

Address to the Institute of International and European Affairs - “EU Administration and Renewing Democracy”

Speech - **City** Brussels - **Country** Belgium - **Date** 11/11/2019

Good evening and thank you for the invitation to speak to you again.

The timing and theme of this evening's event are very good given that today is Armistice Day in Europe and last weekend we celebrated the 30th anniversary of the fall of the Berlin Wall, a key event in the ultimate demise of the Soviet Union and the democratisation of central and Eastern Europe.

For most of us in this room that event isn't just within our living memory, it seems contemporary even if many of the young colleagues we work with today were not even born.

I remember I was pregnant with my first child that winter. I remember the ecstatic scenes in Berlin. I also remember that Christmas Day of 1989 when Nicolae and Elena Ceausescu of Romania were taken out and shot after a brief trial, photographs of their dead bodies disseminated throughout the world.

One of my daughters was born in April 1990. That same year, Nelson Mandela was released from prison, Mary Robinson became the first woman President and – possibly most memorable of all for many of us in this room – the Republic of Ireland got through to the quarter finals of the World Cup.

I remember thinking what a wonderful time it was for my child to come into the world. A short time later the historian Francis Fukuyama seemed to echo that late millennial optimism when he published *The End of History* with its confident thesis around the strength and reach of liberal democracy.

“What we may be witnessing,” he wrote, “is not just the end of the Cold War, or the passing of a particular period of post-war history, but the end of history as such: that is, the end point of mankind's ideological evolution and the universalisation of Western liberal democracy as the final form of human government.”

So, not too surprisingly, given the dual commemoration of the fall of the wall and the publication



of that book, Mr Fukuyama is now regularly and repeatedly asked; “So how’s that all going Francis?”

In a recent interview, and showing some understandable irritation at being constantly asked that question with its underlying suggestion that Francis had got it wrong, the historian argued that his essential thesis had been misunderstood, that he had never said that nationalism and populism were going to disappear but rather that communism had not triumphed in the way that its ideologues had imagined it would. And, in the face of growing nationalism, populism and authoritarianism he urged us all ‘not to panic’.

Other writers are also having a commemoration moment, reflecting back on the imagined future from those fall of communism years and what did actually pan out.

Last year, the American Polish journalist and historian Anne Applebaum wrote in The Atlantic Magazine about a New Year’s Eve party she and her friends had celebrated in 1999 in her husband’s family home in northwest Poland.

She wrote, “We had rebuilt our house. Our friends were rebuilding the country. I have a particularly clear memory of a walk in the snow—maybe it was the day before the party, maybe the day after—with a bilingual group, everybody chattering at once, English and Polish mingling and echoing through the birch forest. At that moment, when Poland was on the cusp of joining the West, it felt as if we were all on the same team. We agreed about democracy, about the road to prosperity, about the way things were going.”

Twenty years later, all had changed.

“That moment has passed. Nearly two decades later, I would now cross the street to avoid some of the people who were at my New Year’s Eve party. They, in turn, would not only refuse to enter my house, they would be embarrassed to admit they had ever been there. In fact, about half the people who were at that party would no longer speak to the other half. The estrangements are political, not personal. Poland is now one of the most polarized societies in Europe, and we have found ourselves on opposite sides of a profound divide, one that runs through not only what used to be the Polish right but also the old Hungarian right, the Italian right, and, with some differences, the British right and the American right, too.”

I think that all of us here can identify at least with the polarisation that Applebaum has identified. As Irish people we gaze at it from a distance when we contemplate the United States and some parts of Europe, but up close and personal as we observe and experience the fallout from Brexit. In the latter case, and from a point just shortly before the referendum where barely 6% of British people ranked EU membership as a significant concern for them, it has now become a wrecking ball through families, communities and the entire political infrastructure of the state itself. How did that happen?

Anne Applebaum would say that the Brexit phenomenon and similar polarising others around the world emerge from ‘the big lie’ when populists magic up a conspiracy to account for a public



or private grievance. In the UK, it became the faceless unaccountable Brussels elite preventing Britain from being Great again, in Hungary it was the power of George Soros, in Poland, according to Applebaum, it was the plane crash that killed a swathe of the then ruling administration.

And alongside the polarisation comes the slow erosion of democratic norms but also of civility and a capacity to reach across and engage with the arguments and fears of others. Democracy necessarily implies a shared space, a safe space where the concerns of all are taken into account and politics is not reduced to a zero sum game, to the survival of the loudest bully. But it would be wrong to think that Trump and his global brothers emerged out of nothing, polarisation in US politics had been building slowly for decades in tandem with massive wealth and other inequalities and technology driven electoral manipulation. The Presidency of Donald Trump was, arguably, inevitable.

The challenge for the EU and others then is obvious, but not so obvious as yet a shared and settled understanding of why those forces re-emerged or how they should be dealt with. We have still to come to grips with seeming paradoxes – why those now experiencing unprecedented freedom and improved living standards express nostalgia for the past or the attraction of those electorally profiting from attacking the elites who themselves come from that very class.

But two issues do seem continually to emerge from the volumes of theorising about these crises – one is equality, the other is control and to those one could add the speed of change particularly when it comes to social and cultural norms, and the way in which the global power of massive technology companies are usurping the traditional power and reach – even basic functions - of democratically elected governments , and administrations, themselves.

One small example. Just the other day, in the wake of the trial and conviction in Ireland of two young boys accused of the murder of a teenage girl, I listened to a debate about how the Government could act to control the essential corruption of children through the ability to access vile material on their smartphones. There was a suggestion that further engagement with the Irish based global tech companies might be useful. I think we can all agree that a few polite chats are unlikely to achieve the level of change needed, but it is undeniable that unless the technology giants are regulated in a way that makes them accountable for some the negative forces they have unleashed, the unanticipated consequences of their remarkable positive contribution to the world will continue.

I think that the EU is acutely aware of this and the actions of Margrethe Vestager and others over the last few years in attempting to force them out of the virtual world and into the real world of fair taxation and democratic accountability is a sign of that. In some ways it's an existential battle and the extent to which the EU recognises that will determine its approach to other challenges it now faces.

The incoming Commission President, Ursula Von Der Leyen, has spoken of the need for the EU to realise and to articulate its global power and it is clear that this Commission and this period of



EU administration will be judged by the degree to which it can impose itself on an increasingly fragile and contested world order. It is said that you begin to lose power on the day you think you don't have any, so a study of the psychology of power might be a very useful addition to the Commission's welcome pack.

Another challenging issue for the EU concerns fundamental rights, their erosion in some member states and the highly contested question of what levers to pull to deal with the problem. Fail to push and the EU compromises its very *raison d'être*, push too hard or the wrong way and the law of unintended consequences might kick in. The rights issue is inextricably linked to nationalism and populism with EU criticism of rights erosion therefore mediated as an attack on identity and sovereignty.

A further complication concerns a weakening common understanding of what we mean by fundamental rights and other values. Can we even say with confidence that across the EU there is agreement that democracy is about the rule of law, separation of powers, protection of minorities, the freedom of the press and human rights?

A recent Eurobarometer poll on discrimination revealed large differences between EU Member States on the question of whether members of the LGBT community should have the same rights as heterosexuals, or whether respondents would be comfortable with having a Roma person running their country.

The EU Charter of Fundamental Rights has fifty articles covering dignity, freedoms, equality, solidarity, citizens' rights, and justice and next month marks its tenth anniversary. Next week I will speak at the Finnish Presidency event to mark the occasion, alongside Michael O'Flaherty, Director of the Fundamental Rights Agency, and it will be an opportunity to acknowledge openly the real tension between the ideals of the Charter, the messy reality of crisis politics, and the *à la carte* choice of fundamental rights by some members of the EU who are nonetheless bound to uphold them all when implementing EU law.

At times these issues seem insurmountable but they never are when they begin. Very bad things happen when we let less bad things happen or ignore incremental erosion because certain actions of themselves never seem important enough to challenge.

In my work as European Ombudsman, it is frequently those small actions that I deal with, those small actions that I challenge the EU administration to deal with.

This evening we are to discussing the renewal of democracy. Of course, many of the answers need to be provided by our political leaders, but I wish to highlight one feature of a strong and stable democracy and that is a high quality public administration.

Good administrations, and the EU has a very good administration, when acting with impartiality, integrity and efficiency, can guide democracies towards good decision making, providing solid evidence-based reasoning for political choices and implementing legislation in a just and humane fashion.



When I was elected European Ombudsman by the European Parliament in 2013, with the ten years of Irish Ombudsman experience behind me, there were a few fundamental things that I understood about public administration. One is that people need to be listened to when they have problems. Even if the problem isn't resolved, the fact that they have been heard greatly relieves the stress surrounding it.

The second is that transparency is like medicine – it might taste horrible at times but it rarely does harm and often greatly improves administrative health. The third is that ordinary citizens and what we call civil society are not the enemy. It is never their intention to annoy you in the course of your working day, but usually just want to alert you to a problem that you need to know about and deal with. Treating them with suspicion or holding them at arm's length is guaranteed to help to perpetuate the myth of the faceless bureaucrat.

Take for example our inquiry into the transparency of the TTIP negotiations, prompted by civil society and other concerns that the EU was preparing a trade deal with the US without the involvement of those people who would be directly affected by the outcome.

Our inquiry, alongside pressure from others, did cause the Commission to reflect and to its great credit did overhaul its transparency policy in relation to trade. Yes, the additional oversight might cause a few headaches, but the enhancing of legitimacy is vital at a time when the EU finds its legitimacy challenged by Euroscepticism. It was in the same spirit that we began a dialogue with the Eurogroup, suggesting that it allows a little more light into its decision making given the impact of those decisions on so many people.

How EU officials and Commissioners behave also feeds into the perception of the legitimacy and integrity of the EU. The Juncker Commission strengthened its code of conduct, and is now one of the strongest in the world.

We also worked with the Commission to improve the transparency and balance of its 800 expert groups – vital influencers of EU policy-making. The ECB and EIB have improved their transparency and ethics policies after our engagement with them, and both Frontex and the European Asylum Support Office have set up complaints mechanisms for those who feel fundamental rights have been infringed, following Ombudsman inquiries.

Upholding the EU core value of non-discrimination was the backdrop to a complaint about the failure of the European External Action Service to pay its trainees - over 800 trainees in its delegations around the world. Thanks to our input, plus that of Parliament and other institutions, trainees are now paid which means that those valuable traineeships are not just available to those whose families can afford to pay for them.

Our major piece of work in recent years, was an inquiry into the lack of legislative transparency in the Council of the EU. This will be a long process, but I appreciate that ten Member States, including Ireland, are pushing for more transparency recognising that it gives legitimacy but also helps to dispel the 'blame Brussels' culture, with citizens failing to realise that it is their own



governments who are making the laws.

I also appreciate the support of the European Parliament and many national parliaments across Europe, including the Dail, on that issue.

Transparency has now moved from the fringes to the centre of Brussels politics. The incoming Commission will, for the first time, have a “transparency” portfolio, overseen by Vice-President Jourova. Her mission letter states she will work to bring more transparency to the legislative process, work on creating a new ethics body for EU institutions and help to improve how the European Citizen’s Initiative works.

This formal institutional recognition of the centrality of transparency will create its own momentum and expectations - something which, if the past years are anything to go by, will also be carefully scrutinised by the active civil society scene in Brussels.

Finally, and given that we are this evening in Brussels, the world’s 2nd largest lobbying capital, this issue has also been a focus on my work. The EU is now a legislative, trade and regulatory global power so it’s no surprise that many people wish to influence what is decided here. And indeed, such input into policy making is welcome and necessary, once it is transparent and not unduly influenced.

This audience will be well aware of the amount of lobbying on the tobacco directive which the Irish Presidency pushed to conclusion, also the EU copyright law and the reform of the Common Agricultural Policy steered by Commissioner Hogan.

The Guardian reported last month that the five biggest oil and gas companies, and their industry groups, have spent at least €250m lobbying the EU on climate policies since 2010. A large-scale journalistic investigation in 2018 showed how intense lobbying resulted in blocked European safety checks for dangerous medical implants, or did it maintain the competitiveness of the European medical devices industry? It depends on your perspective I suppose, but fact remains there is a lot at stake in the legislative decisions of Brussels.

I welcomed President Juncker’s initiative to publish details of high-level commission meetings with lobbyists – but I would like to see that policy extended to more Commission staff as they are also influential in the decision making process. Making meetings dependent on the organisation being on the EU Transparency Register is also welcome and I would also like to see other EU institutions adopt that same policy.

Conclusion

Five years ago the EU was coming out of a severe financial crisis that had weakened the social bonds in several regions and cities of Europe; there was an all-time low in the trust in the EU and turnout in the EU elections remained stubbornly low.

Today the EU is in many ways in better shape. Turnout in the May elections rose, trust in the EU has gone up and the worst days of the financial crisis seem to be behind us.



But we are in the midst of new challenges. Climate catastrophe and technological advances are already fundamentally altering societies. Young people, in particular, are demanding change. The Open Society Foundation marking the 30th anniversary of the fall of the Berlin Wall, noted that young people in the seven surveyed countries exhibit a “broad embrace of social justice” and are able “mobilise effectively, navigate the information landscape, and harness social media. ”

Good public administrations, and good democracies, anticipate these changes and desires. They also listen, without flinching, to justified criticism.

In today’s world public administrations no longer have control over the message. But they can choose to be responsive, communicative and ethical.

It’s an ombudsman’s role to help them with this challenge.

Thank you.