

'The Golden Calf': Irish Crime and the Deconstruction of Irish Society

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That the financial crisis of 2007-2008 was a matter of global import is by now very much a truism. Banks collapsing, the sub-prime mortgage market in the USA becoming toxic and a world-wide economic recession were the most notable effects of the property bubble and the easy credit conditions that enabled a feeding frenzy before the whole financial structure imploded. The effects of this crisis on Ireland, both as an economy and as a society, were similarly drastic. The period of the Celtic Tiger, when Ireland was the poster-child of global capitalism and property expansion shuddered to a halt. New estates were replaced by ghost estates; immigration was replaced with emigration; banks which had been seen as creating a new economic paradigm were now the subject of bail-outs by the taxpayer and miniscule unemployment figures became huge again. Ireland, as a nation, and as a society, was transformed, and not in a good way. The subject of this chapter will be an investigation, through cultural lenses, of the causes and consequences of the Celtic Tiger, and the legal and societal ramifications of that collapse. I use a cultural as opposed to an economic or political frame of analysis because I feel that the consequences for Irish society are far deeper than those for the Irish economy, drastic indeed as these have been. I feel that a cultural perspective can cast a deeper light on the situation.

So, I would begin with two films, both concerning a pivotal moment for the rule of law in Western Culture. In Cecil B. de Milles's *The Ten Commandments*, made in 1956, Moses, played by a massively bearded Charlton Heston, comes down from Mount Sinai to see the Israelites cavorting around a golden calf. Shouting '[t]here is no freedom without the

law', he smashes the tablets off the golden calf, and makes the point that 'God has set before you this day his laws of life and good and death and evil' and '[t]hose who will not live by the law shall die by the law' (DeMille). This is an apocalyptic scene, accompanied by much climactic music and flashes of lightning. Some twenty five years later, in *History of the World Part 1*, an equally impressively-bearded Brooks, as Moses, is given three tablets by the Lord, who says 'I shall give you my laws and you shall take them unto the people', and he then goes to his people crying '[t]he Lord Jehovah has given unto you these fifteen [whereupon he drops one of the tablets, which promptly shatters] 'Oy ... ten! Ten commandments! For all to obey!' (Brooks).

Both of the filmic representations of the codification of the commandments, one serious and one comic, have strong epistemological implications for the role of law in society. In each case, a certain number of practices, which hitherto had not been subject to sanction, were now deemed to be unlawful, or to be crimes, and their committal would result in punishment. There is no debate, reason, or intersubjective communication about these: there is only the injunction to obey, an injunction that is grounded on the supernatural and transcendental origin of these laws. Writing about law, Jacques Derrida makes the point that every law originates in an act of force:

How to distinguish between the force of law [*loi*] of a legitimate power and the allegedly originary violence that must have established this authority and that could not itself have authorized itself by any anterior legitimacy so that, in this initial moment, it is neither legal nor illegal, just or unjust. (Derrida 234)

This originary force is what each Moses, in each film, brings to the Israelites: law is the point of connection between the transcendent and the immanent, as the title of Derrida's essay makes clear: 'The Force of Law: The Mystical Foundation of Authority' (Derrida 230). The quotation is from the work of Blaise Pascal, via Montaigne, another thinker about the nature

and epistemological status of law (Pascal 104), and it refers to the initial founding moment of law, when an act occurs which is outside of any legal system as that system has not yet been inaugurated. The aporia or contradiction here is that every single law must be inaugurated by an act which itself would be outside the systemic code of that law.

In the case of the burning bush, the source of authority is indeed mystical and as the source of law, it brooks no debate – the injunction is to ‘obey’ as opposed to critique or discuss. As Jean-Jacques Rousseau would have it, Gods are required to ‘give men laws’ (Rousseau 163). The idea of laws being given by a God is one that provides a sense of certainty about the origins of the laws, and about the correctness of the decision to brand certain practices as crimes, as the God-like origin of laws ‘are invoked in order to deny the inescapably arbitrary essence of foundations’ (Sokoloff 343).

Thus, the source of the law, in both films, is God. Significantly, however, the burning bush in *The Ten Commandments* is voiced by an un-credited Heston himself, so at a sub-textual level, the encounter is a performative act of Moses talking to Moses. It is as if the society needs warrant from outside itself to decide which actions should be named as crimes, and which ones are societally acceptable, but the performative of the film undercuts this as it is a very-much human voice talking to itself that actually originates the laws. The idea of this transcendent origin is to show that the law is fair and free across all groups of society: hence the term equality before the law. However, this idea is very much a rhetorical flourish, as while there may be *de jure* equality before the law, at a *de facto* level of singularity, this is not the case. It is very often not the voice of God, but the voice of a socio-cultural elite, who prescribe the laws which will govern a society, and conversely the actions which will be deemed crimes. Thinkers like Louis Althusser, have probed the way in which society uses discourses like law as a way of ensuring societal compliance, seeing the legal apparatus as

part of the Repressive State Apparatus (RSA), and the ideological State Apparatuses (ISAs), of society.

In *Lenin and Philosophy*, he sketches out these, seeing the former as the 'Army, the Police, the Courts, the Prisons', all aspects of a single Repressive State Apparatus which 'functions by violence' (Althusser 143). The Ideological State Apparatuses, on the other hand, are plural and consist of different religions, different school systems, the family, the legal system, the political system, trade unions, the media and culture. Significantly, he sees only one real point of intersection, noting that 'the Law belongs both to the (Repressive) State Apparatus and to the system of the ISAs' (Althusser 143). For him, the law is a form of social control: crime is defined as anything that is against the interests of the hegemonic societal group, and laws are pragmatic systems designed to punish those in society who have not been ideologically structured as obedient subjects, because 'ideology hails or interpellates individuals as subjects' (Althusser 175). Thus for Althusser, and other thinkers like him, laws are far from mystical. Instead, they are societally-contextualised and their authority is not mystical but very much man-made: his focus would be less on the burning bush than on the notion of Heston talking to himself, and less on the sanctified number of laws (ten) and more on the arbitrary nature of this number, as comically indicated in the Mel Brooks film.

From this perspective, the ten commandments were written at a time when the Jews were nomadic, and when the prohibitions against contact between men and women (the norm in the ancient world) would have been very hard to enforce. Hence two of the commandments refer to adultery and the coveting of one's neighbour's wife, so clearly such acts were problematic in the close confines of a large migration, and the system reacted to this by creating laws to make such contacts crimes. In the context of such a nomadic existence, quarrels over sexual matters would have the added danger of splitting the community and so were placed firmly under interdict. The first and second commandments would clearly be a

response to the Israelites' adoration of the golden calf. The notion that the commandments came from god attempted to obscure the immanent and practical origin of these laws: when a people had no land or territory with borders to define them, they needed a written set of parameters to differentiate them from their racially similar neighbours. Laws, as such, serve the political purpose of uniting a people into a nation, as laws and religious practices, which generally have laws as part of their systemic structure, are ways of differentiating between one group and another.

Thus, the first three commandments bind the Jews together in terms of worship and would differentiate them from their largely polytheistic neighbours. In this context religion has become an identificatory practice, and any deviation from the national and communal norm has now become a crime. The act of worshipping a golden calf might not seem criminal to a 21st century observer, but to a migratory people, intent on forging a sense of racial community, but lacking a territory where such a national identity could be defined within physical borders, a monotheistic religion was a strong signifier of national identity. In this sense, the laws and commandments became metaphysical borders which separated self from other, and gave a sense of community to the people. For a Hittite or Philistine or Egyptian, polytheistic worship was the norm; for the Israelites then, monotheism acted as a strong signifier of communal and national bonding with each other and crucially, of difference from their neighbours. Any act which attenuated this difference threatened the incipient national identity and so became a crime, a very Jewish crime.

The other seven commandments point to behaviour which would damage this sense of communal identity, by giving rise to disputes, feuds and bad feeling. Read in this light, laws are potent signifiers which point to the real of what makes a society a cohesive group. When trying to define a group identity, the acts that are judged to be in contravention of this identity are often far more eloquent signifiers of the philosophical and ethical nature of the

community than any aspirational or political rhetorical statements. What a society considers a crime tells an awful lot about the nature of that society. In this context, the word 'crime' has an interesting etymological history. It derives from Middle English (in the sense 'wickedness, sin'), via Old French from Latin '*crimen*': 'judgement, offence', based on '*cernere*': 'to judge' (*OED*). Given the etymological roots of the word, clearly crime is not something that is obvious or given: there is a need to judge whether actions contravene the legal system, and when that system changes, so too does the definition of what constitutes a crime. Any attempt to see crime as a fixed concept would seem to be doomed to failure, and that is ever before one looks at the specifically 'Irish' aspects of crime. So, rather than itemizing different crimes, or looking at the instance of crime, this essay will analyse the epistemological structure of crime in Ireland, and will then extrapolate from this how crime acts as a very potent index of how Ireland functions, politically, philosophically, ideologically and culturally as a society. The notion of judgement can really only be studied by relating the act to the system. In a sense, the epistemology of crime acts as a contradictory definition of the core values of a nation. It is the ultimate signifier of belonging to a group, as those who are in power can use the full force of law and persuasively deem this to be justice in action – the act of making the golden calf is not a crime whereas the act of worshipping one is, and deemed worthy of the ultimate punishment. There are strong resonances here of recent Irish events.

All nations espouse a foundational rhetoric wherein they set out the philosophy of the country, and this philosophy is later enshrined in various legal and political structures. Political structures include the party system and the electoral system, and it might seem that one could arrive at a clearer picture of the ethics of a nation by an analysis of political parties and election manifestos. However, experience has taught us that what is enshrined in a political party's constitution is very often far removed from the real of the country's experience. The major Irish political parties all have commitments to restoring of the Irish

language, but in effect this is not happening in the Ireland of today. The same can be said for pledges to reunite Ireland, still a rhetorical aim if not a realistic one. However, if one examines what acts or practices are seen as crimes in a society, therein lies a very strong indicator of the nature, ethical stance and structure of that society. Thus the anti-Jewish Nuremberg laws of Nazi-Germany, or the apartheid laws in South Africa, provide strong signifiers of the core values of those two states, and more specifically, they provide that parallel sense of structuring a community through legal borders. To be a German in Nazi Germany was legally not to be a Jew; to be South African was legally not to be black. So there were specific German crimes and South-African crimes which spoke to the nature of those societies and to issues of belonging and what Martin Heidegger would term *Versammlung* or gathering (Heidegger 160). He saw this gathering as a central imperative in nation-building, and judging what actions were crimes was an important aspect of this process.

Similarly, the criminalization of homosexuality in Ireland demonstrated how the ethos of one church pervaded the public sphere of Irish society, before this law was repealed in 1993. Prior to that year, to be Irish was to be Catholic and was not to be homosexual. So homosexuality was then an Irish crime. Just as Irish society judges which actions are crimes, so this judgement allows a reader to similarly judge the nature of that society. Ireland, at least in name, is a republic, and the core values of separation of church and state, and of a parallel separation between the different arms of government, are central to that definition. Indeed, the national rhetoric would espouse the nature of Ireland as a republican society, but the judgement as to what constituted a crime would seem to deconstruct that rhetoric.

To be black, Jewish or gay, in very specific societies, at very specific times, was to be subject to laws and punishments which we would now see as discriminatory in these countries at a particular point in time, but this was not the case in neighbouring countries with

different legal systems; nor is it the case in those countries now. So the sense of what a society sees as aberrant probably gives us a clearer, picture of the nature of that society. The relationship between crime, punishment and the epistemology of the politics of a nation is one wherein Derrida's sense of the indeterminacy of the origins of law is enacted. This is the aspect of crime which this essay examines, looking at how the judgement of Irish society on what actions are crimes and what actions are not, speaks to the very essence, or the real, of that society. For the judgement of what constitutes a crime is a judgement that tends to be kinder to those at the top of the pyramid than it is to those at the bottom.

Thus when Moses comes down from the mountain, some three thousand of the Israelites are killed by the Levites, but his brother, Aaron, who made the Golden calf, remains unpunished. In this case, adoring the golden calf is a crime, but its manufacture clearly is not: 'So all the people took off their earrings and brought them to Aaron. He took what they handed him and made it into an idol cast in the shape of a calf, fashioning it with a tool' (Exodus 32: 3-4). The real here is that the nation was under threat and to save the nation, three thousand people had to suffer punishment for the crime of adoring a false god. Interestingly, in the context of Derrida's idea of an originary act which is outside the law as something which is foundational of the law, the first commandment had not yet been promulgated by Moses so, strictly speaking, it was not yet a crime to 'have false gods before' the one god of the Israelites. Another aspect of the real of this incident is that the brother of the leader of the nation, while technically subject to the law, was never going to suffer the fate of the three thousand dead worshippers: what is a Jewish crime for some, clearly was not for others.

I am using the term 'real' here in the sense coined by the French thinker Jacques Lacan, who notes that most of our dealings with others are conducted through language, or what he terms the symbolic order of meaning, where words signify according to accepted

cultural codes. Due to legal and societal constrictions and strictures, information is very often not fully signified in the symbolic order. For Lacan, the 'real' refers to the world beyond language, to that which cannot be symbolised in language, it is 'what resists symbolisation absolutely' (Lacan *Seminar 1 Freud's Papers on Technique 1953-1954* 66); it is therefore that which is 'without fissure' (Lacan *Seminar 2 the Ego in Freud's Theory and in the Technique of Psychoanalysis 1954-1955* 97). It hints at what lies beneath the symbolic order, things that have an effect, but that cannot be said: 'when discourse runs up against something, falters, and can go no further ... that's the real' (Lacan and Copjec xxiii).

For example, when one is being given a new idea by one's boss, even if the idea is blindingly stupid, the symbolic order response is required to be positive, and possibly even gushing, assent. In reality, outside the office door, the real truth comes out, but this is a truth that is seldom to be found in the minutes of the meeting. Individuals, groups and society as a whole, repress the real in favour of the symbolic order. The symbolic is made possible because of the acceptance of the Name of the Father, those laws and restrictions that control both desire and the rules of communication: 'it is in the *Name of the father* that we must recognize the support of the symbolic function which, from the dawn of history, has identified his person with the figure of the law' (Lacan *Écrits: The First Complete Edition in English* 67). The Name of the Father is invoked through the commandments handed down by God the Father, and the patriarchal associations of the deity are clearly an attempt to transpose the values and responsibilities of the family onto a socio-political platform. While laws may not come from god, they do come from the hegemonic ruling group in society, and since time began, the associations between law and religion as twin arbiter of power in societies have been strong and lasting. In this sense, they often do embody the will of the patriarchal power at the top of the pyramid – and can be seen as the real the name of the father, of authority and of power. Thus the real of the inception of the Ten Commandments

is a political and familial; power-dynamic, as opposed to what is set out as a connection between the immanent and the transcendent.

To exemplify what I mean by the real in an Irish context, I would like to look at the events of September 29th, 2008, when the chief executives of Allied Irish Bank and Bank of Ireland looked for a bank guarantee from the Taoiseach, Brian Cowen, and the Finance Minister and a small group of advisers and higher civil servants. This guarantee was based on the idea that the banks had a liquidity issue but was fundamentally solvent; hence it was granted. All deposits were guaranteed unconditionally, and this was sanctioned by an incorporeal cabinet meeting in the small hours of that morning, where the remainder of the cabinet were contacted by phone and confronted with a *fait accompli*. What this meant, in actuality, was that the taxpayers, the private citizens, the ordinary people of Ireland, under the guise of their own relatively small savings accounts of up to 100,000 being protected, in fact were now burdened with the debts of the banks, debts which, it would soon become clear, were cataclysmic.

The fact that senior bankers at best did not know the true state of the liquidity of their institutions on the night of September 29th, when they met the then Minister of Finance Brian Lenihan, and at worst blatantly lied about the state of the banks, has never really been addressed. They spoke of a liquidity crisis when in fact what was at issue was a solvency crisis. Regulation was non-existent, a point made in a report by Klaus Regling and Max Watson: 'it appears clear, however, that bank governance and risk management were weak – in some cases disastrously so' (Regling 6). Given the genre involved here, that of a government report, and the generally nuanced and carefully-chosen symbolic tenor of such discourse, this is a damning indictment of the structures of management in private banks, specifically Allied Irish Bank, Bank of Ireland, and Anglo-Irish Bank. This final bank was the cause of much of the problem due to its reckless lending, which resulted in a €1.5 billion

bail-out for it and full guarantees for all bondholders, secured and unsecured, in all banks. Ultimately, the guarantee for Anglo-Irish bank alone would cost the Irish taxpayer some €30 billion. The result was national bankruptcy, the need for a financial bailout from Europe, and a rise in unemployment to some 400,000 people. Four to five years later, the Irish public sphere is still shell-shocked. In the light of this behaviour, Alain Badiou's gnomic remark that 'the State does not think' (Badiou 87) becomes clearer. By this he means that the state seldom has a philosophy; instead it has a pragmatic system through which it enacts the necessary performatives which make it a state. And as no Moses has come down from the mountain to show what law has been broken, none of these acts has been deemed a crime.

Yet on the night of September 28th, these men denied that the crisis was one of solvency, stressing that instead, their problem was liquidity. If they knew differently on that night, then that is fraud, and there are laws which can be invoked to indict and bring to trial anyone who is fraudulent in financial matters; if they did not know, that is gross incompetence, or criminal negligence, and there are procedures which can also be invoked to deal with that. If fraud is proven, there should be criminal sanctions; if incompetence is proven, there can be financial sanctions. However, five years later, there has been no charges, three enquiries have reported on aspects of the bailout and the banking crisis but there is only one case soon to be before the courts, that of Sean Fitzpatrick, the former CEO of Anglo-Irish bank. Two other members of that bank are also due to face charges, but as yet, there are no indictments. There seems to be serious doubt as to whether crimes have been committed, doubt that has not been assuaged by the three reports that have been held to date on the crisis:

The Irish Banking Crisis Regulatory and Financial Stability Policy 2003-2008: A Report to the Minister for Finance by the Governor of the Central Bank (Honohan); A Preliminary Report on The Sources of Ireland's Banking Crisis Klaus Regling and Max Watson (Regling);

Misjudging Risk: Causes of the Systemic Banking Crisis in Ireland: Report of the Commission of Investigation into the Banking Sector in Ireland (Nyberg).

A fourth report will be added to these as in the Autumn of 2013, the government is in the process of setting up a bank enquiry, which will not be binding, and which cannot make judgements. Given the pending court-cases against members of Anglo-Irish bank, it is highly unlikely that these people will be required to give evidence, and already Jean-Claude Trichet, former president of the European central bank, has said that he will not come before the enquiry. So if we are expecting answers from the fourth report that we did not get from the other three, I am afraid we are set up for disappointment.

The core problem here is deciding if laws were broken: if any of the actions of the bankers was, indeed, an Irish crime? It is a situation that has associations with the pre-Commandment lifeworld of the Israelites: actions taken may well be deemed wrong, but they have broken no law as set out. So what does this tell us about the epistemology of Irish crime, and by extension about the epistemology of the Irish body politic? The point at issue here is that the judgements which a society makes as to what constitutes a crime, and what does not, can speak to what I would term the 'real' of that society.

Like Althusser, I would contend that laws are always motivated by a desire for one group to achieve hegemony over society; even though laws are generally seen to be created almost *ex nihilo*, as evidenced by the two filmic representations of the Ten Commandments. In Ireland, during the property boom, the review of rents only ever resulted in a higher figure being set out, and because this helped to bring in more taxes and because the economy was booming, this was seen as part of the law of supply and demand. However, with the onset of recession, and the very sharp decline in consumer demand and retail spending, businesses could no longer afford to keep renegotiating upward and this issue became a key driver in unemployment and business closure. Consequently, before the last general Election For

example, in the Irish general Election in 2011, Fine Gael, under its 5 Point plan, undertook to: 'overhaul public procurement so that small companies can bid for business, and give tenants the right to have their commercial rents reviewed irrespective of any upward only or other review clauses' (FineGael 4). Their coalition partners, the Labour party, made a similar commitment, as they promised to:

Enact the Labour Party's legislation to abolish upward only rent reviews for all commercial leases, as a matter of urgent priority for the Dáil.

In the interim, appoint a Commercial Rents Ombudsman with some powers currently only granted to an Examiner. This Ombudsman would have the power to adjudicate on rents that have the potential to cause a business to fail, without undertaking a costly court process. (Labour 21)

However, on being elected, both parties claimed that this could have constitutional implications, and so could not be done, that the constitution would not allow them to do it: in other words that it would be illegal. Would this constitute a crime? Would this constitute an Irish crime? This is an interesting excuse coming from a government who has, in a democracy, the task of making, changing and upgrading the laws of the land. One presumes that, if the constitution saw such a process as illegal, then it could be put to a referendum – but this has not happened. In this context, the Government seems to be locating the source of the law in a parallel structure to the burning bush on Mount Sinai – something which is transcendent and which cannot be changed. Ironically, the self-same government can enact legislation to invoke a property tax, and thereby make the ownership of a property a crime if the tax on that property is not paid.

The question as to what type of act the Irish state considers to be a crime says so much about the nature of that state. In the aftermath of the Cloyne report into clerical child abuse in the diocese of Cloyne, on July 20 2011, the Taoiseach Enda Kenny made a ringing assertion in Dáil Éireann:

This is the Republic of Ireland 2011. A republic of laws, of rights and responsibilities; of proper civic order; where the delinquency and arrogance of a particular version, of a particular kind of 'morality', will no longer be tolerated or ignored. (Dáil Report 2011)

Yet, the fact that bishops and church hierarchy did not report cases of abuse has never been subject to criminal charges. There has been no prosecution under the idea of being accessories after the fact, nor has anyone been prosecuted for obstructing the course of justice. Indeed, the government has agreed to indemnify the Catholic Church from the financial consequences of their crimes, even though there seems to be evidence that the church, as system and organization, was culpable in not reporting what they knew of child abuse allegations. The Murphy report put this very starkly:

All the Archbishops and many of the auxiliary bishops in the period covered by the Commission handled child sexual abuse complaints badly. During the period under review, there were four Archbishops – Archbishops McQuaid, Ryan, McNamara and Connell. Not one of them reported his knowledge of child sexual abuse to the Gardaí throughout the 1960s, 1970s, or 1980s. It was not until November 1995 that Archbishop Connell allowed the names of 17 priests about whom the Archdiocese had received complaints to be given to the Gardaí. This figure was not complete. At that time there was knowledge within the Archdiocese of at least 28 priests against whom there had been complaints. (Murphy 10)

Even as late as February 2010, a paedophile priest, Patrick Hughes, pleaded guilty at Dublin Circuit Criminal Court to four counts of indecent assault against the child, who was then aged between 11 and 14 between 1979 and 1983. Detective Sergeant Joseph McLoughlin, who apprehended the priest, agreed that Gardaí were 'getting the run-around from church authorities'. He said they were initially unable to locate the accused man through the Archbishop's Palace but a 'liaison priest' contacted him in 2003 and said the accused wished to speak to Gardaí, but the detective then received a call to say the accused would not be

attending. That was the last he heard about his location and efforts to find him were unsuccessful until Gardaí received a tip-off and Detective Sergeant McLoughlin located the priest in England. (Ferguson). Was this a crime? Was this some form of criminal conspiracy to pervert the course of justice? If it was, then the mills of justice ground exceedingly slowly, as to date, there have been no charges made to any members of the church hierarchy with respect to these matters; like Aaron in our biblical example, their actions were not judged to be criminal.

In the Irish justice system, there is an offence of contempt of court, which can be used to charge people who the court feels are not co-operating with the attempts to see justice done, and there are laws which can indict people who are seen to pervert the course of justice, or perhaps be seen as accessories after the fact. This would refer to people who, having not been complicit in a crime, connive to help the perpetrator of that crime evade justice. Given the complicity of members of the church hierarchy in many of the church paedophilia crimes, one wonders why there have been no charges against members of the hierarchy, because it is now a matter of public record that some of the bishops knew about cases of child abuse, and colluded to keep this from the authorities. The Murphy report spells this out very clearly:

Many of the auxiliary bishops also knew of the fact of abuse as did officials such as Monsignor Gerard Sheehy and Monsignor Alex Stenson who worked in the Chancellery. Bishop James Kavanagh, Bishop Dermot O'Mahony, Bishop Laurence Forristal, Bishop Donal Murray and Bishop Brendan Comiskey were aware for many years of complaints and/or suspicions of clerical child sexual abuse in the Archdiocese. (Murphy 6)

So in Ireland in recent years, there are two groups of powerful people whose behaviour would seem to be criminal to some degree. Both groups would appear to have broken rules – one group the rules of financial rectitude and the other was complicit in not bringing notice of criminal activity to the authorities. However, like Aaron in the earlier example, they will not

be brought to book – theirs will not be an Irish crime. The reasons are simple, if generally occluded: the law is another vehicle for the perpetuation of power in society and not, as it rhetorically is stated, an agent of justice and equality in that society. The rhetoric of a Irish Republic of laws is deconstructed by the fact that so very few in positions of power – be these religious or political – are ever brought before the law through actions which have been designated as crimes.

To understand why, or why not, actions are classed as crimes or not, it is necessary to examine the system of judgement that is used to determine this decision. Law is usually a defined as a complex set of written prescriptions which attempt to define acts of right and wrong in a society. However, in western democracies such as Ireland, it is not implemented in a standardised fashion – it is not a question of someone has stolen some money; they are caught, and sentenced to a mandatory term in prison. Instead there is a trial, a testing of how the individual act transgressed against the written prohibition. In this case, the discourse of literary theory may provide some insight into the relationship between the individual act and the system.

In all cultures, as has been already noted, the law becomes part of what Althusser terms *Ideological State Apparatuses*, and thereby influence the identity of each individual within that particular society (Althusser 152). So, in Nazi Germany, laws of racial purity ensured that Nazi ideology became enshrined in German law and racial purity became an issue of legal action. Thus the disenfranchisement of the Jews became legal as the 'mystical foundation of authority' was now seen to reside in the Reich's sense of *Blut und Boden*. Here the law was basically and structurally 'the law of the strongest' (Derrida 232). The same was true of the Apartheid laws in South Africa, where issues of racial ideology again became enshrined in law and thus to be black meant that one was a lesser legal entity. In these, and in numerous other legal jurisdictions, the connection between law and issues of justice would

seem to be tenuous in the extreme. The adequation of hegemonic attitudes towards racism, with a legal codification of those attitudes, seemed to enshrine the views of the strong with the law. As Derrida puts it, in this context: 'laws are not just in as much as they are laws' (Derrida 240) and he also makes the connection with La Fontaine's fable of 'The Wolf and the Sheep' according to which '*La raison du plus fort est toujours la meilleure*' [the reason of the strongest is always the best – i.e., might makes right] (Derrida 241). In cultures without number, the law has been used as an instrument of almost genteel oppression, a 'masked power' (Derrida 241), which allows one elite group in society to retain hegemonic influence. And when harnessed in tandem with restricted access to education, this then becomes a self-perpetuating oligarchy which is able to mask oppression by the suasive application of the law as an instrument of equality and fairness. The symbolic order might rhetorically claim that all are equal before the law, but the real of the definitions of Irish crime and not crime would seem to suggest a very different truth. My examples have been largely taken from the socio-political sphere, but the same arbitrariness in terms of crime and punishment can be seen across the Irish public sphere.

In 2003, a Limerick man, Liam Keane, a member of the Keane-Collopy crime gang, walked free after a number of witnesses refused to testify against him in a murder trial, due to intimidation. Bribes had been offered and threats made to an eyewitness who had signed a statement saying that he had seen Keane stab the victim, but this was then withdrawn:

Liam Keane is the young man who recently walked free from a murder trial when all of the prosecution witnesses developed collective amnesia. As he left the court, Liam Keane offered two fingers to the waiting cameras - and, it has been suggested, to the justice system. (O'Connor)

This is one example of the outrage that this act caused: there was a sense that the crime gangs were subverting all of the forces of the state, and that this gesture was both a literal and

metaphorical two fingered gesture to society as a whole. Keane, in 2009, was sentenced to ten years in prison for possession of a firearm, and he had also served some time for road-traffic offenses. His behaviour was criminal; he seemed to benefit from further criminal behaviour in causing a witness to commit perjury (the witness was convicted of perjury in 2007 and received a one-year sentence). The public outrage was intense at the initial mistrial, and there were numerous media accounts of the trial, the perjury, the ongoing feud in Limerick and finally, the sense that justice was done.

There was a parallel media interest in another murder trial one year earlier in Dublin. In August 2000, a young Dublin man, Brian Murphy was out with friends in Club Anabel, a well-known club in Dublin City. That same night, a group of former students of Blackrock College were also in the club. As the disco ended and people made their way out of the nightclub, a fight broke out, Murphy was involved and subsequently was killed through a series of kicks and blows on the head. Four young men, Dermot Laide (22), Andrew Frame (22), Sean Mackey (23) and Desmond Ryan (22) from wealthy, affluent families were under investigation for the death of this young man. The trial went on for seven weeks in the Circuit Criminal Court. The four men were all charged with manslaughter and violent disorder and each pleaded not guilty to both charges. On the direction of the judge, Michael White, Frame was acquitted; Ryan successfully appealed his nine month sentence for violent disorder and the sentence was quashed; Laide appealed his four year sentence, and he finally served nineteen months while Mackey served eighteen months.

Another aspect of this story, seldom commented on, is that over three hundred people were on the vicinity of Annabel's that night, but the evidence given has been fractured, contradictory and it is highly possible that the person or persons who delivered the fatal kicks have actually not been charged. Interestingly, in contrast with the previous example, there

was no contempt of court or perjury case brought against any of these witnesses. And within two years of Brian Murphy's death, there was no-one serving a sentence for his crime.

These deaths of two young men in two of Ireland's larger cities are, obviously, both Irish crimes: in one case, a man was stabbed after an altercation, while in the other; a man was kicked to death. Yet the punishment meted out by the justice system, the judgment offered on the seriousness of these crimes would seem to suggest that one was graver than the other. One can see this as just an anomaly of the Irish justice system, but I would suggest that it can be seen to signify something at a macrocosmic level, and if we attempt to access the real of the situation, we may find that these two Irish crimes further deconstruct the philosophy of the Irish state.

In "The Force of Law", Derrida stresses the aporetic relationship between the law and justice, using the Kantian dictum of 'no law without force' to syncretise these positions (Derrida 233). Clearly, the sense that law is used by a dominant social class to ensure that its hegemonic position is engraved in statute is what is at stake here, and Derrida is not averse to discussing the *Realpolitik* of such legal discourses. He discusses Pascal's rhetorical conflation of justice and strength: 'Justice, force – It is right that what is just should be followed; it is necessary that what is strongest should be followed', and goes on to cite the rest of the text:

Force without justice is tyrannical. Justice without force is gainsaid, because there are always offenders; force without justice is condemned. It is necessary then to combine justice and force; and for this end make what is just strong, or what is strong just. (Derrida 238)

Derrida points to the aporia that most laws must have been created through an act of violence (another example of the force of law) whereby control and power were won.

In Ireland, the stealing of a small amount of money, or the non-payment of debt or fines, is deemed a crime and people are charged, arraigned and sentenced. However, at a certain social level, the judgement of crime is not made with respect to behaviour. In our culture, the maker of the golden calf has been replaced by the makers of the golden circle, and these bankers, politicians, children of the wealthy and bishops are never deemed to have committed an Irish crime, and instead, like Aaron, make their respective ways to the promised land. Until those who are responsible for making the golden calf are given the same punishment as those who foolishly worship it, then any adequation between law and justice will only be true at the level of rhetoric, and not at the level of society. Only when there is an equalisation of judgement in terms of what constitutes an Irish crime, will justice be done, and seen to be done, in the Irish public sphere.

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