

# Sunday Independent

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## Libel reform now urgently required

THE standard of a reasonable man is used to measure whether a statement is considered defamatory or not. In Ireland, the issue of defamatory effect is still left to a jury as representing a reasonable man. Such a man is presumed to be somewhere between the two extremes of unusually suspicious and unusually naive.

In a landmark judgment last week, the Court of Appeal set aside a jury verdict of defamation on the grounds that it was “perverse”. The judgment, in the case of Martin McDonagh and Sunday Newspapers Limited, is as welcome as it is significant, and should form the basis of further required reform of this country’s notoriously out-of-step defamation laws, not least on the issue of removing the presumption in favour of a trial by jury in such cases.

A defamatory effect is produced where a statement tends to lower a person in the eyes of society, or in the estimation of “right-thinking members of society generally” or in the eyes of the “average right-thinking man” or tends to hold that person up to ridicule, hatred or contempt, or causes the person to be shunned or avoided.

Martin McDonagh claimed that he was defamed in an article published by the *Sunday World* on September 5, 1999 entitled ‘Traveller is new drug king’. The article narrated the background to the seizure by Gardai of illegal drugs worth IR€500,000 in Tubbercurry, Co Sligo a few days previously and identified McDonagh, although it did not name him as such, as the man behind the drug seizure.

McDonagh contended that the article meant that he was a criminal, a drug dealer, a tax evader and a loan shark.

The *Sunday World*, a newspaper with a distinguished record in crime journalism, claimed qualified privilege and justification, that is, that on the balance of probabilities that article was true. The newspaper led evidence from nine Gardai and a representative of a financial institution. The evidence related principally to the circumstances of the drug seizure, the detention of McDonagh and the admissions he was said to have made in custody. In February 2008, a jury found that McDonagh had been defamed and awarded him €900,000, more than twice the then existing record for defamation awards. This outcome which had a ‘chilling effect’ on media here, that in itself struck at the heart of the principle of freedom of speech.

Last week, the three-judge Court of Appeal, led by Mr Justice Peter Kelly, granted an appeal against “the entirety of the verdict”. Mr Justice Gerard Hogan said: “It is clear the jury’s verdict as far as it concerns a drug dealing allegation cannot be allowed to stand.

He said “viewed objectively” the evidence overwhelmingly pointed to the conclusion the plaintiff was indeed “a drug dealer associated with the drug seizure”. If the allegation was correct, he said, the newspaper had a constitutional right to publish and that right could not be compromised by a jury verdict “which was, in essence, perverse”.

There is a long-established principle that when somebody’s life, honour or liberty is jeopardised they should have the right to be judged by their peers. This point was made in the UK parliament in opposition to the first reading of the bill that culminated there in the Defamation Act 2013. That act in effect reversed the presumption in favour of jury trials in defamation cases in the UK, making judge-alone trials the prevailing norm. It is time for politicians here to revisit the civil law of defamation.

## Quotes of the week

“OVER the last couple of years, members of An Garda Síochana have felt pilloried by a lot of negative commentary in relation to members of An Garda Síochana and An Garda Síochana as a whole. So there is a huge job of work that has to be done to reinvigorate and boost morale.”

Noirín O’Sullivan, Garda Commissioner.

“I cannot explain the suspended sentences that are being handed out all over the place. I cannot explain the failure to apply consecutive sentences where the law allows them to be imposed. But if it is as I think it might be, that the judiciary are responding to the lack of prison places, then that’s wrong.”

Michael Patwoll, former judge.

“I used to love Dublin city but I’m not in love with it anymore. The lifestyle has changed. There was a time when I could walk home from Dublin city centre any night of the week. I can’t do that any more. I started to feel very threatened in the city at night time, so I just stopped going in.”

Tom Jordan, *Fair City* actor.

“Ireland’s abortion laws are among the most punitive in the world... I have always been very proud to be Irish but I am embarrassed by Ireland’s abortion laws. This is something you can’t be proud of. It’s barbaric.”

Graham Linehan, *Fr Ted* creator.

“If you cannot get the right training, if you do not have the right job that is enhancing your career and making you a better doctor, there is nothing patriotic about staying and doing service work in an inappropriate non-training environment.”

Professor John Crown, senator, and oncologist to young doctors.

“I remember having a chat with someone and them saying, ‘You know you’ve got to recognise that this is part and parcel of what you’re doing. When you walk into a room, yes, people are going to talk about what you are doing there, but they’re also going to want to know what you’re wearing’. I wrestled with that one for a little while and caved in at the end of the day.”

Sophie, Countess of Wessex.

“In a world in which the internet, with its forums and discussion groups, has blurred the line between readers and writers almost to invisibility, the relationship between one and the other now seems increasingly difficult – audience participation in the creation of art is considered by many to be not only legitimate, but desirable.”

Joanne Harris, author.

“They know nothing. All they know is, ‘Let me get a part, let me be discovered.’”

Steven Berkoff, actor, on young actors.

“I think we must be very careful not to make our daughters despise men. There is too much comedy around where men are hopeless and despicable. I’ve encountered very lovely men who see nothing wrong with stacking the dishwasher, doing the laundry, being supportive while I work, being as manly as I need them to be around the house and in the bedroom.”

Maureen Lipman, actress.

“I’ve for years argued that we should treat drug use as a health issue, not as a crime. While the vast majority of recreational drug users never experience any problems, people who struggle with drug addiction deserve access to treatment, not a prison cell.”

Sir Richard Branson.

### Corrections and Clarifications

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MOUTHING OFF: Taoiseach Enda Kenny speaking during the plenary session of the European People's Party Congress in Madrid, Spain. Photo: Getty Images

# There goes Enda with his funny stories again

It’s very odd that we take it for granted that the Taoiseach is not to be fully believed some of the time, says **Brendan O’Connor**



THIS is a queer country and no doubt about it. Take the Taoiseach. The Taoiseach was off in Spain during the week mouthing off again about the apocalypse he saved us all from. Now, it should be said first off that the Taoiseach, and his Government, did bring this country back from the brink, or certainly were on duty while the country came back from the brink.

It has been an extraordinary turnaround for this country. Think of where we were even a year ago, about the depression that stalked the land. And now a year on, we almost feel normal again. And, of course, things aren’t perfect. And, of course, too much of the turnaround is to do with dumb luck – weak euro, oil prices, low interest rates. And, of course, too, these things can change very quickly. And, of course, too, the reason there are low interest rates and a cheap euro is because of a greater threat, that of slow growth internationally, which could ultimately scupper us again. But so far, we have been lucky, and we are managing to grow while most of the world slows down. Not forgetting, of course, it was cheap money that got us in trouble in the first place.

Even with all those caveats in place, you would still have to say that things have picked up hugely during this Government’s tenure. But somehow, this is not enough

for the Taoiseach. The Taoiseach wants things to be more dramatic. He is not alone in this. From Pat Rabbitte to Joan Burton, members of the Government have been at pains to remind an ungrateful public just how close to the edge this country was five years ago. They assume, correctly, that people forget and move on quickly and begin to take stability and maybe even prosperity for granted again. It is probably part of our survival mechanism as human beings that we have a great ability to forget pain.

But, of course, part of this Government’s plan to get re-elected is that we have to remember the pain, remember how close to chaos we were.

The Government’s primary narrative in this campaign is going to be chaos versus stability (with the Government representing stability in case you were confused). And part of getting people to buy into that narrative is to remind us that chaos is possible, that it lurks beneath always, and that we came very close to it very recently.

But there is a feeling that the Taoiseach tends to overegg that particular pudding. He rolled out his story about the Army at the ATMs again during the week. Apparently, shortly after Enda came to power the governor of the Central Bank called him in and told him that they could have the Army at the ATMs by the weekend. The Army would be around the banks,

too, apparently. And there would have to be capital controls, like in Cyprus. Presumably the timing – 2011, just after they came to power – is to underpin the narrative of the mess that Fine Gael and Labour inherited from Fianna Fail. This is another obsession of the Taoiseach, to remind everyone that everything is Fianna Fail’s fault.

The problem with that timing is that it doesn’t seem to add up. Capital controls were not introduced in Cyprus until 2013, for example. But, no doubt, the Taoiseach will

**‘A history of weak and risible leadership has corrupted our sense of what is normal in this country’**

say that he was the one likening the situation to Cyprus, now, in 2015. He will say that of course he wasn’t suggesting that the governor of the Central Bank mentioned Cyprus. But the story is odd for other reasons, too. The Central Bank is said to be puzzled as to why the Taoiseach keeps saying this, and thinks he may be confused with contingency plans made for the break-up of the eurozone. And everyone else is wondering why this was never mentioned at the Banking Inquiry.

But that’s not the really weird thing about all this. The really weird thing about it is that no one is that surprised at the prospect that the Taoiseach might be embellishing things or exaggerating

or commingling various things that happened. The general attitude seems to be, “Ah there goes the Taoiseach again with those little make-uppy stories he likes to tell, like with all those people who he claims to meet, like the man with two pints giving out about water charges, or the person who contacted him because they had extra money in their pay cheque”. We just kind of laugh it off. “That’s Enda for you! Always with the crazy stories. You have to laugh really.” We kind of indulge him as we would a child. Because everyone assumes that other, possibly more mature people, are running the country, so we don’t worry overly. Enda is regarded as a kind of embarrassing uncle who is liable to say something inappropriate in front of visitors. Every time he gets in front of a microphone we slightly tense up, because you never know what he’ll come out with. When he goes out foreign we often get slightly embarrassed at his carry on, but we console ourselves with the fact that foreigners seem to enjoy him.

Still, it’s an extraordinary country all the same that we just happily take it for granted that our leader shouldn’t really be allowed to speak in public, and we take for granted that often, when he does speak, we only half believe what he is saying.

Of course, there was queerer than that in the past week. We had another bizarre situation whereby we learnt that the members of a terrorist organisation from a neighbouring state, now committed to peace but deeply involved in crime, believe that they run one of the biggest political parties in this country. Again, the really weird bit about that was that most people just shrugged their shoulders and

said, “Shure we knew that”. So everyone was more or less taking it for granted that a bunch of former terrorists believed they are strategising for a party that wants to go into government in this State. And more to the point, it won’t stop people voting for that party either.

It’s funny the things that people learn to live with and take for granted, things that if we saw them happening in another country we would think it a laughable banana republic.

And while we can laugh about it on one hand, in another way it says something terrible about what we expect and what we are willing to tolerate. It is perhaps a legacy of our recent history.

When your standards and moral compass are corrupted you develop a new sense of normal where you don’t even recognise inappropriateness anymore. You just think that’s the way things are. And a history of weak and risible leadership and extreme nationalism has clearly corrupted and twisted our sense of what is normal in this country.

That’s why you have to wonder, too, about the value of all the 1916 war-games and flag-waving. Why are we simplifying into parades and re-enactments something that was very complicated, aspects of which sowed the seeds of our weird sense of normality. There is a strange militarism in the air all of a sudden, even the dramatic way the Taoiseach talked about a “bloodless coup” last week, in his daft and OTT characterisation of the arrival of the troika. We like to think we’ve come a long way from the violent birth of the State. But violence is possibly a bit like that chaos the Government warns us about. It’s always there lurking under the surface.

# Micheal Martin has won: Fianna Fail not Sinn Fein is true republican party

Question must be asked whether Sinn Fein has ever fully abandoned its strategy of ballot box and Armalite, writes **Jody Corcoran**



MICHEAL Martin has been described as the first Fianna Fail leader who will never be Taoiseach.

Whether that turns out to be true or not, he will still have done the State a great service as the man who rescued “republicanism” from Sinn Fein. That is if the Sinn Fein party as we know it can be properly described as republican in the first place.

After the events of last week, it is difficult if not impossible to regard Sinn Fein a republican party. The historian Peter Pyne, at the 50th anniversary of the 1916 Rising suggested there had been several “Sinn Fein” parties, only one “republican” and that for a brief period.

Sinn Fein went through four phases in its early years, he said; or even that there were four different parties of the name “Sinn Fein”: monarchical (1907-17); nationalist (1917-22); republican (1922-26) and “extremist or fundamentalist” thereafter.

Two further splits since, “thereafter” includes the current leadership of Sinn Fein, which believes the IRA’s mandate came from ‘the situation in the North’ rather than legalistic arguments about what happened in 1921 or 1938.

At its 1981 Ard Fheis, this leadership rhetorically asked whether delegates would object if Sinn Fein took power with a ballot box in one hand and an Armalite rifle in the other.

From a report presented by the Northern Secretary, Theresa Villiers last week, the question now arises: has Sinn Fein ever fully

abandoned its Armalite/ballot box strategy?

The report concluded that Provisional IRA members believe the PIRA army council oversees both

**‘Republicanism is a term long misused here, associated as it is with militant and armed nationalism’**

the Provos and Sinn Fein with an overarching strategy.

In the Dail last week, Micheal Martin said the fundamental question for our republic, that we must answer and which the report does not ask, was the “threat to democracy” from an organisation that is linked with politics but which retains a military structure, with an active intelligence gathering department which has access to weaponry.

In recent months, the Fianna Fail leader, if not alone, then to an extent greater than any other political leader here has taken the

battle to Sinn Fein on the republican question.

Republicanism is the well-spring of Fianna Fail, which that other political party by the name Sinn Fein has, with some success, sought to run dry.

This exchange in the Dail last week illustrates how Sinn Fein has waged battle for the hearts and minds of republicans:

The Taoiseach: “Whatever way we are here – Deputy Martin as leader of his party, I as leader of mine, and the Tanaiste as leader of the Labour Party – we are not subject to direction from any army council.

Deputy Jonathan O’Brien (SF): “They are only subject to bankers and developers.”

The battle came to a head in the Dail when Sinn Fein could elevate the debate no further than to refer to the Fianna Fail leader as a “gurrrier”. As Fianna Fail leader, Micheal Martin has waged an ideological battle with Sinn Fein for the hearts and minds of republicans, more recently at the Bodensown commemoration last weekend for the grandfather of Irish republicanism, Wolfe Tone, a man made great, it has been said, because he had no ideology at all.

But first, republicanism is a term long misused in Ireland, as-

sociated as it is with militant and armed nationalism. Nothing new there: the English-American political activist, Tom Paine, a player in both the American and French revolutions said “it has always been the political craft of courtiers and court government to abuse something which they call republicanism: but what that republicanism was or is they never attempt to explain”.

The principles of modern republicanism have developed over time to be widely accepted as democracy, citizenship and internationalism; liberty, equality and fraternity.

“How dare they claim to own Irish republicanism,” Micheal Martin said of Sinn Fein at Bodensown last Sunday: “No organisation which fails to expose child abusers, racketeers and murderers can call itself republican.”

This battle for the hearts and minds of republicans has also been fought by Sinn Fein. In a statement last month, Gerry Adams said Sinn Fein was “the only republican movement in this island”.

Martin took issue at Bodensown: “Theirs is not the ideology of 1798 and 1916 – it is a mafia-like organisation which is incapable of respecting anyone outside of its own ranks.”

At Bodensown, and before that in the Dail in July, he again called out Sinn Fein: in a debate on Northern Ireland, he said that Sinn Fein’s call on people to vote by religion, and get one over on the other side, was “sectarianism pure and simple”.

He said the failure of political

leadership to assist properly in the fight against sectarianism and to promote a “genuine spirit of equality” was demonstrated in “disgraceful comments” by Gerry Adams last year when he talked about “breaking the bastard”, a comment made in response to the DUP’s “childish mockery of the Irish language”. In that context Adams had also said equality was “the Trojan horse of the entire republican strategy”.

But equality was not a strategy, the Fianna Fail leader said, and was not something to be exploited: “It is the fundamental and core foundation of the entire strategy of the people of Ireland.”

Since the 16th century, republicanism, in the words of one commentator was “more a language than a programme”; the vocabulary one of protest, resistance to tyrants, rooting out corruption and instilling (and installing) civic virtue.

In that regard, Fianna Fail has both failed and succeeded, its failure, by reference to bankers and developers, which Sinn Fein has sought to exploit. In this General Election, republicans will have to make a choice within the ultimate choice, which will be, who best represents republicanism – Fianna Fail or Sinn Fein?

Whatever Fianna Fail’s failure to uphold the true ideals of republicanism in the past, I would contend that Micheal Martin won the argument last week; and I would argue that Fine Gael and Labour, have a duty to make the case for Fianna Fail. The republic – literally, the public thing – depends on it.