efforts of the producer groups in this through its concern for modernisation, partnership and supply side policies. Distributive justice is a measure of the redistributive policies of the state that address the requirements of all the people for support in achieving their lifegoals. Huge progress has been made in this area if only indicated by the voice and organisation of the voluntary and community sector. Convincing arguments are made that a broader tax base is needed if the cycles of deprivation are to be interrupted finally and forever in a

traditionally poor Ireland. Commutative justice is done when employers and employees agree on wages for work for a specific duration.   The distributive aspect of such agreements is respected when workers are willing to take into account the effects of wage increases on the capacity of the system as a whole. Social partnership appears to have handled this with a minimum of conflict. The period of social partnership has coincided with a period of low strike statistics.

In a time of economic buoyancy it is easier to reach voluntary agreement on partnership programmes. In a time of recession pressures reduce the wiggle room and conflicts of interest appear. The present is such a time but the new agreement Sustaining Progress has been endorsed by a 60:40 margin. Many votes favoured endorsement simply because a preferable alternative was not available.

The social dialogue of adjacent rooms that facilitate conversations under the forms of discussions, consultations, negotiations and shared deliberation leading to joint decision making and coordinated action is a way of getting problems onto the common agenda so that common analysis and common solutions be found. It is a framework process of natural justice that learns the ways of justice through shared insight, judgment and action

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The War in Iraq - Is it still worth working for peace?

Written by [Eugene Quinn](#) on Thursday, 10 April 2003.

Eugene Quinn and Seamus O'Gorman SJ

"It was an outrage, an obscenity. The severed hand on the metal door, the swamp of blood and mud across the road, the human brains inside a garage, the incinerated, skeletal remains of an Iraqi mother and her three small children in their still-smouldering car. Two missiles from an American jet killed them all - by my estimate, more than 20 Iraqi civilians, torn to pieces before they could be \'liberated\' by the nation that destroyed their lives. Who dares, I ask myself, to call this \'collateral damage\'?"
Robert Fisk's visceral description of the horrors of the Market Square bombing in Baghdad (The Independent, March 27th, 2003) shatters any illusions about what the reality of war means in terms of human lives. The speed with which war arrived has been bewildering. It seemed one day we were debating the justness and the legitimacy of military intervention, marveling at the spontaneous and unexpected opposition of millions worldwide to the prospect of war. The next we were sitting helplessly by as war enveloped Iraq.

It is important that our protest does not end and that we continuously challenge the justifications for war. It seems that the vehemence with which Bush and Blair found themselves opposed during the diplomatic negotiations has subsided with the engagement in war. Now the leaders of the \'coalition of the willing\' have the floor to themselves as if it is ungracious to challenge them because their military personnel are at risk. We owe it not only to the Iraqi people but to military personnel on all sides to continue to challenge the war and so to work for peace.

The goalposts for going to war have been continually shifting from disarming Saddam Hussein, to regime change, to liberation of the Iraqi people. Some might argue that the threatened serious devastation of Iraq and its civilian population could possibly be \'justified\' on the grounds of proportionality if the reason for going to war was defense against grave and imminent threat. Few would now disagree that Iraq did not pose an immediate and grave threat to the US or any other country in the period leading up to war. Thus the strongest justification for a preventive strike in defense is removed. The case that the US is morally obliged to go to war to liberate Iraqis has to be made in its own right. It is infinitely more difficult to show that killing innocent Iraqis and destroying their already crippled infrastructure can be a means to their \'liberation\'. The Jesuit Social Justice Secretariat in Rome argued that "the reasons for a pre-emptive attack are not convincing and that the consequences of a potential war so devastating that it becomes very difficult, if not impossible, to justify military intervention".

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A disheartening feature in the run up to the war was that 'just war' theory was used by ethicists to give the stamp of moral approval to the war. The tendency that, in practice, 'just war' theory always seems to allow the case against war to fail appears to defeat the purpose that the theory was intended for: to make us think long and hard before we say that the uncontrollable devastation of war is the only means we can think of for building peace. It is important that ethical arguments that are disembodied from the bloody reality of conflict are not left unchallenged.

The ethical imperative does require that we and the international community do what we can to improve the prospects of the Iraqi people. War is proving a blunt and crude instrument with which to work for that aim. A better future for the Iraqi people might have been achieved by containment of Saddam, and a package of 'just peace' initiatives consistent with a real commitment to liberate them. The proponents of war filled our imaginations with images of what Saddam could do with WMD and Iraqi people greeting their liberators. The truth is far different. From what we can see the Iraqi people are fighting to their death to defend their country from occupation. Iraqi men women and children continue to be the innocent and most tragic victims of the conflict. Our worst fears of a long and protracted conflict descending into guerrilla warfare (suicide bombers, hand to hand combat) and mounting civilian casualties may be realised.

We join with the families of the September 11th tragedy in calling for an end to the war.

> *"September 11th Families for Peaceful Tomorrows condemns unconditionally the illegal, immoral, and unjustified US-led military action in Iraq. As family members of September 11th victims, we know how it feels to experience "shock and awe," and we do not want other innocent families to suffer the trauma and grief that we have endured. While we also condemn the brutality of Saddam Hussein's regime, it does not justify the brutality, death and destruction being visited upon Iraq and its citizens by our own government."*

We call on the Irish Government to take a courageous stand for peace by not allowing US warplanes to land and refuel in Shannon.

Juvenile Justice, Child Care and the Children Act, 2001

on Thursday, 10 April 2003.

Raymond Doole and Maria Corbett

The juvenile justice system in Ireland is governed by legislation (the Children Act, 1908) that pre-dates the creation of the present Irish State. New legislation (the Children Act, 2001) has been enacted but the ongoing delay in bringing most of its provisions into force has resulted in the continued use of the outdated 1908 Act. Full introduction of the 2001 legislation is not expected until the end of 2006.

Underlying the Children Act, 2001 is the principle that detention should only be used as a last resort. In this respect the Act upholds the UN Convention on the Rights of the Child which provides that detention of those under the age of 18 "shall be used only as a measure of last resort and for the shortest appropriate period of time." The Act emphasises community-based non-custodial measures as alternative approaches for dealing with young offenders, including restorative justice, cautioning, family group conferences and the strengthening of the Garda Juvenile Diversion Scheme.

Public investments in community and statutory services offering prevention, early intervention and diversion must be made if the Act is to be fully and successfully implemented. Its effective functioning will also require the full staffing of the social work and child care services which are currently experiencing severe shortages of workers.

Priority given to Detention Facilities over Preventive Measures
Despite the Act's overall focus on prevention and alternatives to detention, most of the commencement orders to date have brought into force the punitive and non-resource intensive sections of the Act (Commencement Order, May 1st 2002). Similarly, the slow rate of investment in prevention, early intervention and diversion services contrasts with an increase in the provision of detention places over the past five years, suggesting an emphasis on incarceration over rehabilitation.

Recent Government decisions reflect this worrying trend within juvenile justice policy. The Government chose to close Shanganagh Castle, a progressive facility operating in line with modern concepts of best practice and chose to open a prison for children, possible only under 1908 legislation, ignoring the recently passed but not yet introduced section within the Children Act

2001. These decisions also highlight the lack of a coherent strategy for the provision of places and services within the juvenile justice system.

Closure of Shanganagh Castle

The closure in late 2002 of Shanganagh Castle constitutes a major step backwards for justice policy and practice in Ireland and runs contrary to the philosophy of the Children Act. Shanganagh Castle, the only open prison in Ireland, provided rehabilitation and education to young offenders between the ages of 16 and 21 years. With nearly one in five prisoners below the age of 21 years, the closure of Shanganagh with no plan for a replacement is a regressive step, leaving a gap in the options available for young offenders. It is widely anticipated that Shanganagh Castle will be sold.

The closure of Shanganagh Castle prompted a number of interested organisations and individuals to come together to form a new group, the Irish Juvenile Justice Alliance. The group comprises organisations such the Irish Penal Reform Trust, the Irish Council for Civil Liberties, the Children's Rights Alliance, along with professional workers in the system, academics, human rights activists and concerned individuals. The Alliance will work towards reforming the juvenile justice system and addressing particular human rights violations within the system.

New Facility at St. Patrick's Institution

In April 2002, following the death of two Gardai in connection with a juvenile-related auto theft and joyriding offence, Minister for Justice John O\'Donoghue announced plans to open a "temporary" children's prison wing for 14 and 15-year-olds. The prison was to be housed within St. Patrick's Institution, a prison for juveniles aged 16 to 21 years.

Three floors of St. Patrick's Institution were re-designated as a detention centre for offenders aged between 14 and 15 years and renovations were undertaken at a reported cost of €9 million. The Government faced opposition to this development and has now abandoned its plans to detain 14 and 15 year olds at the facility.

Whilst welcoming the Government's decision, it is important to note that the facility at St. Patrick's for 14 and 15 year olds was built in contradiction to the letter and spirit of the UN Convention on the Rights of the Child, the National Children's Strategy and the Children Act 2001, and a year after the fatal crash on the Stillorgan road the €9 million facility lies empty, its future use unknown.

One possible use of the facility may be to accommodate 16 and 17 year olds, thereby bringing practice into line with the UN Convention on the Rights of the Child, which stipulates that children in detention must be separated from adults. Whilst this would be a welcome development in the short term it is not a long term solution as the St Patrick's / Mountjoy complex remains an unsuitable environment for children. If the facility is to be used to accommodate 16 and 17 year olds, a therapeutic and educational model should be adopted, similar to that operating in the Children Detention Schools, as opposed to the regime in St. Patrick's Institution which is not dissimilar from that of an adult prison.

The Detention of Non-Offenders

Primarily due to the failure to provide appropriate services and facilities to children with severe

behavioural problems, Ireland's child care and juvenile justice systems are now thoroughly intertwined. The lack of treatment and secure accommodation for young people with serious emotional and behavioural problems has led to the use of the High Court as a means of accessing placements for non-offending youths within the juvenile justice system. The use of the courts in this manner began in 1995 when a court ruling in the FN case placed the onus on the State to provide facilities for such children. In general, the young people who have come before the courts and been placed subsequently in secure accommodation have been in the care of the health boards for several years. Their care histories show episodes of homelessness and a series of care placements which were either inappropriate or could not offer the young person sufficient support to meet their needs.

The health boards have been criticised for not meeting the needs of these young people at an earlier age and for allowing their situations to deteriorate to the point where the only alternative is to seek a secure detention place to ensure the young person's safety. Two secure Special Care Units have been established to respond to the needs of these young people. However, the delay in providing such units and the inadequate number of beds provided prompted a High Court judge, Mr. Justice Peter Kelly, to hold three Government Ministers in contempt of court in 2001.

The ongoing lack of secure health board accommodation has led to non-offending children being routinely detained under court orders in Children Detention Schools, police stations, hotels, adult prisons and even adult psychiatric hospitals. It has been reported that at certain times as many as 40% of the places in Oberstown and Trinity House are occupied inappropriately by children who have not been sentenced for a criminal offence but have been remanded due to behaviour or emotional needs.

The detention of non-offending children in Children Detention Schools and within the prison system is a regressive practice. On the 16th of May 2002, the European Court of Human Rights ruled against the Irish Government in the D.G. v Ireland case. The case challenged the legality of detaining in St. Patrick's Institution a 16 year-old non-offending child with serious behavioural problems who had previously committed offences. The European Court ruled that the detention of the child in St. Patrick's was in contravention of rights guaranteed under Article 5.1 of the European Convention on Human Rights. The court ruled that the State acted unlawfully in failing to provide the disturbed child with a safe, suitable, therapeutic unit and upheld the claim that the young person's human rights were violated.

Staffing
The widespread and chronic failure to fill vacancies in the social service, particularly in the Dublin area, has had a crippling impact on efforts to provide non-punitive services to children with behavioural problems, to children who have committed offences and to children in and out of care who are at-risk of becoming offenders. Many centres are operating well below full capacity due to difficulties in recruiting and retaining qualified and experienced staff. For example, the Ballydowd Special Care Unit was built to cater for twenty-four young people but due to recruitment difficulties has never been able to deal with more than eight young people at a time.

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No system of service provision can operate with any reasonable degree of effectiveness when staff vacancy rates reach 25–50% of staff complement, as they have in the Dublin area, or when there are 2,272 children on the waiting list for social services, as there were in the Eastern Regional Health Authority service area as at the end of March 2001.

Management and operational deficiencies of this order of magnitude ultimately translate into ever-increasing numbers of children coming before the courts, both as offenders and non-offenders, and more placements that violate children's rights. Moreover, despite government policies, domestic law and international treaties to the contrary, the knock-on effect promotes an increased reliance on punitive measures over preventive, therapeutic and rehabilitative approaches to the treatment and care of children with behavioural problems and to the treatment and care of children who have committed offences.

Lack of Safeguards for Children in Detention
Concern has been raised regarding the lack of safeguards of children under Special Care Orders and for offending children in detention. Given the vulnerability of these children, it is imperative that safeguards are put in place as soon as possible.

Lack of Provisions for Children under Special Care Orders
The safeguards outlined in the Children Act 2001 in relation to Special Care Orders are minimal. The Act does not define the boundaries under which an Order can be granted. There is a danger that in order to access suitable accommodation, a child's behaviour may be defined in terms which will allow for the court to grant such an order and detain the young person. Other safeguards which are absent from the legislation include the child's right to a solicitor and the right to representation at reviews.

Ombudsman for Children Exclusion
Legislation to establish an Office of Ombudsman for Children was passed into law in April, 2002 (Ombudsman for Children Act, 2002). Although broadly welcomed, the Act contains certain inappropriate exclusions in relation to the Ombudsman's authority to hear complaints, including the exclusion of children in prison. During the debate on the Ombudsman for Children Bill, this exclusion was defended on the basis that under the Children Act it will be illegal for children to be held in inappropriate places, and that the exclusion of children in detention will refer only to children who are legitimately in places like St. Patrick's Institution by virtue of their being offenders. The exclusion of children in prisons from the remit of the Ombudsman for Children is however particularly worrying in light of the lack of clear legislative guidelines on what may or may not constitute a place of detention and on the type of regime that should operate in a place of detention. Section 56 of the Children Act 2001 provides that a detained child can be kept in a cell when no other place is available and Section 150 gives the Minister discretion in defining a 'place of detention' suitable for the detention of offenders who are between the ages of 16 and 18 years of age.

Limited Role of Garda Inspectorate
In October 2002, the Minister for Justice announced plans to establish a Garda Inspectorate, with

powers of an Ombudsman, to replace the Garda Complaints Board. The Alliance welcomes this development as an important step in the promotion and protection of children and young people's rights as they interact with the Gardai.

The Alliance is, however, concerned at reports that there are to be limitations on the Inspectorate's investigative remit. It has been reported that the proposed Inspectorate's remit will extend only to "the most serious allegations". All "minor disciplinary matters" and "more serious allegations" would continue to be dealt with internally within the Garda Síochána. Thus the majority of complaints against members of the Gardaí would continue to be investigated by fellow Gardaí, albeit internal investigations of "more serious allegations" would be overseen by the Inspectorate. The Alliance believes this proposed arrangement to be deeply flawed and will perpetuate the problems of the current system.
The Alliance calls for the Inspectorate's remit to be extended to ensure that the rights of children and young people, who interact with the Gardai, are protected and vindicated.

Human Rights Commission
In their Strategic Plan 2003-2006 the Human Rights Commission has identified juvenile justice as one of their key areas of work. They cite their concern "about conditions of detention of children and young persons in custody and the provision of appropriate secure facilities for disturbed or distressed young people who have not been charged with any offence. The commission will co-operate with other interested bodies to monitor this area with a view to ensuring that international human rights standards and best practice are observed."

Visit of the European Committee for the Prevention of Torture
A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment paid an unannounced visit to Ireland in May 2002. It was the Committee's third periodic visit to Ireland but the first time they included a focus on children in detention. The Committee visited Trinity House School in Lusk, a detention facility for 12 to 16 year old boys and met with statutory agencies and non-governmental organisations, including the Children's Rights Alliance. It is understood that the Government will publish the Committee's report on its visit and the Government's response sometime this summer.

Proposed Actions
We believe the following steps should be taken as quickly as possible to address the current crisis in the child care and juvenile justice systems:

1. Bring into force the remaining provisions of the Children Act, 2001, including the sections covering family welfare conferences, special care provision and private foster care. Introduce bail supervision and support schemes to avoid children committing crimes on bail. Priority should be given to the preventive elements of the 2001 Act and to the investment of resources in community and statutory services necessary to support these measures, including the full staffing of the social work service. Priority should also be given to resourcing community-based, non-custodial options and to the provision of community supervision services, step-down facilities and after-care services.

2. Ring-fence funds raised through the sale of Shanganagh Castle for non-custodial juvenile justice projects and services to children and young people.

3. Consult with the Ombudsman for Children, the Human Rights Commission and non-governmental organisations to ensure that practices adopted by relevant governmental bodies are in line with international human rights requirements and standards of best practice.

4. End the practice of mixing children and adults in detention. Children must not be detained in prisons, adult psychiatric hospitals, Garda stations, hotels and other inappropriate places of detention.

5. End the practice of placing non-offending children in facilities for offenders. Children with severe emotional or behavioural problems should not be placed in facilities for offenders, including juvenile justice institutions or the adult prison system.

6. Correct the practice of misplacing children in Children Detention Schools. Provide specialised community services (and if necessary residential services) to meet the needs of certain at-risk children and adolescents. These children include those with learning disabilities, acute psychiatric illnesses, children requiring medically supervised detoxification for drug use, persistent school non-attendees and those at risk of leaving home. Culturally appropriate prevention services are needed to tackle the disproportionate representation of children from the Travelling Community in detention.

7. Fill vacancies in the social work service to provide children with access to care and counselling services without delays. Implement a drive to recruit and retain suitable, qualified and experienced staff.

8. Provide additional safeguards for children under Special Care Orders and for offending children in detention.
Draw up a national regulatory framework to govern disciplinary practices. Introduce guidelines to govern the type of accommodation and regime which the Minister may define as a 'place of detention' (Section 150, Children Act, 2001) and in relation to the detention of children in cells where no other place is available. Appoint an Inspector of Children Detention Schools. Implement the guidelines of the Special Residential Services Board, particularly in relation to the duration of placement and review intervals. Amend the Ombudsman for Children Act, 2002 to allow children in prison to avail of the services of the Ombudsman.

9. Provide children with the right to representation.
Introduce guidelines to define the grounds on which a child may be detained in a Special Care Unit to ensure the right of the detained child to have access to a solicitor and the right to representation at reviews. Ensure that Special Care Orders cannot be automatically renewed without a full status review. Implement statutory provisions regarding the Guardian ad Litem service.

10. Have all Garda stations provided with child-friendly holding rooms separate from adult cells. Ensure the separation of children in detention from adults and ensure that all Garda stations make available rooms that are child friendly and separated from adult cells and holding rooms.

11. Ensure that all children in detention are informed of their rights.

12. Ensure that all staff who work with children are fully trained in children's rights and committed to the principle that children are to be treated as children first.