

Appendix IV

Address to MacGill Summer School by the Ombudsman, Emily O'Reilly – 20 July 2010

I would like to begin by thanking Joe Mulholland and his team for the Invitation to address this year's summer school, and also to congratulate the school on its 30th year of doing the State some service by providing this annual platform for debate around, and analysis of, our shared past, present and future.

I want to confess that I have found it hard to gather my thoughts around the notion of The Republic I want to see if only because I suspect a creeping sense of analysis fatigue among the general populace. There's barely an element of our public life that hasn't been skewered and dissected by some earnest person urging transformation and reform.

Rhetoric can be a powerful force in bringing transformation about but it remains a cue to action rather than the action itself.

One of my children recently informed me that lest I have any notions about myself and the role I play in this society, he assured me that all I did for this country - in his 17 year old opinion - was "Give out about it". And so, chastened by that teenage admonishment, I rather humbly make this address.

Reading the contributions of the last few years of this forum, and noting the extensive commentary on the decline and fall of our economy over the last two years, there would appear to be at least a superficial shared value system around The Republic I want to see or perhaps just a shared rhetoric.

We want apparently, greater social equality, greater political and administrative accountability, less centralised control, an Oireachtas that is taken and takes itself seriously, a health service that treats people

because they're sick and not because they've more money than other sick people, an education system that frontloads services for the very young disadvantaged, a prison system that does not further brutalise and dehumanise its prisoners, mental health provision with individual human dignity at its core.

And that's all very well. Most of us could find broad agreement around those issues. Indeed there's hardly a politician or head of a public body that hasn't espoused one or all of them. And if those outcomes don't happen, haven't happened, whether in the boom years or now as the downturn has us by the throat, we really do need to examine why.

And I would suggest that the key to unlocking the secret of this national failure is not to talk about The Republic I want to see, but perhaps rather The Republicans I want to see. Because on a small island, with a small, largely homogeneous population, free elections, unrivalled access to our public representatives, we have to assume that the institutions and the institutional behaviours that have developed since our independence, have come about because we have willed them into being. The old enemy has long since departed this Republic. And while we still cling to the coat tails of repression as a catch all excuse for everything that ails us, we the people are in charge of our own destiny and have been now for a very long time.

Last year, in the wake of the publication of the Ryan report on institutional abuse of children, I said, "It is strange at times to observe some of the reactions to the report as though this new liberal, compassionate, progressive generation of the 21st century were alien observers of a new and horrible land. Some appear like shocked US soldiers stumbling into Belsen at the end of World War 2. How could this have happened, they wondered, what monsters did this?"

The horrible truth of course is that there was no other, the monsters lived among us, some of the monsters were ourselves, no one invaded us and performed those execrable acts on our children, we did it all on our own. If things were hidden they were hidden in clear sight, the crocodile lines of boys and girls that streamed out of the institutions, the certain knowledge that corporal punishment at the very least was practised therein, the incarcerated Magdalenes in their Madonna blues and whites who walked the open streets of towns and villages in Church processions. Judges knew, lawyers knew, teachers knew, civil servants knew, child-care workers knew, Gardai knew - even the ISPCC knew. Not to know was not an option."

Last week, in the Irish Times, journalist Michael Viney recalled how he had written about these institutions, the borstals and reformatories, in a series in 1966. Nobody who read it at that time could have been left in any doubt about the Horrors that lay within those places. Young boys spoke of beatings and rotten food, of starvation rations and most of all, of the cold that paralysed small hands and feet. Viney remembers a single letter in the Irish Times in response. As one survivor of those institutions noted in a recent documentary, "I remember the crying, the screaming of the children. I remember it all, but no one gave a toss."

I make the point to highlight the collective collusion in the atrocities of those days, and how in a single generation, a phenomenon that was banal and commonplace was transformed into national shame and jaw dropping horror.

The downturn has highlighted a more up to date version of our capacity for denial and perverse groupthink.

In recent weeks, two men have moved centre stage to wear the mask of popular villain - former Anglo Irish Bank Chairman and CEO

Sean Fitzpatrick, and former Financial Regulator Patrick Neary. But neither man acted or failed to act, alone. If it takes a village to raise a child, it certainly takes a political and administrative system madly in thrall to a lunatic economic fantasy, not just to produce men like Fitzpatrick and Neary, but to allow each of them to thrive.

In September 2005, peak boom year, a country afloat on champagne and swagger, Sean Fitzpatrick, was invited as guest speaker to a property advertising awards dinner in Dublin. Great was the anticipation of Mr Fitzpatrick's address. One newspaper noted, with obvious approval, ""Sean Fitzpatrick, reputed to know every development site in the country - has been a loyal supporter of the property industry down through the years, but particularly when other banks shied away from loaning to the men in hard hats. Developers will be anxious to hear his views on the property industry and the likely prospects for the future.""

In the event, Fitzpatrick went down a bomb with the 400 strong crowd, wowing them with an evisceration of the evils of over regulation, excoriating RTE for giving a soapbox to Eddie Hobbs and his Rip off Republic series, lamenting the agendas of those who would seek to further tie the hands of buccaneers such as himself and his property developer and banker pals. ""Why would they want to do this"", Sean pleaded, ""What has been done here over the past decade that demands such a reaction? Where is the line up of failed companies with shareholders who've been ripped off and left bemoaning the lack of due care and attention by feckless directors.""

That was 2005. Two weeks ago, as bankruptcy loomed for Fitzpatrick and we edged ever closer to the real truth of the cost of bailing out his failed bank, a clip of Sean repeating those views on radio, was

replayed . Clearly we were all meant to nod ruefully at Fitzpatrick's 2005 remarks and note the irony.

Yet, when he made them first on that November night, as he and his dining colleagues wallowed in the fruits of the reckless decisions that have crippled this country, the headline on the following day's paper was ""Challenging and thoughtful - what makes a winner?":

Clearly the details of what Sean and his pals were doing behind the scenes could not have been known to most people at least in that room, never mind the wider public. But it is instructive nonetheless to glance over the headlines on the Sean Fitzpatrick story in the boom years and ask oneself, why did so few people scream that this was too good to be true? A random sample:: ""Anglo shares surge as profit rises by 28%,"" Anglo Irish directors make \$9.1million, ""Fitzpatrick a hard act to follow."" ""Fitzpatrick to leave on a high as Anglo surge continues'.

Or when he sneered at those who would come in and want to pore over every figure in a potential transaction. ""The last thing I wanted, ""he said in an interview ""was a grey headed customer coming in with a notepad and pencil and asking how much we would charge to do such and such...We only wanted to play at the sexy end of the market.. Other bankers would mutter about us, Of course Anglo take a lot of risk. I never saw us taking a big risk at all."

The delusion was widespread. Google a random two years of the boom and observe what is thrown up. House prices up 270% - a headline from 2006. SSIA's to assist in soft landing - headline from same year. Irish banks well-placed for long time returns - ditto.

Of course there were other voices, but by and large they were drowned out and they were drowned out because too many of us were swept up in a collective narrative around our wealth, our entrepreneurial genius, the self satisfied and satisfying glow that spread across the globe.

We were in love with that fairytale about ourselves and the bad fairies were very quickly shown the door, even if David McWilliams resolutely refused to leave.

When the Central Bank and other international agencies warned against the potential of the bubble to cause financial havoc, uber confident economists, attached to some of the most prestigious firms in the state, trotted out to say, that well if the housing market went soft, state infrastructural projects would take up the slack. How the state was going to afford the projects if the revenues generated precisely by the property boom were to collapse, was never addressed. No cloud was allowed to blot out that boom time sun.

We were living out 21st century Tulipmania, reprising the 17th century hyper inflated Dutch market in tulip bulbs. Charles McKay in his 1841 book, *Extraordinary Popular Delusions and the Madness of Crowds*, wrote,

"At last however, the more prudent began to see that this folly could not last forever...It was seen that somebody must lose fearfully in the end. As this conviction spread, prices fell, and never rose again. Confidence was destroyed, and a universal panic seized upon the dealers. A had agreed to purchase ten *Semper Augustines* (a type of tulip) from B, at four thousand florins each, at six weeks after the signing of the contract. B was ready with the flowers at the appointed time; but the price had fallen to three or four hundred florins and A refused either to pay the difference or receive the tulips. Defaulters were announced day after day in all the towns of Holland. Hundreds who, a few months previously, had begun to doubt that there was such a thing as poverty in the land, suddenly found themselves the possessors of a few bulbs, which nobody would buy, even though they offered them at one quarter of the sums they had paid for them. Many who, for a brief season, had emerged from the

humbler walks of life, were cast back into their original obscurity. Substantial merchants were reduced almost to beggary, and many a representative of a noble line saw the fortunes of his house ruined beyond redemption."

I don't need to point out the analogy. But as we sit in this lovely part of our country and enjoy this week, we should know that the horrible human cost of what we have gone through isn't just about the loss of material wealth. Last week, my 20 year old daughter told me that the father of an acquaintance, a beloved father of four children, had taken his life. Was he a businessman, I asked, had he lost in the crash. He had, she replied. I read later of the despair he had voiced to a friend in a telephone call just moments before he had taken his life. And that story has been repeated over and over again in the last 18 months. One report at the weekend claimed that in a recent, single day, eight men with similar stories, had committed suicide.

So, in a very short period of time, we have gone through an entire boxed set of national narratives. For many many decades, the narrative told of the most religiously observant people in Europe, high mass attendance, precious little clear blue sky between the democratically elected national parliament and the Catholic Church Hierarchy, a charming race, simultaneously pious and endearingly feckless that entranced everyone who met us and made us feel good about ourselves.

That particular fairy tale fell apart when we realised that we emerged clean and holy and shining into the light only because we buried the bits that didn't quite fit the narrative into dozens of brutal and brutalising institutions the length and breadth of the country. It fell further apart when the story of the mass institutional collusion in the ill treatment of the people in those places was laid bare in the Ryan and Murphy

reports respectively and through the earlier pioneering work of journalists such as Mary Raftery.

The next narrative involved a tiger, house building on a par with European post war reconstruction and a notion of ourselves as commercial and entrepreneurial geniuses capable of breaking, with impunity, every long held economic rule in the book. And you don't need me to tell you how that one ends.

And so we enter into our latest narrative with no one yet quite sure of the plot line. We now look in horror at the ourselves of just 18 months ago. The indulged excesses of the tiger years, now appear like the actions of a people not just naive and infantile, but ruinously stupid.

Five years ago, when we were going through narrative number 2, the rich as Croesus one, I spoke at the annual Ceifin Conference in Co Clare, and I asked the question, what is the real us? Were we real I wondered when we crammed the churches, or were we real then - in 2005 - as church car parks lay abandoned and we giddily anticipated the arrival of IKEA on a side road off the M50. I wonder now, when we're neither particularly religious and certainly no longer rich, what version of our national psyche will emerge, what new persona, what new set of clothes are we going to wear?

As Ombudsman, I am privileged from time to time to have a bird's eye view of our little piece of the world; I observe housing, and education and health and while my role is confined to finding cracks in the administration, I also note the deeper fault lines in the system when things go wrong and if I go really deep I can observe that the most serious of those fault lines relates directly to our own national psyche, to our emotional DNA.

In my view, in recent years, that fault line revolved around the elevation of private interests and private pleasures over and above the

national, the public interest. Throughout the boom, in many areas of our national life, we came very close to the embodiment of the Thatcher dictum of there being no such thing as society.

That may well be an historical hangover. The British may have long since abandoned these shores - or most of them - but there are nonetheless Irish citizens who act as though the landlord is still calling round with an eviction notice in one hand and a bullwhip in the other. This mindset observes every action of the state to elevate the public over the private interest as an act of imperial oppression. In the 1970s, when the grounds of Castletown House in Kildare were being developed for housing estates and many people cavilled at the aesthetically uncomfortable closeness of the block rows of houses to the beautiful main residence, the developer (Paddy Kelly - now in hock to the tune of 300 million) opined that it was time the Irish people went through the main gate. How easy it is to cow the dissenters with the cynical flash of a tricolour.

Some time ago, I eventually had to abandon a case involving a row relating to a right of way across an otherwise private stretch of heart breakingly beautiful land. By the time a cowed Local Authority was forced to act against the erection of very ugly fencing, blocking off beach access, it was too late for legal enforcement action to take place.

Years passed while my Office wrestled with the matter to no avail. In effect the Local Authority refused to act for fear of the wrath this might incur in the local community, where the man's neighbours and others appeared determined to defend his right to the land, to his private property, irrespective of the damage caused to the wider public interest. The legal advice afforded to the council spoke of the ""emotive"" nature of land ownership in that county, of the Land League, Parnell and Captain Boycott. The fact that whatever action the authority might have taken

would have been sanctioned by the sovereign parliament of an independent sovereign republic was, apparently, irrelevant. It sometimes seems to me, that whenever the constitutional right to private property is invoked, that bit in Bunreacht na hEireann about it having to be in accord with the public interest, falls off the page.

The desecration of large parts of the countryside throughout the boom years as isolated fields and boreens became built on development land, can, in my view also be traced to this national desire to hang on to and to exploit private ownership for dear life. Once the ingredients for turbo charged development were in place - from tax breaks to low interest rates - to a very blokey testosterone charged face off between the banks for pole position, the land and money grab was on.

How difficult it would have been for any government - once the genie had been unleashed - let alone any vulnerable county councillor to cry halt to the sovereign right of the sovereign people to make as much money out of the land as possible irrespective of the lunacy of an almost inevitable over supply, not to mention the architectural ugliness and unsuitability of much of what was built, the infamous ghost estates that now await either NAMA or the bulldozer.

So, again, what is our latest narrative going to look like with now the national coffers as well as many of our churches, largely empty. What new notion of ourselves can we spin? Ever since the downturn, there has been a rash of calls mainly from political leaders, for the need to exhibit patriotism, to put our collective public interest before private interest, to show solidarity with each other. No one can argue with that and indeed a great deal of national solidarity has been demonstrated with people willing to take large pay cuts and reduce their standard of living in order to help to fix the economic crisis. But if we are to follow that through and use that call to transform our public services in a way that truly

serves the collective interest, we need more than the stoic acceptance of a cut in take home pay.

Because it takes a while to do a 180 degree turn from a culture that as recently as 18 months ago considered precisely the private interest as a cardinal virtue. The elevation of the market economy to demonstrably dangerous levels, the Olympian pursuit of profit through rampant, reckless development, the subsuming of the public interest vis a vis planning and other matters to allow that rampant development to continue at any cost was the model we were conditioned to accept. A generation has effectively been wet nursed in greed and self-interest and it will take great commitment and public leadership to turn that around, if indeed it is the intention that it be turned around. -

We have always fancied ourselves as people with a great community sense, a community that looks out for each other and cares for each other and that is very true in very many instances whether as witnessed by the fabulous work of the GAA in binding communities together, the communal outbreak of grief and solidarity following the tragic deaths of eight men in this very county last week, and many other such examples where the community reaches out to protect and to support.

Yet from my vantage point, it is clear to me that the fault lines in our health service, in our education service, in institutional care for prisoners, for the elderly, for the intellectually and physically disabled, lie precisely in the absence of a shared, communal, public value about what precisely we expect the State to deliver to all of these vulnerable groups. Let me be clear about what I mean about public values; I mean that part of our shared lives that we will attempt to protect and defend irrespective of what the market is doing at any particular time; that part of our shared

lives that we value as a community, and not as a set of individual economic units.

Let me take one example, long term care for the elderly, nursing homes. I will shortly publish an investigation report into the operation of this sector by the Department of Health and the HSE over the last number of years. It will tell of a largely chaotic ad hoc system, in which many people were not alone confused about their rights and entitlements but also suffered years of stress and crippling expense because of the deliberate failure of the system to clarify their rights to public care let alone provide it for them. In many instances people were encouraged to go into private care on the understanding that once a public bed became free - they would move. Yet time and time again, that public bed never materialised and the consequences for families were horrendous.

Elderly men wrote to me, telling how the care of their very elderly mothers had forced them out of their homes. One man, 75 years of age, rented out his home to pay for private care for his mother while he rented a room from friends. Women spoke of the stress of coping with their own children as well as with an elderly parent, scraping together hundreds of euro every week to meet exorbitant private nursing home fees. One woman, caring for an elderly parent at home, was being pressurised to take her brother home from hospital. He needed residential care but none was made available. Another family, despite their relative being entitled to public care, had paid out over euro 40,000 to a private home. Now at the point of retirement, they didn't know how they would make ends meet.

I am aware that the new system - the so called Fair Deal system, the Nursing Homes Support Scheme- will make things a lot clearer and a lot better for many people, but as my investigation will point out, what has effectively happened through the new legislation, is that the State

believes it has now divested itself of the responsibility to provide nursing home care. The model now is based on the principle that responsibility for long-term care rests primarily with the patient and or family. The State MAY support the patient/family financially but this is subject to the availability of resources and to the individual satisfying a means test. Support under Fair Deal (NHSS) is not guaranteed and the Scheme is not a demand led scheme. If demand outstrips supply then the applicant may be placed on a waiting list until such time as resources become available. There is no legal entitlement to financial support.

The creeping privatisation of the nursing home service is evident from the figures we have collated. In recent years there has been a significant decline in public bed per head of population while the provision of private nursing home places has virtually trebled over the 12 years 1997 to 2009.

My point is not ideological, any scheme, public, private, mixed, if it works and is sustainable that's all to the good. But as a people, we need to ask ourselves whether good care of the elderly is one that we place high on the public value scale and if so, what is the correct public private mix that will guarantee not just quality of care, but sustainability of care. Can the private sector be trusted to look after our elderly; is the dilution of the State's role in the public interest?

Close to where I live is a large former nursing home. For many years during the boom, part funded by tax breaks, it grew bigger and bigger, adding more and more rooms to the original building then, suddenly, it closed down - the residents scattered to I know not where, the house and the surrounding lands primed instead for development. But the move came too late; the house still stands empty many years later, weeds growing up around it, windows broken, a bigger eyesore with every

passing day the crumbling flipside of the market placed in charge of elder care.

I won't rehearse for you here what two recent retiring prison governors have said about the state of our prisons, dehumanising conditions, drugs, high rates of recidivism etc. The solution to over crowding by the building of a new prison fell apart when the recession hit, as the private part of the public private partnership that was supposed to build it went wallop. But again, this space allows us to ask what our public value around prisons actually is. Do we even care all that much about prison conditions, have we made the connection between a prison centred rehabilitation system and the outcomes in the form of recidivism etc.

A recent article in the Guardian about the low numbers of prisoners in Norway and other Scandinavian countries explored that phenomenon. The conditions the prisoners enjoy, educational opportunities, conjugal rights, sporting activities that reportedly include horseback riding, fishing, tennis and cross-country skiing are exceptional by any standard but the core determinant of the prison regime's relative success, is the public value that underpins it. They can see no point in punishing someone if all it achieves is to wreak further havoc on the people, the moment the prisoner gets out.

An expert on European prison reform Professor Nils Chriteois, told the Guardian that ""having a functioning welfare state has done a great deal, for this makes it difficult to create ""social distance" so that each person feels connected to everyone else and therefore no one gets scapegoated for the troubles that occur. The low prison numbers, he believes, reflect a moderate social system in Norway, and that the only real danger is excess, and the growing divide between those who have and those who have not.""

Perhaps that is the key word in this debate, moderation, the lack of excess. When we glance back at the narratives I have outlined, what marked both was excess, excessive piety and institutional cruelty in one, excessive greed and a failure properly to balance private and public interest in the other. Again, when we examine the social success of the Scandinavian countries, a culture of old Lutheran moderation and equality emerges as one determinant of the superior health, educational; and other outcomes that those countries largely enjoy. As a people, we have to grow up and realise that, moderation, a greater division of the spoils, may inhibit an individual's ability to create great wealth, but it may equally inhibit the flipside of that, the ruination, even the extinction of precious lives.

As the downturn continues, the State is called upon to do more and more for the citizen, from providing jobs, bailing out troubled home owners, supporting the unemployed. Public service jobs are craved and envied. From a point where the State was increasingly taking a back seat, it is now called upon to provide, ironically at a point when the financial means of doing so are weak. For many years during the boom, the role of the State in a market economy was sidelined, attempts at regulation hissed at by those in the development driving seat. Now, as its citizens seek shelter from the storm, its role is more akin to that envisaged by the poet and politician Thomas Kettle when he wrote, "The State is the name by which we call the great human conspiracy against hunger and cold, against loneliness and ignorance; the State is the foster-mother and warden of the arts, of love, of comradeship, of all that redeems from despair that strange adventure which we call human life.

The collapse of private enterprise on such a large scale, the failure of urban renewal and prison projects because of the collapse of the private developers that the State had confidently expected to provide, has

taken the scales from our eyes. The economy will undoubtedly recover, but while it does, we should not lose sight of the lesson we have been taught, and before we dive for the handbags again, let us acknowledge that we the people, we as Republicans, can determine the lot of our country for better or for worse. The political class must give leadership and must above all put self and party interest aside when it comes to serving the public good, but that political class takes its cues from us. So when we turn our backs on, or are indifferent to, the old, the disabled, the imprisoned, and the weak and marginalised, why are we surprised when the State does likewise?

This not a call for a return to the stagnant days of the dead hand of the state across everything we do. The market economy, the liberalisation of the economy, drove a great deal of our early economic success. We went astray when development for its own sake diverted creative entrepreneurial energy down a rancid, self-defeating cul de sac. That energy can be, must be harnessed again, in ways that exploit not the land but the genius and creativity of our fabulous children, the potential of our third and fourth level institutions, the natural resources of our country, the potential of the knowledge economy.

Just 2% of our schools currently have access to broadband, a shocking statistic in a country that prattles on about said knowledge economy. The figure compares with over 95% in Scandinavian countries, and contrast our overall broadband distribution with Finland where at the beginning of this month, established a legal right to broadband connectivity to every single household.

One might ask how a country like ours that plays host to global cutting edge IT companies such as Google and Microsoft, allow its children to abandon their 21st technology in the form of mobiles and i-phones and Nintendo DS's at the school door and move inside to attempt

to boot up virtually obsolete computers. We need to throw out the rulebook, to loosen the stays of our education system and to allow it to become our engine for growth, to develop pioneering ways of learning and innovation and to sell that across the globe. If we are no longer saints, let us at least again be pioneering scholars. My vision of a new Republic is not one of frugality and a return to cheery, stoic subsistence, but rather the creation of a wealthy society which uses its collective intelligence to impose itself on the world and in so doing improve the lot not just of everyone in this country but exercises its moral obligation to do some good on the global stage as well.

All of this - the protection of core public values, the transformation of the pretence of a good educational system into a lived reality, must be nurtured and cued by an administration that refuses to bow to narrow, self serving sectoral interests and raises its game instead to acknowledge and to embrace all of the people, to acknowledge the kind of republic that really is, as translated in all of its purity, a public affair.

Ends