**LAW, POETRY AND THE REPUBLIC**

Address to the Burren Law School, 2011

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It is a fundamental duty of the State to manage the economy in order to provide for the common good. Insofar as we are self-constituted as a Republic, that duty is a solemn obligation conferred by the citizens acting in concert as citizens of the Republic. The State, considered as the apparatus of governance in its entirety, derives its authority and legitimacy from the citizens who in their totality as free men and women constitute the Republic; the right of the State to discharge the duties and obligations of a sovereign government is no more and no less than the devolved right to exercise the prior sovereignty of the Republic.

It follows that the ceding of economic sovereignty is also an undermining of the sovereignty of the Republic. The State, insofar as it takes its instructions from an external power, can no longer claim co-identification with the Republic, an instrumental fiction that has proved useful up to now. In the most absolute sense possible, the continuing existence of the Republic as a sovereign entity has been called into question.

What is to be done with our poor battered Republic is not just an open question, it is a question that keeps on opening out into further questions, so much so that one begins to wonder if we’ll ever find a way to get started on the process of rebuilding.

It seems to me we are still at the diagnostic stage, still trying to get a grip on the extent and nature of what is wrong before we can formulate even tentative proposals as to what is to be done. It may even be that re-building will prove impossible, in which case we will find ourselves looking at a profound rupture, at the re-founding rather than the reformulation of the Republic and hence the State.

It is still an open question, whether rebuilding is even possible; it may well prove to be, when all the analysis is complete, that we need to start over again from an entirely new set of assumptions as to what kind of State is needed to provide for the Republic, for the common good in the 21st century.

One thing we can say for certain: piecemeal reform of an ad hoc kind is likely to leave intact what we might call the armature or infrastructure of the State, its accumulated burden of law, language and custom.

The State apparatus derives its ultimate authority from that regular consultation with the will of the people that we are pleased to call the representative democratic process. In theory, it works like this: we the people choose representatives freely, and those representatives, acting on our behalf, choose a government. Our primary influence on who forms that government is fatally circumscribed, in most instances, by a kind of a-priori sleight of hand: strictly speaking, we cast our votes to select individuals as our representatives, but in all likelihood that representative will have a prior allegiance to a party and a policy, and should that party enter into government, our representative will almost invariably find herself or himself disposed if not actually constrained to put party allegiance before the expressed interests of those people who elected them. No longer able (or perhaps willing) to act as a direct representative of his or her constituency’s wishes, the individual deputy finds himself or herself co-opted by the unquestioned supposition that in voting for that individual we are, in effect, giving a free hand to his or her party to pursue its policy goals. Even when there are grounds to believe that the people in toto do not approve of a particular policy, the party in government will claim that it has a free hand until the next election, and that the individual deputy must in effect surrender his or her direct responsibility to a particular cohort of electors in favour of the party’s will.

Once it enters into office according to law, the government assumes, crucially, responsibility for ensuring the continued operation of that corpus of laws it inherits, and it acquires the power both to amend existing laws and to promulgate further laws.

In effect, the government enters into possession of the law, and into ownership of the language of law. This further fuels the inexorable alienation of the Government from the people.

If party allegiance if the first dilution of the contract between we the people on the one hand, and the aggregate of our chosen representatives on the other, then the second dilution comes from a profound misunderstanding. Naively, a majority of the people believe, may always have believed, that there is a necessary connection between law and justice understood as fairness. That the State is concerned with delivering justice by means of policy and the law.

Neither the possessors nor the enforcers of law are under this illusion.

Bertrand Russell was of the opinion that “Law in origin was merely a codification of the power of dominant groups, and did not aim at anything that to a modern man would appear to be justice”. The late and unlamented J Edgar Hoover believed that “Justice is incidental to law and order”.

When the citizen looks at the law, even when she hopes to benefit from it, she is always looking upward, towards the apex of a pyramid of power, towards that small handful of people who, in effect, own the law.

This is the dynamic underpinning the well-known anarchist slogans: “Don’t vote, it only encourages them” and “No matter who you vote for, the government always gets in.”

Who makes the law? The naive believe that government makes the law, and instrumentally, though to a very limited extent, this is true. It is more useful, and in a broader sense more true, to say that the State makes the law, and we should always bear in mind that the incumbent government is no more than a part of, perhaps not always the most powerful component of, the State.

What is a law? Let us agree to speak of it for the moment as a directive arising from desire, embodied in language.

That desire, which is in essence a desire of governance, is a desire of the State.

The State desires that we refrain from murdering one another, for instance. In order to inhibit murder, the State frames a set of prohibitions in language, and a consequent set of punishments for transgressors of those prohibitions. These prohibitions make the transition from desire to instrument when once they are embodied in language.

The State may equally wish explicitly to permit some action or other, and from time to time, when it is considered desirable for one reason or another, the State will frame a law which permits some action, or calls something into being. These permissions, too, will appear in the world framed in, framed as a particular kind of text.

These texts, these directives, we call laws.

We are accustomed to thinking of laws as relatively simple exercises in language. A law says, for instance: You may do this or, you may not do this other...

I am not at all sure that this process is anything like as clear-cut and straightforward as it seems. In fact, these instruments in language are complex phenomena.

Firstly, in order to promulgate this law, the State must have the authority to do so. In our small Republic, setting aside the historical processes which brought the State into existence, this authority derives from the Constitution. It is by virtue of authority deriving from the Constitution that the State is empowered to speak to us in the laws.

To be sure, laws are proximately framed by the government of the day, which derives its immediate authority to make and enforce laws from the democratic election process, but the validating matrix of any given law is the Constitution.

Thus, the first test of whether or not a law is a true law is its Constitutionality; that is, the concepts and meanings which can be said to legitimately inhere in the law must be put through a linguistic process which tests whether or not there is agreement between the language of the law and the language of the Constitution.

A law, then, is framed in a particular voice; the law speaks to us *de haut en bas*.

Law must be founded on authority, and the language of lawgiving necessarily derives from precedent, by which I mean here linguistic precedent.

A law, to put it simply, cannot employ arbitrary language. More, it would be rare indeed if a law could be successfully framed in colloquial language — imagine, if you will, a law against murder which said, simply “Ah here, you can’t be going around killing people.”

The framers of laws are hedged around by inherited prohibitions, constrained by linguistic precedent, limited to a specific instrumental vocabulary, syntax and grammar.

Here is a major source of the unease most people feel in the face of the law. On the one hand, the State derives its authority under the Constitution from the people. Without their consent to be governed, the people owe no allegiance to the State, nor can the State presume to frame laws and expect them to have and take effect. The Constitution itself, which stands in back of the State in its framing of laws, derives *its* authority from the people, too. The Constitution, put to us as a proposal framed and expressed in words, takes effect with our assent as authority in language. Yet the language of law, as the language of the Constitution, might as well exist in a different universe as far as the daily language of the people is concerned. The linguist Saussure distinguished between two aspects of the use of language, aspects to which he gave the terms ‘langue’ and ‘parole’. ‘Langue’, to put it very simply, is official language, bourgeois and conservative language if you like. ‘Parole’ is the common speech of everyday life.

Law is always and everywhere ‘langue’. It aspires to the qualities of fixedness: of fixed definitions, custom-enshrined usage, precedent, singularity of meaning. Law, if I might put it like this, aspires to a kind of marmoreal perfection, it aspires to the condition of language carved in stone.

‘Parole’, on the other hand, is flux and swerve, a busyness of constant renewal, a thing of tones and shades of meaning, inventive, protean, multilayered, a hare jinking through a field as opposed to a horse dreaming of its apotheosis in bronze.

All societies ruled by law will continue to accumulate laws in the light of Zeno’s paradox, always approaching by smaller and smaller increments towards that unreachable state of perfection where everything that can be permitted has been defined and provided for, everything to be forbidden has been accounted for.

Laws, taken in their accumulation through time, tend towards a worldview where life can be framed and conducted in the light of fixities and definites — which is so much at variance with life as we actually experience it that there is and must be a constant necessary tension between life and law.

Law, as I am framing it here, is hieratic, and every hieros must have its servants and hierophants — in this case its enforcers and explainers.

Because law in our time has the status of constituted mystery, as religion once had, in many places still has, the language of law has become a reserved language, and must therefore have its interpreters if it is to be made intelligible to we the people. These interpreters, seen horizontally, evaluate one another in accordance with each individual’s skill at interpreting, parsing and deploying the language of the law. Because of the intrinsic stasis or tendency towards stasis of the whole system, there is also a vertical distribution of adepts, with the implicit assumption that those most versed in the law will occupy positions closest to the apex of the mystery, and that conversely those entering into the service of the law will do so at a level where the appropriate language must be painstakingly and laboriously acquired.

To those of us, on the other hand, who encounter the law as litigants or defendants, law presents itself as a closed system that needs to be interpreted for us and to us. In a real and even unremarkable sense, the language of the law is not our language.

So here is another plane of rupture: in the first place, the ‘langue’ of law is in retreat from the normal flux of being and becoming in the social domain. Now, and still in the social domain, we find an interpolated priestly caste who, interpreting the law to us, are also by virtue of the same process possessors of the special and particular domain of the law, a reserved mystery from which, sans interpreters, we are necessarily excluded.

Now the purpose of law is, of course, the ordering and regulation of society. You might say, law is the means by which social relations enter into the domain of form, and the opposite of form is chaos. Any one individual may, from time to time, be able to live with a certain amount of chaos in the day to day; we have long since learned that society without laws will rapidly descend into, as Hobbes puts it, “a ceaseless war of each against each.” This does not mean, however, that the boundary can ever be fixed or definite; we should think of it as a tideline, perhaps, a definite frontier whose line is always, to a certain small degree, in doubt.

It happens that social order in a normal social democracy is founded in law, and law is founded in, has its being in, language. The particular forms in language we use to contain the vital energies of lawgiving are few, and aspire to the immutable. Rhetorically, they tend to the declarative, and inside those parameters, towards the twin dynamics of permitting and forbidding. In this particular sense, the language of law is a kind of written and spoken organised withdrawal from history — in the sense that history as we live it consists of the unregulated and protean arrival of new facts from the future, and law is a permanent attempt to govern the present from the safety of the past.

You may well sense by now the uneasy ghost of Plato hovering offstage, rehearsing his lines in a worried murmur. Plato considered that reality, though he would not have used the term, is vertically structured, with the ideal forms at the top of the pyramid, the reality-quotient of phenomena becoming thinner and more diluted as we descend all the way down to the muddled level of the everyday. In Plato’s worldview our task as humans desirous of becoming enlightened is to work our way by reason and clarity of thought upwards out of the fog into the rarefied empyrean, the high clear air of the ideal forms.

The higher we get, of course, the closer we approach to the Ideal Forms, the more measured our thoughts and our language become. We seek, then, the absolute, the frozen, the fixed and definite, that which is out of time — and to the extent that humans are capable of participating in this sacred order, it must be by virtue of language that itself remains unchanging. You might say, in Plato’s world it is indeed possible, at least thinkable, to have the final word.

This divine achievement is, of course, reserved in our fallen world for the most exalted judges alone — but then as so many of their Lordships will tell you, like the Gods of Olympus their Lordships, axiomatically, are never wrong.

If it were merely the case that the language of law and the language of society are at all times in a state of tension, that would not be so bad, provided of course that this tension could be constituted as a living dialectic. This, unfortunately, is far from the case. The process is, in fact, asymmetric: laws accumulate, and as they accumulate, so the power of the State accumulates. As the power of the State accumulates, the social space for unencumbered action necessarily contracts. As the space for free action contracts, so parole turns mutinous, retreats from the sphere of the State, grows and mutates under pressure from the constantly-arriving future. Eventually, a schism is created between the State and its language, on the one hand, and the people with its multiplicity of paroles on the other. Just as asymmetry in wealth and power generates a social chasm, so, too, this social chasm is reflected in the gap between langue and parole, or, as it then becomes, the gap between the language of the State and the languages of the people.

I do not mean here that the language of the State is a professional dialect, of the kind which tends naturally to grow in any defined profession. The medical profession has its dialect, its shorthand, so, too, does engineering, shipping, policing, factory work, teaching and so on. It’s an inherent tendency in language, to exfoliate in specialist vocabularies and patterns, habits, of usage. But such occupational dialects are no more than paroles of kinship, subsets if you will of the wider shared parole of a given society at a given time.

That there is a dialect peculiar to all who work in the law, many of us have observed; and insofar as this is a normal, a conventional thing, it is a harmless phenomenon.

The problem arises when this specialist dialect forms a particular relationship to the language of law as deployed by the State. In effect, it leads to the emergence or creation of a caste whose private domain is the law — in brute terms, to a common interest between lawgivers and interpreters of the law which acts, over time, to increase the alienation of the citizen from the law, and hence from the State.

It comes to the point where a small but powerful consortium of interests come to identify themselves with the language of law, and hence to identify the law with themselves. This caste, I should say, is not confined to the lawyers, judges and lawmakers; as the State class grows, its language begins to metamorphose into the language of politics, more precisely the language of governance. Not the laws, themselves, to be sure, but those particular and specific habits of language — with this profound difference: where the language of law attempts to enshrine concrete concepts, defined and definable precepts and principles, the language of the State tends towards emptiness, towards an illusory ideal of the State as instrument and embodiment of achievable total control.

This growth outward from law continues and makes terrible the already evacuated relationship between personhood and the language of law; just as the actual citizen, the individual whose consent is notionally necessary for governance to have authority, is nowhere present as himself or herself in the codex of laws, so also that individual ceases to be real in the edicts of governance. Thus a citizen-patient in a hospital becomes a customer of the health service, and the civil servant, employed by us acting in common in order to serve us as citizens discovers that in fact she serves the State, and that the citizen standing before her is no longer a citizen-person but a customer, a client, a cipher in the calculus of State management.

What begins as a notion of necessary austerity in language develops a dark twin, a merciless and instrumental language of governance. This process, of course, is not confined to the upper echelons of the State, to the lawmakers and lawgivers: it attracts its adherents and cheerleaders — some of them, the Garda, say, the upper echelons of the Defence Forces and the upper reaches of the Civil Service, by reason of professional contiguity, but others, too, by reason of appetite or affinity, including political journalists and commentators, academics, and — not least of these parasites on power — persons of wealth and standing having a vested interest in closeness to the State.

I began by saying that law is a directive arising from desire, embodied in language. In our system, the desire may crystallise in one of three places: the courts may decide that an existing law is inadequate in its relation to a particular circumstance, and require of the Oireachtas that it remedy a deficiency by amendment, or that it cause a new law to be written to meet the circumstance; the Oireachtas, more practically the Cabinet, may cause a law to be written for a specific purpose in order that it be passed by the Oireachtas; or, in obedience to an obligation arising from EU membership or other international affiliation, the Oireachtas may cause a law to be written, and subsequently enacted, in accordance with or in fulfillment of that obligation.

The actual writing of the law, the embodiment of desire as a directive in language, is the task of the parliamentary draftsmen and women.

These men and women are heavily constrained by precedent, in other words by custom and tradition. They will, inevitably, turn inward to the language of existing law for their vocabulary, syntax and grammar. They will strive for a cold lucidity, they will strive to eliminate any and all possible ambiguities of meaning, they will reach for a language that has no home in our hearts or in our daily speech, a language whose permanent tropism is towards the imagined cold perfection of the idealised unchanging State.

This process takes place within the Civil Service, notionally a body of men and women employed, as the name implies, to serve the *civis*, that is, to serve the people. The more proper name, at this point in our evolution as a Republic, would be the State Service. In the *Irish Times* on 22nd April 2011, Mr. Eddie Molloy contributed a fascinating article, the core argument of which was that “The country desperately needs a technically qualified, ethical, accountable public service, one that will place the public good ahead of the preferences of the incumbent government whenever officials are faced with hard choices between the two.” Mr. Molloy, as he plainly states, does not believe that we have such a service at present.

I agree with him, of course, as any sane person would, but I do not underestimate the difficulties that root-and-branch reform will encounter should we ever embark on that course, not least the difficulty of transforming the habits of speech and writing, by which I mean the habits of thought, which permeate the State Service.

And these habits, this habitual stance in language, are deep-rooted. In 1975, the poet Michael Hartnett, in Section 4 of ‘A Farewell to English’ wrote:

So we queued up at the Castle

in nineteen-twenty-two

to make our Gaelic

or our Irish dream come true.

We could have from that start

made certain of our fate

but we chose to learn the noble art

of writing forms in triplicate.

With big wide eyes

and childish smiles

quivering on our lips

we entered the Irish paradise

of files and paper-clips.

Such is the flexibility, the multivalence of language in the service of poetry that no reader will take this as a literal description, but few will fail to recognise what Hartnett describes and most of us will understand very well what he means. The “Irish paradise of files and paper-clips” is the Four Courts as much as it is the Department of Finance; it is in any case a vivid invoking of the State as we the citizens encounter it.

Hartnett’s poem is, of course, cast in a very different register of language, a register in which allusion, affective use of words, colour and tone are deployed to evocative effect as spurs to the imagination. His language is, in a word, passionate.

Aristotle tells us that “the law is reason free from passion”, and just as we wish our laws to be reasonable, so also we would wish them uninflected by some transitory passion. Our laws, almost all of them, are at the very least reasonable — and therein lies a considerable difficulty, for, as Aristotle also reminds us: “Whereas the law is passionless, passion must ever sway the heart of man.”

Some passions are of the moment, and often it is a good thing that we do not take steps to act on those passions in the civic arena. But there is such a thing as shaped and controlled passion, there are passions that need to be actively encouraged, and constantly renewed — the passion for justice, for instance, for equity, for liberty.

Our problem is this: how do we frame our laws and governance so that the dry bones of the law and the day-to-day tedium of the State’s ordinary business are constantly animated by these and other desirable civic passions?

In a settled society, provided the laws are reasonable and provided the State acts always within the law, momentary random dissatisfactions can be subsumed into the overall sway of things.

But, as we build up the corpus of law and the habitual behaviour of the State on one the hand, dissatisfactions begin to accumulate on the other side of the scales in equal measure, so that the State tends inevitably to withdraw farther and farther into its citadel of language, into a condition of mind engendered by the increasing remoteness of its perfected language — and the farther the State withdraws, the more we begin to distrust it.

In confronting the State through its laws and in that denatured language of governance which derives from the dessicated language of the laws, the citizen is denied not only his naive belief that law, and hence the State, is concerned with justice; he is denied, perhaps more fundamentally, a relationship with the State in which passion can find expression in dialogue. He or she finds that there is no pulse at the heart of the State, no governing passion restrained by moderation in language. Where there was once the fiery and passionate dream and promise of a Republic, now there is only an arid landscape, picked over by weary souls who, perhaps unknowingly, are constantly tempted genuinely to despise us for our native dreams — above all, for our naive belief that the State exists for the promotion of the common good.

When Hartnett says:

“We could have from that start

made certain of our fate”

he is saying a great deal. Among other things he is reminding us that our infant Republic, at the handing-over of power, could have chosen differently, could have looked beyond the inherited practice of civil administration, the inherited apparatus of law and its customs of governance; but of course we did no such thing. We took on, unquestioned, the burden of the common law as it had evolved in Britain, with all its precedents and preconceptions, never once asking if this was an appropriate tradition for our people, in our time. Never once asking if this was the proper frame for our future. We took on the British civil service tradition, not just in its forms of management and administration but in its entire suffocating weight of custom and practice. The beggars, to invoke Yeats, changed places indeed, but for the majority of the population the lash went on. Now there may well have been sound pragmatic reasons for doing this as a temporary measure, if only to buttress a fragile new Free State by providing it with an administrative apparatus in a time of transition, in a time of war. But of course this isn’t what happened. We embraced the Irish paradise, its files, paper-clips and language, with relish. And stopped there.

For the vast majority of people, the harp replaced the crown on police stations and on the letterheads of the State — and that was all. There was no pretence that the State would be founded on consultation with the people, no attempt to conduct and direct a broad-ranging first principles public debate on what form the State should take, what values its laws and its legislature should embody and profess. The passion of revolution, such as it was, found itself quietly extinguished in a decisive manoeuvre by a managerial class many of whom were already waiting and poised in the wings.

When I say with Hartnett that “we embraced the Irish paradise”, I should

perhaps qualify that ‘we’; the truth is, of course, that with residual exceptions, the architects of our new State were in the main second-generation revolutionaries and enduring functionaries of the previous administration. We forget or elide a simple but profound truth: the War of Independence was largely conducted by the urban and rural poor, officered and led in the main by the lower middle class. The lawgivers and managers of the new Free State were cut from a different cloth; they edged out the rough men with a practiced ease, as is always the case. First come the dreamers and poets, and the poor who do the fighting and dying; then come the smooth men, the silky and silken voiced judges and lawyers and administrators. And, of course, in back of these respectable men, the hard-eyed executioners when they are needed.

In time, those of the revolutionary generation who survived into politics had the hard edges sanded off them by the ceaseless murmuring abrasions of what was in essence an unaltered and seemingly insurmountable process of governance. As the Normans became *Hiberniores Hibernii*, so too the men and women who had overthrown imperial rule made themselves comfortable in the corridors and in the assured language of enduring functional power. Prisoners of the unaltered and unaltering State.

There was, there remains to this day, a sense of helplessness at the heart of government. As if stasis were fore-ordained and inescapable.

In his magnificent book-length poem *The Rough Field*, published in 1972, John Montague sets up a kind of counterpoint to his own words, a recurring series of quotations that question and inflect his own imaginings.

Two of these are set one above the other, by way of introducing the section entitled ‘Patriotic Suite’, first published by the Dolmen Press as a pamphlet in 1966:

The first is from poet and ethnic cleanser Edmund Spenser, speaking of Ireland:

“They say it is the Fatal Destiny of that land, that no purposes whatsoever which are meant for her good will prosper.”

It is a perception to chill the blood, inasmuch as its prophetic power, whatever its provenance, rings as true to day as it did during the barbarous Elizabethan conquest.

Spenser, who gives no authority for this fatalistic observation, was of course sent to rule over a sizable portion of the province of Munster, and did a pretty good job of ensuring that neither the good nor the people prospered under his steely eye.

The second quotation is from Friedrich Engels:

“The real aims of a revolution, those which are not illusions, are always to be realised after that revolution.”

If there were revolutionary aspirations in the Rising and in the War of Independence, I would argue that they were quickly suffocated in the lore, language and precedents of that *mentalité* of governance we so easily and unquestioningly took upon ourselves.

It is a truism, and often by recent commentators held against them, that the revolutionaries of our proto-Republic were visionaries and romantics — as if this were self-evidently a bad thing. Insofar as visionaries and romantics embarked on revolution are more likely to be driven by song, story and poem than by political analysis, there is a certain sting in the charge. But without Davis and Ferguson, and behind them Ó Rathaille, Ó Súilleabháin, Ó Bruadair and the anonymous makers of the song tradition, how should we have risen, how should we have struck, as we did, for liberty? Where, in a phrase, should we have found that passion of the heart? The great singer Frank Harte once observed, that the winners write the histories, the losers make the songs — without those songs, poems and stories, how should we have remembered ourselves, how should we have formulated a better dream of who we yet might be?

It is a pity that Pearse, McDonagh, Collins, de Valera and Markievicz were not well-versed in the theoretical projection of the post-revolutionary future; it is a tragedy that the only revolutionary theorist among those freedom fighters came to his end prematurely, strapped to a chair in the execution yard of Kilmainham Gaol.

Well, our Republic was not arrived at by a process of cold reasoning. Yeats may well have nurtured, for a brief while, the hope that England would keep faith, and we have many among us who persist in that fond delusion still, but the Rising happened, the War of Independence happened, and we are the direct inheritors of those irrevocable, inescapable passionate gestures.

Julius Caesar had sage advice for revolutionaries: “If you must break the law, do it to seize power: in all other cases observe it.” Ireland’s tragedy is that, having broken the law to seize power, we immediately reinstated that very law we had overthrown. There is no more poignant symbol of this self-defeating revolution than Collins commanding those borrowed batteries that shelled the Four Courts. We live with that legacy still, and whether or not we aim to reform or refound our Republic, we would do well to square up to this monumental fact.

In Section 4 of ‘a Patriotic Suite’ Montague celebrates the nobility of the founding dream:

“Symbolic depth charge of music

Releases a national dream;

From clerk to paladin

In a single violent day.

Files of men from shattered buildings

(Slouch hat, blunt mauser gun)

Frame the freedom that they won.

The bread queue, the messianic

Agitator of legend

Arriving on the train —

Christ and socialism —

Wheatfield and factory

Vivid in the sun;

Connolly’s dream, if any one.”

But Montague is too good, too true a poet, to leave it at that. He goes on in the third and final stanza to say this:

“All revolutions are interior

The displacement of spirit

By the arrival of fact,

Ceaseless as cloud across sky,

Sudden as sun.

Movement of a butterfly

Modifies everything.”

The revolution that we never had is that interior revolution. Because we did not change in our spirits, nothing of any substance was ever displaced by the arrival of a new set of facts. We failed, if I might put it very simply indeed, to change our minds.

We failed to change our language.

In the poems and the songs and stories there are more durable maps of memory than in all the edicts of the State. Perhaps we need to find new ways to re-insert these memories in our narrative of who we most deeply and truly are?

I would not underestimate the difficulty. In her poem ‘A Child's Map Of Dublin’, 1991, Paula Meehan’s opening stanza charts an exclusion process that has only accelerated since Montague wrote ‘Patriotic Suite’:

 “I wanted to find you Connolly's Starry Plough,

the flag I have lived under since birth or since

I first scanned nightskies and learned the nature of work.

'That hasn't been on show in years,' the porter told us.

They're revising at the National Museum,

all hammers and drills and dust, conversion to

an interpretive centre in the usual contemporary style.”

I believe that our present crisis stems from a double failure: the failure of the revolutionary generation to establish a true Republic, and our inevitable consequent ongoing failure to imagine a new State from inside the facts and the language of the present State.

Hannah Arendt says:

“Predictions of the future are never anything but projections of present automatic processes and procedures, that is, of occurrences that are likely to come to pass if men do not act and if nothing unexpected happens; every action, for better or worse, and every accident necessarily destroys the whole pattern in whose frame the prediction moves and where it finds its evidence.”

Change, in other words, meaningful change, will require some considerable accident or some profound, history-breaking action.

As with predictions, so with proposals: projected solutions couched in the present language of politics can at best offer a kind of battlefield triage to keep the patient alive for the moment. The real problem is to find a mould-breaking gesture, a departure into some new language which offers a whole new life, perhaps a whole new kind of life, for the patient.

If we are to imagine a new Republic, we are constrained to do so from outside the walls of the State — and we would do well to remind ourselves of Bob Dylan’s useful phrase: “To live outside the law you must be honest.”

The language of public life in Ireland today is a language of subservience to authority when it is not a bullying on the part of the State. Cringing before the displeasure of our new colonial masters, our governments have inflicted on us suffering and sacrifice into the fourth or fifth generation so that a political and banking system brutally indifferent to our needs and desires may be saved from its own excesses.

Dress it how you like, neither the last nor the present government can credibly claim that its first, governing loyalty is to the people of Ireland.

I think again of Michael Hartnett, and his excoriating, prophetic vision:

“I saw our governments the other night —

I think the scene was Leopardstown —

horribly deformed dwarfs rode the racetrack

each mounted on a horribly deformed dwarf;

greenfaced, screaming, yellow-toothed, prodding

each other with electric prods, thrashing

each other’s skinny arses, dribbling snot

and smeared with their own dung, they galloped

towards the prize, a glass and concrete anus.

I think the result was a dead heat.”

Not, I agree, the language of statecraft or diplomacy — but a living language, a language capable of telling and carrying truths. A language far closer to the truth of what is than any number of government press releases, or post-ministerial mea culpas.

I doubt that I need to, but perhaps I had better make it explicit that I am not suggesting for a moment that the language of law can ever be spoken or written as poetry is spoken and written. I do want to say, forcibly, that unless the language of governance breaks with the dead weight of the language of law and moves decisively closer to the fully inclusive paroles of song, poem and story, then the gap between governor and governed can only and surely must become that deep chasm out of which chaos will come swaggering one dark night.

Poetry is, among other things, passion embodied in living language; there is room for reason, and for unreason, too, but above all else poetry is disciplined language in the register of human passions. Poetry is the living language raised to the power of imagination.

Is it beyond us to found a dialogue between State and people in a living language?

The poet’s business is with the dignity of the human soul in language, and whether it be the hard tyranny of persecution or the soft, insidious tyranny of willed indifference, the one thing government from above will not abide is language that insists on the irreducible human dignity of the citizen.

If the language of governance, and hence the practice and obligations of government, derive from the inherited corpus of law, and if the language of law derives from and gains its authority from the language of the Constitution, and if you grant me that piecemeal reform is little more than a holding action in the face of looming chaos, then our task is a very simple one: we must re-write the Constitution.

We must change our language.

It has been done before, in a post-colonial State; it has been done, it is being done, in our time.

In post-apartheid South Africa, they faced up to the challenge of a new jurisprudence as a concomitant of facing up to imagining a new politics.

In a landmark case concerning the issue of whether or not certain benefits should be extended to Mozambican refugees, Justice Yvonne Mokgoro introduced, in parallel with the Kantian ideal of ‘the Kingdom of Ends’, the concept of *ubuntu*. The word translates, more or less, as humaneness, according to the scholar Drucilla Cornell, on whose description of that landmark judgement I am drawing here. Cornell tells us that Mokgoro Stated the following:

“Generally, *ubuntu* translates as *humaneness*. In its most fundamental sense, it translates as personhood and morality. Metaphorically, it expresses itself in *umuntu ngumuntu ngabantu*, describing the significance of group solidarity on survival issues so central to the survival of communities. While it envelops the key values of group solidarity, compassion, respect, human dignity, conformity to basic norms and collective unity, in its fundamental sense it denoted humanity and morality. Its spirit emphasises respect for human dignity, marking a shift from confrontation to conciliation.”

In a later part of the judgement, Justice Mokgoro goes on to say:

“In the western cultural heritage, respect and the value for life, manifested in the all-embracing concepts of *humanity* and *menswaardigheit* are also highly priced.”

Cornell brings two towering figures to our attention, Justice Mokgoro and the former Constitutional Court Judge, Justice Laurie Ackermann, champion of the proposal that human rights are grounded in the moral idea of dignity, itself an idea he derives from German idealism. Between them, if I understand Cornell here, they can be said to propose a synthesis, a co-existence, between the rights of the individual and the rights of community; both ideas, says Cornell, “appeal to the principle of humanity as the basis of legality.”

It is not without significance, I think, that this new jurisprudence feels free to draw on the plurality of languages available to the new State. It is not without significance that the new South Africa is respectful in its postures towards both the old and the new, towards high culture, including elements of the inherited legal culture of the former State, and towards the demotic cultures of the powerless.

The choice, as these learned Judges recognise, is to make it new or to fall back into the disempowering language of the former regime.

To step outside your language is to step into a particular liberty; it is also to experience that vertigo, familiar to the poet, which Michael Hartnett expressed when he wrote: “I have poems to hand, it’s words I cannot find.” I would not deny the difficulty of what I am proposing. The language we employ in all its registers is overwhelmingly an inherited language, and the very fact that the language of law endures as it does suggests that to some extent at least it possesses an adequacy, an aptness for its purpose, that we should take very seriously into consideration. It is not as if, by will and *fiat*, we can imagine a wholly new language into existence — but that is by no means what I am suggesting. The task is to find and imagine a register in language that steps between liberty and vertigo, that conserves what serves and provides, it may be, for states of mind and being that we are only beginning to imagine. Above all else, perhaps, a register of language that embodies and renders active a reconciliation between passion and reason.

So, very simply, we must find the words. The old words will not do. The old language must be mined and sifted for what is good in it, and there will be a great deal, I am sure. But, only so much of what has brought us here will serve.

Lawyer and politician, poet and citizen, we face a common task: To build a right Republic we must find the right words.

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