



President Robinson and former Presidents Cearbhall Ó Dálaigh (right) and Sean T. O'Kelly.

In the wake of the Government's refusal to allow President Robinson to deliver the Dimbleby lecture, **Jim Duffy** examines the constitutional position

Doubt over Cabinet's rights to veto Presidential speeches

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THE question of the rights or otherwise of the Government to veto Presidential speeches has been central to the Presidency since the first President, Dr Douglas Hyde, entered office in June, 1938.

The dispute has its origins in the wording of the Constitution. Article 13.7.1 states that: The President may, after consultation with the Council of State, communicate with the Houses of the Oireachtas by message or address on any matter of national or public importance.

Sub-section 2 goes on to state that: The President may, after consultation with the Council of State, address a message to the nation at any time on any such matter.

The only qualification on these rights is contained in sub-section 3, which states that:

Every such message or address must, however, have received the approval of the Government.

The precise meaning of this Article is central to the debate. It has also been central to a number of Presidential election campaigns, as candidates and governments differed about how liberally or conservatively the Article should be applied.

A literal interpretation suggests that the government's rights to limit a President's right of free speech are quite limited.

Firstly, the use of the phrase "every such message or address" in subsection 3 clearly restricts the government's right of veto to messages of the type described in the earlier sub-sections of this Article.

According to this interpretation, the government is not entitled to claim a constitutional veto over every speech, but only those covered by 13.7.1 and 13.7.2.

Secondly, the government can only veto the text of the speech. It cannot, according to a literal interpretation of the Constitution, veto a Presidential decision to deliver a speech. It is thus open to the President to accept offers to make addresses without reference to the government, the latter simply being restricted to vetting the speech to be given.

Thirdly, the government is obliged either to accept or reject a speech in its entirety. There is no provision in the Constitution for a line-by-line veto.

All of this poses the question: what sort of speeches are envisaged by Article 13.7.1?

Two major criteria must be fulfilled for a speech to be covered by this Article. Firstly,

it must be directed towards a specific audience mentioned in the Article, of which there are two, "the Oireachtas" or "the Nation". Secondly, the President, before submitting the speech for government approval, must consult with the Council of State, though its approval is not needed.

It is this literal interpretation of the Constitution that formed the basis for the contention of the President, Mrs Mary Robinson, when running for the Presidency, that the President's right of free speech was less limited than was realised. (Similar views were also held by Erskine Childers and Cearbhall Ó Dálaigh when they were President).

Few governments have accepted that their rights in this area are as restricted as is suggested above. Most governments have seized on the ambiguities contained in Article 13.7.1 to justify their own belief that they have far greater rights over Presidential speeches.

Among the questions apparently unanswered are the following: Is government approval needed for speeches given to smaller audiences (eg at conferences, etc) where the speech, though directed at that audience, will be conveyed by the media to the wider public? Who should decide whether a speech was of such importance as to require government approval? What happens where a President disputes the right of the government to veto a particular speech? What is the status of speeches given to non-Irish audiences?

It is in these areas that governments have sought to impose additional restrictions on Presidential speeches. When in 1945 President Sean T. O Ceallaigh delivered a speech that hadn't been submitted for approval, the displeasure of the government was expressed directly to the Presidential secretariat by the secretary to the government.

The secretary to the President, Michael MacDunphy (who believed in a highly restricted Presidency) told his opposite number in Merrion Street that the government was "pushing an open door" with him in its desire to vet Presidential speeches.

MacDunphy's view on this point was accepted with the result that Presidential speeches were automatically sent to Merrion Street for examination. Until the early 1970s, each speech was personally vetted by the Taoiseach. If he decided that it required government approval, he would circulate it to

cabinet members for discussion at the next cabinet meeting.

The question of Presidential speeches to non-Irish audiences has long caused particular difficulties. In no sense can such a speech be seen as being directed either to the nation or the Oireachtas. Yet common sense as much as constitutional provisions dictated that the government be intimately involved in the drafting of such a speech.

Three cases in particular set important precedents in this whole area. In October, 1952, the BBC sought to interview President O Ceallaigh about his personal reminiscences of the late Robert Flaherty. The President was more than willing to record the interview but was refused permission by the then Taoiseach, Mr Eamon de Valera.

Over 20 years later, President Cearbhall Ó Dálaigh was invited to deliver the MacDermott Memorial Lecture in Belfast. He was enthusiastic about the idea but was flatly refused permission by the then coalition government on two counts — namely that his speech would not be approved of, and that in any case he would not be given permission to leave the State.

Both of these cases offer examples of governments blocking Presidential speeches or interviews abroad. There is, however, precedent for a government allowing a president to deliver a lecture to a foreign audience. In 1988, President Hillery, a former vice-president of the European Commission, was invited to deliver the Jean Monnet Lecture in Florence.

This lecture is by tradition given by a senior European figure. Given his many years of service as Foreign Minister, Commissioner and President of Ireland, Dr Hillery was regarded as an ideal choice to deliver the prestigious lecture. He was given the full support and approval of Charles Haughey's minority Fianna Fail government.

The current controversy over the Government's refusal to let President Robinson deliver this year's Dimbleby lecture thus marks nothing more than a repeat of the traditional President/Government dispute over the latter's right to seek to restrict the former's right of speech. The fact that the Government sought to veto a speech that would have been aimed at an audience not mentioned in the restrictive provisions of Article 13.7. adds another aspect to the debate, and further highlights the need for constitutional reform in this area.