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AN COMHCHOISTE FIOSRÚCHÁIN I DTAOBH NA GÉARCHÉIME BAINCÉI- REACHTA

JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

Déardaoin, 12 Márta 2015

Thursday, 12 March 2015

The Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Pearse Doherty,	Senator Sean D. Barrett,
Deputy Joe Higgins,	Senator Michael D'Arcy,
Deputy Michael McGrath,	Senator Marc MacSharry,
Deputy Eoghan Murphy,	Senator Susan O'Keeffe.
Deputy Kieran O'Donnell,	
Deputy John Paul Phelan,	

DEPUTY CIARÁN LYNCH IN THE CHAIR.

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Dr. Elaine Byrne

Chairman: I welcome everyone to the 15th public hearing of the Joint Committee of Inquiry into the Banking Crisis. In our sessions today we will focus on the theme of relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector. Later this morning we will hear from the former *The Irish Times* journalist Mr. Frank McDonald, but in our first session we will hear from Dr. Elaine Byrne, a consultant for the European Commission on corruption and governance. She is also a journalist with *The Sunday Business Post*. During her career she has worked as a governance consultant for the United Nations, the World Bank and Transparency International. She has also held academic appointments at Trinity College Dublin and the University of New South Wales. She has published widely on Irish politics and is the author of *Political Corruption in Ireland, 1922-2010: A Crooked Harp*. She was nominated for three national media awards for investigative journalism for her work on allegations of political impropriety. She is very welcome.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If they are directed by the Chairman to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given. As informed previously, the committee is asking witnesses to refrain from discussing named individuals in this phase of the inquiry. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official by name or in such a way as to make him or her identifiable.

I invite Dr. Byrne to make her opening statement.

Dr. Elaine Byrne: I thank the Chairman for the invitation. It is strange being on the other side of the fence, having reported on you. In the invitation to appear before the joint committee I was asked to address four areas, namely, a narrative on how the property and banking sectors had interacted with government, elected representatives and the State during the period prior to the banking crisis in Ireland; a narrative on the nature of the relationship between the property sector, banking, government, elected representatives and the State; a narrative on what, if any, controls or structures were in place to regulate any such relationship; and whether being a small country was a factor in terms of any such relationship. What follows is as a consequence of the extensive research I have done on foot of my book, my work as a consultant and a journalist and a presentation of facts. I will begin to answer these four very broad questions by first looking at the historical context and the culture of deference which I argue was firmly established before the boom. I will address these issues, primarily by focusing on political donations.

At the heart of the four corruption tribunals in Ireland in the past three decades - the beef tribunal, also known as the Hamilton inquiry; the McCracken tribunal; the Moriarty tribunal and the Mahon tribunal - were serious concerns about how political action was funded. These tribunals, in particular the McCracken and Moriarty tribunals, exposed a deferential culture by regulatory authorities towards the banking sector during the 1970s, 1980s and 1990s. They also

identified a deferential culture by banks towards politics and *vice versa*. An absence of political will to enforce regulatory compliance was a recurring theme within the tribunals. I will give two very brief examples of this. Central Bank inspectors examined the Guinness and Mahon bank loan book in 1976 and 1978. The inspectors expressed concern that “Guinness & Mahon was facilitating a tax avoidance scheme [which] was tantamount to facilitating tax evasion”. The Central Bank inspectors discovered that one of its own directors had a loan of £416,000 which was secured by a £230,00 offshore deposit in the Cayman Islands. The response by the Central Bank was to trust a promise made by the then Guinness and Mahon chief executive who promised that the bank would wind down its loan business to Irish residents which was backed by offshore deposits. This promise was not kept.

Twenty years later, the McCracken tribunal discovered the consequence of this deference. Ansbacher was the largest incidence of tax evasion in the history of the State. Revenue subsequently yielded over €112 million in unpaid taxes and penalties from 200 Ansbacher accounts. This tax evasion was enabled by non-action by the Central Bank, Revenue Commissioners, company law regulators and prosecuting authorities. For instance, although the Finance Act 1986 empowered Revenue to inspect non-residence declarations held by financial institutions, it did not do so.

The second example of deference I will give is that of Charles J. Haughey’s indebtedness to Allied Irish Bank which spiralled from £188,000 to £1.1 million in a four year period between 1975 and 1979. The Moriarty tribunal noted that AIB “exhibited a marked deference in its attitude” towards the leader of Fianna Fáil. On his election as Taoiseach in December 1979, Mr. Haughey’s personal overdraft was 77 times his £14,717 gross annual salary. Mr. Haughey’s financial adviser, who also happened to be the *de facto* chief executive of Guinness and Mahon bank, negotiated a £393,000 write-down of the Taoiseach’s debts. The tribunal described this “somewhat unorthodox” bank discount which amounted to one third of Mr. Haughey’s overall arrears, as conferring “a substantial benefit on Mr. Haughey in circumstances referable to his political office and as an indirect payment”. Moreover, the Moriarty tribunal established that Mr. Haughey received at least £9.1 million in donations between 1979 and 1996. The McCracken and Moriarty tribunals revealed a distinctive overlap between prominent financial donors of Mr. Haughey and individuals within the banking and property sectors. The journalist Colm Keena, in particular, has written and investigated a lot of this overlap.

The purpose of these two brief lessons from the tribunals is to illustrate that a culture of deference between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector, was already well established by the 1990s. This culture of deference operated in a context where political parties and individual politicians were particularly financially vulnerable.

The committee asked me to explain the narrative of the relationship between these different entities and I will do so by first looking at disclosed political donations to political individuals and political parties in the three elections of 1997, 2002 and 2007. What follows is a short explanation of legislation on political funding as a means of describing the nature of the relationship between politics and the property and banking sectors. The purpose of this is to demonstrate that it is impossible to present a complete picture of how political parties financed their 1997, 2002 and 2007 election campaigns. Not all donations were legally required to be disclosed. None the less, the disclosed donations infer a pattern as illustrated in the three graphs in the appendix to this submission.

The Electoral Act 1997 was enacted in response to controversy arising from unorthodox

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political donations which came to public attention during the course of the beef tribunal. It emerged that some political individuals and political parties were reliant on donations from the beef industry in the late 1980s and early 1990s. This relationship between the beef industry and politics created the public perception that a *quid pro quo* existed, in other words, that political donations facilitated policy decisions which benefited the beef sector.

The 1997 Act established new rules for the disclosure of political donations. For the first time in the history of the Irish State, political donations over a certain limit were required to be disclosed. The threshold for disclosure of donations to political individuals, including candidates in Dáil, Seanad, European and presidential elections, was €634.87. The threshold for disclosure of donations to political parties was €5,078.95. There was no limit as to how much could be donated.

The Electoral (Amendment) Act 2001, maintained the disclosure limits under the 1997 Act but introduced a limit as to how much could be donated. The threshold for disclosure of donations to political individuals remained at €634, however, donations by the same donor must not exceed €2,539 in any given year. The threshold for disclosure of donations to political parties remained at €5,078. However, donations by the same donor must not now exceed €6,349 in any given year. Also of significance was the banning of foreign donations in circumstances where the donor was not an Irish citizen.

The Electoral Act 1997 and the Electoral (Amendment) Act 2001, required that political individuals, including candidates, and political parties must submit an annual statement of donations and election expenditure to the Standards in Public Office Commission. I compiled information from the archives of the Standards in Public Office Commission for a ten-year period in order to construct the graphs in the appendix relating to political party funding. Where I was unsure about particular figures I took the conservative approach and when in doubt I did not include them.

I will now deal with disclosed donations to political individuals. Figure No. 1 in the appendix represents all disclosed donations to political individuals between 1997 and 2009. The period includes the 1997, 2002 and 2007 general elections. In doing so it must be clearly acknowledged that this figure represents disclosed donations as opposed to undisclosed donations, donations under the €634 threshold. There are a number of observations that can be extrapolated from this data.

First, disclosed donations to political individuals significantly increased in election years. That is not rocket science. Second, Fianna Fáil representatives attracted almost twice as many disclosed donations as all the other parties combined during the 2002 and 2007 general elections. That Fianna Fáil candidates were the beneficiaries of more disclosed donations than candidates from other parties is not surprising because proportionate to other parties, Fianna Fáil traditionally runs more candidates. For instance, of the 466 candidates who ran in the 2002 election, 22% were from Fianna Fáil. None the less, during that election year, Fianna Fáil received two thirds of all funding disclosed which means that candidates from that party were in receipt of seven times more disclosed donations than a non-Fianna Fáil candidate. Third, it is not possible to break down the sources of disclosed donations as is the case for party donations because the donations tend to be from individuals without reference to business addresses. I can deal with this in more detail later if the committee wishes.

Political individuals attracted significantly more disclosed political donations than political parties, notwithstanding the 2001 amended rules which introduced a higher donation limit to

political parties of just over €6,000, compared to donations to political individuals at just over €2,500. Disclosed donations to political individuals in 2007 amounted to €855,995. Excluding subscriptions from the salaries of elected representatives to their parties, disclosed donations to political parties in 2007 amounted to just €43,693. It appears that it is more attractive to donate to political representatives than to political parties.

I will now look at disclosed donations to political parties. Figure No. 2 in the appendix represents all disclosed donations to political parties between 1997 and 2009. A number of observations can be extrapolated from this data. Since the introduction of the Electoral (Amendment) Act 2001, which introduced a limit on the value of donations to be disclosed, a pattern emerged whereby all political parties disclosed under the limit. For example, the disclosed donations by all political parties in 2001 amounted to €753,523, the year before the 2002 election. In contrast, the disclosed donations by all political parties in 2006 amounted to €17,000, the year before the 2007 election. These figures exclude politicians donating to themselves or their own political parties. There appears to be a deliberate policy by political parties of soliciting donations below the disclosure thresholds. This is perhaps due to the relatively small difference in the maximum donation that can be accepted by a political party, €6,349, and the amount that must be disclosed, €5,078. The Fine Gael Party returned a nil disclosure to the Standards in Public Office Commission from 2001 to 2009 and, in fact, made its first disclosure last year. The Fianna Fáil Party, the Fine Gael Party and the Labour Party disclosed zero returns in disclosed donations for 2009, the year all three political parties ran substantial local and European by-election campaigns and a referendum on the Treaty of Lisbon.

It is impossible to present a complete picture of how political parties were financed in this period. Of the €10.1 million spent by political parties and candidates in the 2007 general election which was disclosed to the Standards in Public Office Commission, just €1.3 million of the donations was disclosed, with no information available on the origins of the remaining €8.8 million. That gap allows an unnecessary perception that something unorthodox is happening with political funding, but much of it can be explained by membership fees, annual draws and so forth. The €10.1 million figure does not encompass all of what was spent during the 2007 election. The legislation only requires election expenditure in the period between the dissolution of the Dáil and polling day, usually a period of three to five weeks, to be accounted for. Electioneering prior to this period is not accounted for. Election campaigning in the 2007 election, for instance, was well under way before May 2007. The pre-election statement of intent between Fine Gael and the Labour Party, known as the “Mullingar Accord”, was inaugurated in 2004 and accompanied by a billboard campaign.

I will now look at disclosed donations to the Fianna Fáil Party by sector. Figure 3 in the appendix represents all disclosed donations to Fianna Fáil, excluding the donations to political representatives or individuals between 1997 and 2007. They amounted to €1.8 million; 80% of this figure was donated between 1997 and the change of the rules in 2001. Subsequent to the 2001 Act, the maximum donation a party could receive was limited to €6,349. As outlined, this is an incomplete picture of how the Fianna Fáil Party was funded because there are no statutory obligations to disclose donations below the legal threshold of €5,078. Nonetheless the figures do infer trends regarding sources of political donations. The figures are as follows: some 35%, or €635,970, of Fianna Fáil’s disclosed donations were from property and construction interests. Fianna Fáil received substantial donations in 1998 for the particular and stated purpose of campaigning in the 1998 Good Friday Agreement referendum. When these are excluded, disclosed donations from property and construction interests amounted to 39%, or €545,818. A list of property companies and developers who donated to the Fianna Fáil Party can be accessed

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on the Standards Commission's website. All of them are on the public record. Some 20% of the disclosed donations to the Fianna Fáil Party in that period came from business interests and amounted to €367,000; 13% came from individuals, amounting to just over €245,000; 9% came from the hotels and catering sector and amounted to just €160,000; 7% came from the motor sector and amounted to just over €122,000; just over 7% came from the food and drinks sector and amounted to just over €126,000, while 5%, or about, €90,000 came from banks and financial services. This figure does not include, however, donations by individuals who were donating in a personal capacity but who were associated with the banking sector. Some 4% or just over €70,000 were from professional services such as solicitors' firms and auctioneers. Also in that period 34% or almost €89,000 of the disclosed donations of the Progressive Democrats of €262,000 came from the property sector.

It appears that the property barons of the 1990s and 2000s had replaced the beef barons of the 1980s. The Opposition did not disclose donations from property interests. The Fine Gael Party disclosed a sum of €197,914 in donations between 1997 and 2000 from a variety of businesses and individuals - 11 donations in all - but it did not disclose donations above the legal threshold from 2001 to 2009. Almost two thirds of the Labour Party's €392,000 in disclosed donations came from the trade union movement. Sinn Féin was in receipt of almost €1.3 million in disclosed donations in this period, much of it from the salaries of elected representatives, North and South, and organisation such as Friends of Sinn Féin, Australia and Friends of Sinn Féin, America. I can give a breakdown of all the figures for all of the parties, if needed.

The committee also asked me to look at controls and structures to regulate such relationships. I will look at them by considering policy. Irish legislation was criticised by the Council of Europe Group of States against Corruption, GRECO, in 2009 for failing to account for "behaviour of those persons who are close to power and who try to obtain advantages from their situation by influencing the decision-maker". Reliance on political donations from a particular sector may facilitate a perception of undue influence by donors over policy-making. This undue but not illegal influence of vested interests over regulation and policy-making arises where elites have access to insider information which they utilise for their private benefit. This informal misuse of power occurs where personal relationships, patronage, lobbying, political favours and political donations unduly influence the decision-making process, even if no laws are broken.

Did donors from the property sector have a vested interest in the formulation of policy? Was the decision-making capacity of political parties eroded by a conflict of interest? Were key political decisions insulated from critical debate because they were executed within a closed and cartelised system that facilitated regulatory capture? What did the Honohan, Regling and Watson, Nyberg and Wright reports have to say about policy in this regard? They offered limited analysis of the policy-making process outside the financial sector. The Honohan report dedicated just six paragraphs to tax incentives aimed at the construction sector. The Regling and Watson report briefly described the problem of policy analysis, design and implementation as "unusually severe", pointing, in particular, to weaknesses in tax policy. The Nyberg report had five paragraphs on what it termed "advice on economic policy". The Governor of the Central Bank, Professor Patrick Honohan, found that "significant factors contributing to the unsustainable structure of spending in the Irish economy were due to the Government's procyclical fiscal policy stance, budgetary measures aimed at boosting the construction sector, and a relaxed approach to the growing reliance on construction-related and other insecure sources of tax revenue". According to the Honohan report, tax reliefs incentive schemes and income tax exemptions for developers and investors included:

multi-storey car parks, student accommodation, buildings used for third-level educational purposes, hotels and holiday camps, holiday cottages, rural and urban renewal, park-and-ride facilities, living over the shop, nursing homes, private hospitals and convalescent facilities, sports injury clinics and childcare facilities.

The Regling and Watson report noted that such tax reliefs “directed to the property sector, often in particular regions of the country ... contributed to a more general misallocation of resources as some of the tax concessions seemed to have been granted on an ad-hoc basis in a not fully transparent way”. The incentives were not necessarily bad, as they brought much needed investment to particular areas of the country. The problem was that they went on for too long. As the committee has heard, Mr. Wright has acknowledged in his testimony to the banking inquiry that these policies should have been “grandfathered” or ended earlier.

Why were reliefs extended twice in the period of their implementation? For example, the Finance Act 1994 and Chapter 1, Part 9, of the Taxes Consolidation Act 1997 provided for accelerated capital allowances for hotels. While this special provision for hotels was terminated in budget 2003, the Finance Act 2003 included transitional arrangements that allowed for the continued availability of a 100% write-off over seven years provided certain conditions were met. This arrangement was further extended in the Finance Acts 2004 and 2005. The Finance Act 2006 extended the transitional period by introducing a phase-out period. Peter Bacon, who has also come before the committee, compiled a report for the Irish Hotels Federation which asserted that “The tax allowance scheme allowed hotels to access both equity and debt finance easier than would be the case otherwise ... the total value of tax allowance related to hotels that have not been open seven years at the end of 2009 will be just over €1.5 billion”.

Other incentives of note include the 2000 to 2007 special incentive tax rate for developers. This sought to free up land for development by taxing proceeds from the sale of land at 20% instead of the higher rate of up to 42%. Moreover, Part V of the Planning and Development Act 2000 was amended in 2002 to allow developers to negotiate their way out of providing 20% social and affordable housing in any development through land swap, payments to local authority or the building of equivalent social and affordable housing elsewhere. It would be helpful if the committee considered the following: a list of the tax reliefs and incentives granted by the Government to developers and investors between 1997 and 2007; the cost of these reliefs and incentives; the reason tax incentives were extended beyond their natural life spans; whether the structure of local government funding facilitated a financial dependency on development levies; whether reliance on such levies, worth nearly €600 million in 2005 and €700 million in 2006, influenced erroneous planning decisions; and the number of politicians, or their close associates, who received interest-free loans or mortgages on favourable terms or who received loans outside of normal lending practices.

The committee also asked me to look at suggested reforms and controls to moderate these kinds of relationships and I now turn to these. I have presented eight reforms to regulate such relationships. First, is independent audit of the capacity and operational ability of oversight agencies, including the Criminal Assets Bureau, the Office of the Director of Corporate Enforcement, the Garda Bureau of Fraud Investigation, the Central Bank, the Revenue Commissioners, the Competition Authority and other agencies charged with the prevention, detection, investigation and prosecution of white collar crime. This approach was taken in the UK after its financial crisis. In 2008, the UK’s Attorney General commissioned the De Grazia review which appraised the Serious Fraud Office, SFO, in regard to two US agencies, which were the US Attorney’s Office for the Southern District of New York and the Manhattan District Attorney’s

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Office. These were both well established bodies prosecuting serious and complex economic crime. The review's 34 recommendations focused on operations, capacity, governance and external relationships.

Second, I recommend introducing monetary awards for whistleblowers. This approach was taken in the USA following the economic crisis. The Dodd Frank Act 2010 established the Office of the Whistleblower. The Act expanded powers first introduced under the Sarbanes-Oxley Act 2002. The Securities and Exchange Commission is now authorised by the US Congress to provide monetary awards ranging between 10% and 30% of the money collected in cases where high quality original whistleblower information leads to a commission enforcement action of over \$1 million in sanctions.

My third recommendation is the introduction of a register of liabilities. Australia, Finland, New Zealand, Poland, Spain and Canada require politicians to publicly disclose any debts they may have. Ireland only has a register of assets.

Fourth, I note that the Standards in Public Office Commission's annual report 2013 contains 20 recommendations on reforming our ethics and electoral legislation. I submitted an additional six recommendations on the draft guidelines on party finance in my submission to the commission in 2013.

Fifth, I recommend that political parties be required to publish accounts under the guidelines on party finance in advance of the 2016 general election. The delay by the Government in introducing these guidelines means that parties are not obliged to publish accounts until mid-2016 which may, in effect, be after the 2016 general election.

Sixth, I recommend the establishment of an independent commission to decide how political activity in Ireland is funded. The principle that politicians should not regulate themselves is well established. For example, political actors do not decide constituency boundaries. Ireland's rules on political funding disproportionately favour incumbents and political parties.

My seventh recommendation relates to lobbying and seeks registration not only of lobbyists but of why decisions have been made. I recommend the introduction of a web-based centralised information platform to co-ordinate consultations with individuals, stakeholders and lobby groups. This would serve to report on input received on policy and detail how decisions were made. It would improve the openness and transparency of engagement in policy-making by all actors. Stakeholder and lobbying interaction is recorded by health department in Canada within what they call the Consultation and Stakeholder Information Management System, or CMIMS.

My eighth recommendation is to stop blaming our small population or geographical size for bad governance. The committee asked me to examine whether being a small country is a factor in terms of problematic relationships. The population size of a country is not a determining factor in measuring governance effectiveness. Academic research shows that poor governance is correlated with the quality of institutions, in respect of which Niamh Hardiman went into considerable detail yesterday, lower levels of investment and growth, inequality, education, democratisation, colonial heritage, religion and an absence of legislative controls. In Ireland's case, substantial levels of regulation combined with a high degree of State ownership have facilitated considerable political discretion. These conditions have been at the heart of the majority of governance scandals since the foundation of the State.

In the appendix to my written submission, I include a table ranking the governance scores

of 17 selected countries for 2008. That year was chosen as the year of Ireland's financial crisis. Transparency International's Corruption Perception Index, CPI, is a compilation of corruption scores which ranks countries from least corrupt to most corrupt while the World Bank measures good governance using six different indicators, of which four are presented in the appendix. Although Transparency International and the World Bank use different aggregation methods, they are highly correlated. The population sizes of the 17 countries is also set out in the table. While this is a crude exercise, it demonstrates that countries with smaller and larger populations rank both higher and lower than Ireland in the good governance stakes. Indeed, the table suggests that countries with smaller populations tend to have better governance than countries with larger populations. To invoke being a small country is to use a bogeyman argument. It is a lazy explanation for poor governance. Many small countries escaped the economic collapse unscathed while many large ones did not.

Chairman: I thank Dr. Byrne for her opening statement. Before I bring in the lead questioners, I have one question. Does the level of political donations received by political parties determine the outcome of elections?

Dr. Elaine Byrne: In anticipation of that question and while putting together my submission, I was watching "House of Cards".

Chairman: Unfortunately, we do not have that luxury as we are here most of the time. Therefore, I ask Dr. Byrne to drive on with the answer.

Dr. Elaine Byrne: Frank Underwood said, "Power is more important than money but when it comes to elections, money gives power, well, a run for its money". In its recent publication on the importance of political donations within a democracy which was published last month, the International Institute for Democracy and Electoral Assistance in Sweden, where I have done some consultancy work, said that democracy was ultimately about popular control over decision making and should, in theory, allow for a system in which citizens and electoral candidates participate on politics on fair and equal terms.

Chairman: In examining the Irish experience, does Dr. Byrne see a correlation between the funding coming into political parties and their representatives and the outcome of elections during cycles of funding and election cycles themselves?

Dr. Elaine Byrne: Research by Professor Michael Marsh in Trinity College, Dublin, has shown that there is a correlation. The more money a political party may have, the more advantageous that is within an election.

Chairman: Have the adjustments on how funding is now made to political parties, and the caps and limits that have been put in place, had a measurable impact on how election outcomes are now arrived at?

Dr. Elaine Byrne: The new caps, under the legislation, came in last year so we have yet to see the result of it.

Chairman: We had local elections last year.

Dr. Elaine Byrne: Yes but we have not had the Standards in Public Office Commission's annual report which goes through those donations.

Chairman: I thank Dr. Byrne. I call Senator Michael D'Arcy and he has 15 minutes.

Senator Michael D’Arcy: Dr. Byrne is very welcome. I wish to refer to her book entitled *Political Corruption in Ireland 1922-2010, A Crooked Harp?* Why did she bring the period for her book to an end at 2010?

Dr. Elaine Byrne: That was when I finished writing it and it also coincided with the entry into Ireland of the troika. For me, it was a natural beginning and end because it was from the foundation and establishment of political independence to the loss of economic independence in 2010.

Senator Michael D’Arcy: Her book follows on from where her submission concluded. On page 1 of the introduction her book reads, “Although the Irish public mind is perhaps convinced that corruption is a prevailing feature of political life, there has been almost no empirical investigation into the veracity of this assumption”. What is Dr. Byrne’s opinion about the “prevailing feature of political life” that the public is convinced is corrupt?

Dr. Elaine Byrne: I think there is a perception in Ireland that Ireland is very corrupt. Having lived in Australia, Austria and the Czech Republic and travelled extensively, I think it is a perception that is often misplaced. I remember, when I was teaching in Trinity College, I asked my students to rank between 1 and 166, according to the transparency perception index, where they thought Ireland was and most people said Ireland was 150 or 140. I would reply, “So you are saying that Ireland is more corrupt than all of the African countries and countries that have had dictatorships and so forth”. There is a misperception in Ireland about how corrupt we are. In comparative terms, which one can see in the table I have given at the end of my submission, Ireland ranks about the same as the UK, Germany and Belgium.

Senator Michael D’Arcy: Dr. Byrne also stated “that a culture of deference” between Government elected representatives and State authorities with banks and the property sector was well established by the 1990s. This culture of deference “operated where political parties and individual politicians were especially financially vulnerable”. Can that statement not be made about every country in the world that has an open democracy?

Dr. Elaine Byrne: Yes, but in Ireland’s case we were particularly financially vulnerable. At the close of the 1992 general election, for instance, Fianna Fáil was in debt to the tune of €3.5 million and Fine Gael owed more than €1 million. That perhaps was, in part, due to the turbulence of elections and campaigning in the 1980s. What I was trying to set there is the context, that by the time the boom came about political parties and political individuals were very financially vulnerable. In my book I detailed particular individuals and their struggles to finance their elections. Even if it was a small donation it would have meant quite a lot to those individuals and political parties, which may then have presented a more opportune example or opportunity for individuals and parties to be influenced.

Senator Michael D’Arcy: Yesterday Professor Farrell attended here. He quoted the UK, as a jurisdiction, and that our system is based on theirs, plus they were prepared to evolve much faster than ours. For example, the UK is moving towards fixed term elections. Does Dr. Byrne think that an unwillingness to evolve our systems, structures, not just the body politic, but also the public via referenda is unhelpful towards-----

Dr. Elaine Byrne: Does the Senator mean about fixed term elections?

Senator Michael D’Arcy: I gave that as an example. I refer to the fact that we are slow and hesitant to take an opportunity to evolve the political structure.

Dr. Elaine Byrne: I would leave that to Professor Farrell as he has more expertise in this area than I would.

Senator Michael D’Arcy: That is okay. I wish to refer to Dr. Byrne’s book again. In Chapter 4 she discussed, in the context of planning controls, how demographic and market changes impacted on demand within the economy and the effectiveness of planning legislation which was in place at that time. Can she expand on that, please?

Dr. Elaine Byrne: Is that on page 70?

Senator Michael D’Arcy: It is page-----

Dr. Elaine Byrne: In that chapter-----

Senator Michael D’Arcy: Yes, the 1963 Planning Act.

Dr. Elaine Byrne: I went through a series of concerns that happened throughout that period. There was the Tully tribunal in 1975 that lasted two hours - the shortest tribunal in the history of the State. There was also serious allegations on the front page of the *Sunday Independent* by an outstanding investigative journalist called Joe MacAnthony. A lot of what we subsequently were to find out was already in the public domain in the 1970s.

In my chapter I argued that the national coalition - the Fine Gael-Labour coalition - and some of their actions, ensured that these things were not fully investigated. I remember interviewing the former Attorney General and High Court judge, Declan Costello, extensively about this. In the archives I found a memorandum he had sent to the Government. Around that time, in the UK, they were looking at introducing conflict of interest legislation. Mr. Costello brought this to Cabinet, he sat at Cabinet at that time. The UK introduced much of the legislation which subsequently came into being in the mid-1990s, particularly around conflict of interest but there was a reluctance to introduce it here, and Mr. Costello was very frustrated at that. Twenty or 30 years later he was still noticeably frustrated that the Government, despite very obvious scandals happening, chose not to introduce legislation which would have regulated some of this behaviour.

I think the point the Senator has made is that in the 1970s something happened in Ireland that had not happened before, and that was to do with population changes. There were more people living in urban Ireland, for the first time, than there was in rural Ireland and one had this pressure on cities that one did not have before. More people wanted to move into cities, more people wanted planning permission and the existing system was not structured for that demand. A way of getting around that demand and delays in getting planning permission and facilities was that people tended to give money for planning permission or for certain facilities.

Senator Michael D’Arcy: On page 5 of today’s submission, Dr. Byrne states, “[M]uch misuse of power occurs where personal relationships, patronage, lobbying, political favours and political donations unduly influence the decision-making process even if no laws are broken”. Can she expand upon the extent to which there is corruption if a law is not broken?

Dr. Elaine Byrne: This is the distinction between legal corruption and moral corruption where, even though no laws may be broken, morally there may be outrage at particular types of behaviour. Often one finds that the law is catching up to address different concerns that arise. We must remember that the first legislation directly on corruption in Ireland was introduced in 1995. With the existence of the Irish State before that period, our legislation on corruption and

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ethics was derived from British statutes, from 1889, 1908 and 1916. One had this kind of gap where there was no legislation whatsoever to moderate regulated relationships between different entities. Arguably, one could say there was a lot of behaviour in politics in the 1980s and 1990s which, if it were to happen now, would certainly come under corruption legislation. It was not corrupt because there was no legislation which stated it was corrupt, but just because there was no legislation which stated it was corrupt does not mean that it was not corrupt.

Senator Michael D’Arcy: Did Dr. Byrne’s research on corruption show that the longer a party was in government the more corrupt it became, or did it show the contrary?

Dr. Elaine Byrne: When I was doing my thesis at the University of Limerick, much to the frustration of my supervisor, I refused to name particular political parties in it. I did not find relevant what the name of a political party was because it was about proximity to power. There has been a lot of research in other countries where that happens. I do not believe a particular political party and its membership somehow come from a different genetic pool from other political parties and their memberships. If political party X had been in power for a long period of time, rather than political party Y, I am not so sure the behaviour would have been that different. Often when people talk about corruption, it is very easy to do it. One may talk about individuals and corruption is very sexy; it is very easy to politicise it. What I try to do, however, is to rise above its politicisation. I do not believe it is about a particular political party or particular political individuals. I believe it is about how long these political parties or political individuals have been in power.

Senator Michael D’Arcy: Therefore, it is about the individual, not the party.

Dr. Elaine Byrne: No, it is about the proximity to power and how long a particular party or an individual has been in power. It goes back to the original definition of corruption which I think had to do with a bishop in England: “absolute power corrupts, and power corrupts absolutely”.

Senator Michael D’Arcy: Let me ask Dr. Byrne about the existing funding for local government. Does she believe the existing funding structure has contributed to potential corruption?

Dr. Elaine Byrne: I am not an expert on local government and have limited experience of it. For two or three years I sat on the strategic policy committee of Dublin City Council. From that experience I found that city councillors of all hues and political backgrounds were extraordinarily committed to local government and extraordinarily committed to their city. Also, there was incredible frustration at the limit to what they could do in local government because of funding issues. Local government in Ireland has very weak financial autonomy compared to that in other EU countries. There is a large reliance on central government funding. In Dublin City Council’s case, for a decade there were outstanding fees from the Government in property taxes on State buildings around the city. Therefore, I think this weak financial base of local government in the 1990s and the influx of money in property development levies gave local government a large dependence on property levies. I defer again, however, to people who are experts on local government.

Senator Michael D’Arcy: Dr. Byrne mentioned tax incentives in her submission. She said the criticism of tax incentives was that they continued for too long. Am I correct in saying this?

Dr. Elaine Byrne: Yes.

Senator Michael D’Arcy: Were there tax incentives in other countries that Dr. Byrne analysed? If so, did they end when they were supposed to end?

Dr. Elaine Byrne: I have not analysed tax incentives provided in other countries. The reason I asked that series of questions around tax incentives and policy issues was we did not know the answer to these questions. Yesterday Professor Niamh Hardiman touched on some of the issues around the weakness of evidence-based policy making in Ireland.

Senator Sean D. Barrett: I thank Dr. Elaine Byrne for her presentation. On page 238 of the book she quotes Eurobarometer research that the level of trust in government in Ireland fell from 46% to 10% between June 2008 and June 2009. Is that connected with the work of this committee? Was it a critical factor? It is certainly contemporaneous with one of the events at which we are looking.

Dr. Elaine Byrne: Yes. There were similar falls in the level of trust in other countries like Spain and Greece where they had a deep financial collapse. I will point again to the mismatch between the perception in Ireland of corruption and how we compared to other countries. In a survey last year for the European Commission European consultants found that 81% of Irish people believed corruption was widespread. Some 24% believe the Government’s efforts to combat corruption are effective. I guess this comes back to the analogy I often use about shoes and shoelaces. In many ways, Ireland has some of the best legislation in the world on governance and ethics. America and the United Kingdom would give their right arm for the limits on political donations we have and Exchequer funding for political parties. The US President’s recent appointee as ambassador to Ireland is a political appointment, as all appointees are. Such a concept would be alien to the Department of Foreign Affairs and Trade. There are lots of things where Ireland stands head and shoulders above other countries when it comes to the legislative framework we have in place. I argue that new shoes are no good unless one has tied the shoelaces. Despite having very good shoes, or good legislation, what happens is that we trip over the small things. We trip over implementation, perception and culture, which is quite frustrating.

Senator Sean D. Barrett: In the aftermath of what happened on 29 September 2008, however, there was a massive decline in the level of trust from 46% the previous June to 10% the following June.

Dr. Elaine Byrne: Yes, there was.

Senator Sean D. Barrett: What is the number now? Has it been updated?

Dr. Elaine Byrne: I have not seen what the latest number is, but I will quote the recent figures from the European Commission reports in which I was involved last year. Some 81% of Irish people believe corruption is widespread.

Senator Sean D. Barrett: When Dr. Byrne was replying to my colleague, Senator Michael D’Arcy, about her interview with Mr. Declan Costello, on page 86 of the book, she found that he had proposed measures in 1974 which were strikingly similar to the post-1995 Irish corruption legislation. For the benefit of the committee and people watching, what were these measures?

Dr. Elaine Byrne: I have not looked at it since I wrote it. In the archives I found a memorandum for the Government, which was about six or seven pages long. I remember sending it to him and we met afterwards. The tone of the language in that memorandum was so strong and exhibited very deep anger and frustration at the behaviour of politics and political parties in

Ireland in the early to mid-1970s and proposals to address it. At the time there was the Poulson affair in the United Kingdom where similar issues had arisen. I will give one reform that he suggested, apart from introducing conflict of interest legislation under which councillors or TDs would have to declare, for instance, that not only were they politicians but that they were also directors of property companies or were being paid as consultants by property companies. He was critical of the Local Government Act 1946 which had repealed the 1898 order obliging local councillors to declare conflicts of interest. He drew attention to the Housing Act 1966 which had yet to be applied and the difficulties in providing for an offence under the outdated Public Bodies Corrupt Practices Act 1889. He noted that no legislation whatsoever dealing directly with corruption and ethics had been introduced in Ireland since the British statutes.

Senator Sean D. Barrett: On page 7 of Dr. Byrne's presentation today, she refers to the payments for whistleblowers under the Dodd-Frank Wall Street Reform and Consumer Protection Act 2010 in the US. Is it up and running? How does it work?

Dr. Elaine Byrne: Yes, it is. To the Irish mind, this could be very controversial. There have been a number of cases in the last year or two where whistleblowers working within banks have received reward payments of several million dollars and given information about fraudulent practices that had been occurring within their institutions. I have written several newspaper articles detailing the whistleblowers involved, the fines that have been imposed as a consequence of their information and the money that they have received. It has worked very successfully in America.

Senator Sean D. Barrett: Dr. Byrne quotes in her book the Minister for Finance, Deputy Noonan, when he was talking about the professions. This was a matter pertaining to the sugar company. The Minister said in the Dáil, "I know it is a widely held view among the professions in this country that dog does not eat dog. I believe, however, that the taxpayer who paid £1.1 million for this report was at least entitled to one bite". The tone certainly reminds us of the Minister. Are professions not being accountable in Ireland a major issue to which he was drawing attention? Are they ever called to account? Is that part of our non-accountable society?

Chairman: Will Dr. Byrne comment upon that?

Dr. Elaine Byrne: Broadly. I think, until the mid-1990s, politics in Ireland and political behaviour were self-regulated. In the book, I go through different instances where the suggestion of regulating political behaviour was seen as not trusting politicians and how dare someone suggest such things. In particular, Ms Eithne FitzGerald, when she was Minister of State with responsibility for labour affairs in the early 1990s, received incredible abuse for suggesting that politicians needed to have conflicts of interest and so forth. The suggestion that to do so would be abhorrent. We had very much a self-regulating culture in Ireland, whether it was in politics or the church or professions. Each of the professions has its own organisation that self-regulates behaviour. As we have seen through the crash, a lot of things were dealt with in-house and probably did not receive the appropriate legal attention that they should have.

Senator Sean D. Barrett: Dr. Byrne cites on page 125 a senior civil servant congratulating a subordinate for confusing a Deputy who had asked a parliamentary question and was subsequently referenced in the tribunal. If the questions that were asked in the Dáil were answered in the way they are answered here, there would be no need for this inquiry. Does that indicate a culture of dishonesty in the permanent government?

Dr. Elaine Byrne: I think this is in relation to the beef tribunal. This was where, over many

years, different Deputies were asking very pertinent and direct questions about issues pertaining to the export of beef to Iraq. At the tribunal, when that particular politician - was it Ray Burke? - was up before it, the response was, "They never asked the right questions, therefore, I never gave them the right answers". It exposed - this is again going back to what Professor David Farrell would have referred to yesterday - the weakness of the Dáil in respect of getting answers from the Government of the day.

Senator Sean D. Barrett: When Dr. Byrne was replying to Senator D'Arcy, she referred to the tax breaks and a concern about those and the way the Finance Bill appeared each year. How would she recommend that we deal with tax breaks?

Dr. Elaine Byrne: I think that goes back to the recommendation I have with regard to focusing on lobbying. As to the current lobbying legislation, its emphasis is on registering who the lobbyists are, but not necessarily on why Ministers have made particular decisions. In Canada, this works quite well. In its legislation, when amendments have been made, one will see it. A friend who works at a senior level in the Canadian Government explained this process to me. Every Friday, it will go up on the website of the particular Department - the different legislation, the reasons for the different amendments, links to who gave proposals and all of that. It is a very clear, line-by-line explanation for why Ministers and decision makers came to make particular decisions on legislation.

Senator Sean D. Barrett: Would those Canadian parliamentarians have an estimate of the purported costs and benefits? That is one of our problems. We do not know what the cost of a tax break might turn out to be.

Dr. Elaine Byrne: Yes. The 2008 OECD report on public service in Ireland focused a lot on this question and noted the absence in Ireland of a tradition of what would be known as regulatory impact analysis. Some Departments now, particularly the Department of Public Expenditure and Reform, are very much focusing on this but where one looks at what the unintended consequences of this legislation will be, how much will this particular decision cost and how will it impact other legislation, it is not just about introducing something at will, but looking at the potential effect of that legislation down along the line. That is a tradition that, perhaps, we could use more effectively here.

Senator Sean D. Barrett: We rely a lot, as Dr. Byrne knows from the Constitution, on the Comptroller and Auditor General to help in these matters. Would Dr. Byrne strengthen the powers of the Comptroller and Auditor General in any way to deal with the issues she has been raising with us this morning?

Dr. Elaine Byrne: When I was doing consultancy work with Transparency International, we published a national integrity report in 2009. That would have involved in 2008 a series of round tables with different actors, including people from the Comptroller and Auditor General's office. From what we gathered, the effectiveness of the Committee of Public Accounts is often based on the relationship between the Chair of that committee and the Comptroller and Auditor General as to what to focus on and what not to. So, there is very much an informal aspect to it.

I think a lot of agencies, whether it is the Comptroller and Auditor General, the Criminal Assets Bureau, the Competition Authority or whatever it may be, are very reluctant to say publicly they need more resources. If one goes through the cuts that have been made to different agencies that have responsibility for oversight in the past four or five years, some of the cuts have been incredible - 20% or 25% - at a time when their workload has increased. It seems a

very counterproductive effort.

Senator Sean D. Barrett: Dr. Byrne mentions on page 7 the register of liabilities. It seems plausible that a politician who is in debt will be more susceptible to the kind of conduct Dr. Byrne has been describing. How does that work in the countries she mentioned, for example, Australia, Finland, New Zealand and so on?

Dr. Elaine Byrne: If we had such a register of debt, in theory we would have known in the 1970s and 1980s the extent of the then Taoiseach, Charles Haughey's debts to AIB and so forth. The idea is that one is not just influenced by what shares one may own. A register of liabilities is what assets one has and what shares one has, as the members all know from doing these forms every year, but it also lists what one's financial vulnerabilities are. Maybe there is a conflict because one owes a lot of money to a particular bank or institution. In Canada when I looked at it, in the case of its Minister of Finance, if one goes online, one will see the loans he has. Not the exact amount of loans, but the loans that he has and his exposure to different banks. It is a very open and transparent system.

Chairman: I will allow Senator Barrett another question if I can.

Senator Sean D. Barrett: I thank the Chairman. As to banning beauty contests in favour of auctions, why have they been turned down so many times? Dr. Byrne said it and Professor Colm McCarthy says it, namely, we still want something that is not open and transparent like the auction would be.

Dr. Elaine Byrne: Is this about procurement processes and tendering?

Senator Sean D. Barrett: Yes.

Dr. Elaine Byrne: I think the Senator is making reference to an article that Colm McCarthy wrote that I quoted from. He wrote it in 2006, I think, about a tradition in Ireland. Dr. Raj Chari in Trinity College Dublin and Professor Gary Murphy have also looked at this. In Ireland, tendering and procurement processes tend not to be as open and transparent as they should be. Journalists often neglect to read the Comptroller and Auditor General's reports, which report serious questions of unorthodox behaviour in the way certain tenders and procurement contracts are awarded. The annual procurement budget in Ireland is up to €17 billion. Some members would have more information on it than I. There is not as much scrutiny of how procurement awards are made as there should be.

Deputy Kieran O'Donnell: I will return to the overall thrust of our inquiry, which is the banking crisis. On page 5 of Dr. Byrne's statement she refers to "undue, but not illegal, influence by vested interests over regulation of policy making". What role did the influence of vested interests have in the banking crisis?

Dr. Elaine Byrne: This is why I asked the series of questions. I cannot prove that because X gave a donation to Y, policy Z occurred as a result. All I am doing is highlighting the extent of donations and policy making that benefitted those sectors, particularly the property sector. An audit of how much those tax incentives cost the State and the relationships therein would be very helpful. We can insinuate-----

Deputy Kieran O'Donnell: We need empirical evidence.

Dr. Elaine Byrne: Yes. These things happen behind closed doors. How can we know why

certain decisions were made without access to the information? This goes back to my recommendation on lobbying. We do not just need a register of lobbyists and a means of identifying them. Analysing why decisions were made is the crucial issue.

Deputy Kieran O'Donnell: Dr. Byrne spoke about political reforms. What jurisdictions worldwide have such political reforms in place to make the political system appear transparent and fair to the public?

Dr. Elaine Byrne: Along with the reforms I have suggested, I also outlined the countries in which the reforms already exist.

Deputy Kieran O'Donnell: Which of them are operating the most effectively?

Dr. Elaine Byrne: Returning to the evidence given by Professor Niamh Hardiman and Professor David Farrell, there is no silver bullet that will solve everything but a combination of reforms. Reforms could include introducing monetary rewards for whistleblowers and a register of Members' liabilities.

Deputy Kieran O'Donnell: Which system for funding Irish political parties would Dr. Byrne advocate?

Dr. Elaine Byrne: The Irish system is very robust. The unintended consequence, as Des O'Malley and others have pointed out, is that it is so heavily regulated that it is very difficult for new political parties or entities to make a mark. I have spoken to general secretaries of the political parties and many of them model their political funding systems on the Gaelic Athletic Association, GAA. Before President Obama was doing it, the political parties here were deriving the majority of their funding from small donations from many members. Most people would be surprised at how much money political parties receive from membership fees, national draws and dinners. The problem is that the public does not see it, and only sees the gaps between the disclosed and undisclosed money. This creates a problem.

It is not just about having good legislation but about political leadership and the culture that exists. Ireland has some of the best legislation in the world around political funding. Approximately six months after a corruption tribunal reported adverse findings regarding a wealthy businessman, the Taoiseach was ringing a bell with him. That sent a message to people. Instead of the Taoiseach standing up, he sat back and rang a bell. While we can have great legislation, when the public sees there are no consequences and that there are different rules and regulations for different people, it creates an unfair perception.

Deputy Kieran O'Donnell: Which system is more robust, our multi-seat system or the UK's single-seat system?

Dr. Elaine Byrne: I would put changing the electoral system in the same category as the argument that if Ireland were a bigger country, governance would be better. It is a bogeyman argument. As Professor Farrell said yesterday, no matter what electoral system we had, the culture would shape itself around it to determine the choices of what we want the electoral system to be. I am not convinced that changing the electoral system is the big answer that would solve all Ireland's problems. However, I would defer to people who would have particular expertise on electoral systems.

Deputy Michael McGrath: I welcome Dr. Byrne. What does she believe motivates people who make donations to political parties? I am not talking about members buying a ticket in a

national draw or supporting a church gate collection, but non-members of parties who make donations to individuals or parties. Is it to support an individual candidate in whom they believe, to support the policies of the party or to influence the policies of the party?

Dr. Elaine Byrne: It is a combination of those elements. There is a danger that because of the enormous abuses that have happened in the funding of political parties in the past - I mentioned four tribunals that examined this - anybody who donates to a political party is regarded as seeking malign influence. This is wrong and unfair. People support political parties and political individuals because they believe in democracy and democracy does not run on thin air. Money is necessary to fund the salaries of research assistants and so forth. My research shows that when particular sectors have donated in such large amounts to political parties, it suggests they were doing so because they were seeking influence or they felt it was necessary. It is not unusual and occurs in many countries. I referred to beef barons and property barons. In the 1980s, the beef industry was donating to all political parties because beef was the biggest indigenous industry in Ireland at the time. In the 1990s and 2000s it was property, because property was fuelling the economy. If the same rules and culture were in place now, perhaps it would be multinational and technology companies that would be donating to political parties. Donations often reflect the make-up of the economy. Regarding the donations to Fianna Fáil, the property sector, auctioneers and solicitors were prominent donors, as were banks and the motor industry. They were the industries and sectors of the boom.

Deputy Michael McGrath: To extend that question, Dr. Byrne said earlier that it was all about proximity to power. I believe she was inferring that those in power will invariably get more donations. Does that lead her to a conclusion that those who are making the donations are seeking to influence those who hold the reins of power?

Dr. Elaine Byrne: Yes.

Deputy Michael McGrath: More donations are going to those in power, irrespective of who it is.

Dr. Elaine Byrne: Yes.

Deputy Michael McGrath: Does that not answer the first question in a way? As those in power get more donations, for at least some of the people making donations the motivation behind making the donation is to influence policy.

Dr. Elaine Byrne: Yes, that is one reason people donate.

Deputy Michael McGrath: May I clarify the rankings Dr. Byrne has outlined in Table 1? The first column is Transparency International Corruption Perceptions Index, and Ireland has the figure 16. On the scale, one is the least corrupt and 166 is the most corrupt. Is that correct?

Dr. Elaine Byrne: Yes.

Deputy Michael McGrath: Is this perception or is it some type of measure of actual corruption? How is that arrived at and what does it measure?

Dr. Elaine Byrne: It measures perception. There are eight different surveys of different groups of population in each country and those are correlated. There are very few convictions in the world for corruption so it would be very difficult to have a rank that measures actual corruption. By its nature corruption is clandestine. There are problems with measuring just per-

ception, and Transparency International and other agencies have acknowledged that. However, there is also a consistency about these rankings over a period of time and correlated to other indices.

Deputy Michael McGrath: Where does Ireland rank in terms of developed countries?

Dr. Elaine Byrne: Which rank does the Deputy mean?

Deputy Michael McGrath: There is a figure of 16 for Ireland, and Dr. Byrne has given some comparisons there.

Dr. Elaine Byrne: In 2008, Ireland was the 16th least corrupt, Denmark was the least corrupt and I chose the most corrupt in Europe at that time, which were Bulgaria at 72, Romania at 70 and so forth. Does the Deputy want me to refer to the World Bank?

Deputy Michael McGrath: No, I misinterpreted the numbers. Dr. Byrne says the 16 figure for Ireland means that Ireland ranked 16th-----

Dr. Elaine Byrne: Least.

Deputy Michael McGrath: -----not that Ireland had a figure of 16 on the spectrum of one to 166 in terms of corruption. It is a ranking.

Dr. Elaine Byrne: Yes, it is a ranking. Ireland is 16th least corrupt.

Deputy Michael McGrath: Finally, Dr. Byrne asks some quite big questions on page 5 of her statement: “Did donors from the property sector have a vested interest in the formulation of policy?” and “Was the decision-making capacity of political parties eroded by a conflict of interest?” and so forth. She says one cannot reach conclusions without evidence, but she must have formed an opinion. Has she formed an opinion? She is entitled to an opinion, as she has looked at this more than most. What is her opinion or view on those questions?

Dr. Elaine Byrne: Just as in the 1980s when certain policy was tailored to the beef industry, I would argue that perhaps in the 1990s particular policy was targeted towards the property sector.

Senator Marc MacSharry: I have a couple of questions relevant to the presentation. Chairman, can I go in another direction a little?

Chairman: Once you stay within the terms of reference you can go wherever you wish, Senator.

Senator Marc MacSharry: In fairness, much of the good material has already been covered, but Dr. Byrne’s presentation was so good I am sure I will find more in it. What is Dr. Byrne’s opinion of the various political reforms that have been introduced by the current Government and those that are under consideration by the Constitutional Convention? What impact does she believe these reforms will have on the various relationships between State authorities, parties, elected representatives, supervisory authorities, banks and so forth?

Dr. Elaine Byrne: Again, I refer to my shoe and shoelaces argument. In many respects, Ireland has some of the best practice legislation on governance. However, it is about implementation and culture. There have been various scandals in the last year, for example, relating to Seanad appointments which present a picture to the public that there is somehow unorthodox

influence over appointments in public life, when often these things are regulated.

On the Constitutional Convention, as somebody who was part of the reason that it happened through the “We the Citizens” initiative, I am very disappointed by it. It was a missed opportunity. Many of the questions that were presented to the Constitutional Convention were not the big questions of the day. There is a tendency in the Government to focus on numbers in its reforms, for example, how many local councils there are, how many Deputies there are, what are the salaries of particular individuals, whether somebody should vote at 18 years old or 16 years old and whether the age to be President is 35 years old or 21 years old. There is a focus on numbers in the reform programme by the coalition, rather than on where power is, which was discussed by the witnesses before the committee yesterday. I think the Constitutional Convention was a missed opportunity.

Senator Marc MacSharry: Is there legislation anywhere in the world that in some way holds political parties to account in terms of the manifesto versus programme for government?

Dr. Elaine Byrne: Yes. It is called elections.

Senator Marc MacSharry: Apart from elections.

Chairman: Thank you very much. That is one of the major findings of this inquiry.

Senator Marc MacSharry: Somebody suggested to me that in Canada, perhaps, there is some way of holding party A to account for promising X but reneging on it or doing the opposite.

Dr. Elaine Byrne: I am not aware of that. If there was, I would not be surprised that such reforms exist in Canada. It is often ahead of the curve on many of these matters.

Senator Marc MacSharry: Is it the benchmark?

Dr. Elaine Byrne: Yes, it would be on many things.

Senator Marc MacSharry: I will veer slightly away from that. It relates to something we will be considering later, but as Dr. Byrne is here I will put the question to her. From a journalistic perspective, is there a code of conduct in newspapers for how journalists interact with the commercial world?

Dr. Elaine Byrne: There are the NUI guidelines that were introduced as part of the Defamation Act 2009. Yes, there is a code of conduct. There are six principles in it.

Senator Marc MacSharry: It is not related in any way to any law?

Dr. Elaine Byrne: No.

Senator Marc MacSharry: In terms of the relationship between the commercial return from property advertising at a particular period, such as 2004 to 2008, where in some publications the property supplements might have been bigger than the news section, does Dr. Byrne think that in any way influenced the editorial policy of newspapers?

Dr. Elaine Byrne: The committee will have editors and managing directors in and-----

Senator Marc MacSharry: I am asking for Dr. Byrne’s view, because of her expertise.

Dr. Elaine Byrne: I would defer to the editors when they come here. When I was living in Australia, it was very noticeable that the property correspondents in the newspapers were sponsored by particular property companies, and the financial correspondents in different newspapers and television reports were sponsored by particular banks. There are all sorts of conflicts of interest there. I do not think it was to that extent here.

Chairman: A final question, Senator.

Senator Marc MacSharry: Would there have ever been an occasion of which Dr. Byrne is aware - it could be her own newspaper the Sunday Business Post or any newspaper - when a commercial entity cancelled or pulled advertising because of a line of editorial?

Dr. Elaine Byrne: I have written for *The Irish Times* and *The Sunday Business Post*. The editorial inference in *The Irish Times* is what the Senator is referring to. I have my own opinions about that recent experience. Again, I would not be privy to those kinds of decisions.

Senator Marc MacSharry: What is Dr. Byrne's view? She said she has one.

Chairman: I do not want Dr. Byrne to speculate.

Senator Marc MacSharry: I do not want her to name names.

Dr. Elaine Byrne: I will take the Chairman's advice.

Deputy Eoghan Murphy: Just to come back to one of Senator MacSharry's questions on the changes to lobbying and donations legislation which have been made from learning from the crisis? Excluding the cultural and leadership aspects, is it too soon to tell if we have done enough with the law around donations and lobbying?

Dr. Elaine Byrne: It is really. We are still waiting on the Standards in Public Office Commission reports. Again, it is a missed opportunity by the current coalition Government not to have put the guidelines on party finance into place when it could have. It now allows that political parties are not obliged to make their annual reports available for public consumption until, in theory, after the 2016 general election. This allows, facilitates and enables the perception that something unorthodox is happening. Political parties should demonstrate their commitment to transparency, accountability and all those buzzwords by disclosing their accounts.

Deputy Eoghan Murphy: Does Dr. Byrne believe that the way to combat this perception is to do this?

Dr. Elaine Byrne: If they published the accounts, we could see then.

Deputy Eoghan Murphy: Should undisclosed private donations from an individual be allowed to continue?

Dr. Elaine Byrne: The donation limits are very small. In the future, it is very likely that the majority of donations will be undisclosed. That said - this is anecdotal because I have not seen recent accounts - most political parties get their money from membership fees of €25 or €30, depending on the party, from dinners and national draws in particular. If the accounts were published, then we could see. Why not?

Deputy Eoghan Murphy: Does Dr. Byrne think the limits could be lower?

Dr. Elaine Byrne: I do not.

Deputy Eoghan Murphy: Does Dr. Byrne think corporate donations should be completely illegal?

Dr. Elaine Byrne: They are kind of already. If a corporate body donates over €200, it must get permission from its board to do so. In theory, it has made it very difficult to get corporate donations.

Deputy Eoghan Murphy: Should there be concentration limits on which sectors can donate to political parties?

Dr. Elaine Byrne: When I went through all the different donations to political parties, there was evidence of Mr. X, a property developer, donating, as well as his wife and child donating. How does one regulate that? There are ways around legislation, as there are ways around everything. One of the detailed recommendations I made to the standards commission was that, in theory, X property developer, or whatever sector he or she is from, could make individual donations to each member of a political party. In that way, the individual is not donating to a political party but to individuals and, in that way, raising the amount of money he is giving annually to an individual.

Deputy Eoghan Murphy: In terms of the relationship between the party and the individual, Dr. Byrne referred to a movement towards more donations to the individual politician rather than the party. Will she comment further on that and what the implications of that might be?

Dr. Elaine Byrne: Ireland is no different from other countries. Loyalty to political parties is diminishing while loyalty to political individuals is increasing. The brand of political party is not what it once was. People prefer to donate to a particular individual. It is harder to influence a political party but easier to influence an individual.

Deputy Eoghan Murphy: Earlier, Dr. Byrne talked about corruption being sexy. It can be on TV. In Ireland, is our threshold for accepting unethical or improper behaviour in politicians higher or lower than in other countries, for example the UK? I will cite the Andrew Mitchell “Plebgate” incident which was a resignation issue there. Do we have a higher or lower threshold when it comes to those kinds of practices and standards in political life?

Dr. Elaine Byrne: There is a sense in Ireland of *déjà vu*, of here we go again or what would you expect. Much of this is due to the absence of consequences. More than 200 Ansbacher accounts were identified in the biggest incident of tax evasion in the history of the State but not one single prosecution for tax evasion. There have been no meaningful consequences from the tribunals of inquiry. When people see an absence of consequence, then that enables this culture of shrugging shoulders.

Deputy Eoghan Murphy: Should there be sanctions?

Dr. Elaine Byrne: That is why the very first recommendation I suggested was that there should be an audit of the different agencies tasked with oversight. I know from speaking privately to the different individuals in these agencies that, again, they are people very committed to their role of oversight but are frustrated they do not have the resources to do so or that there is no information-sharing. I have written in articles before how the response to the drugs epidemic, along with the murder of journalists and a policeman in the mid 1990s, saw the establishment of one of the most innovative bodies in the world, one which most countries seek to replicate, the Criminal Assets Bureau. Yet, after the biggest financial crisis in the history of the State, the response is not an overhaul of how fraud and economic crime are investigated,

prosecuted and resourced, as was the case in the US or UK. That to me is incredible and very shortsighted.

Deputy Joe Higgins: Following on from that very point, is an explanation that the very most of what was done in building up the bubble, the huge profits made, speculation etc, was all in fact quite legal?

Dr. Elaine Byrne: Does the Deputy mean the behaviour of individuals?

Deputy Joe Higgins: Yes.

Dr. Elaine Byrne: Yes, it was. As I mentioned earlier, the first time we had legislation on corruption or ethics in public life was with the introduction of freedom of information and ethics legislation by people like Eithne FitzGerald and Brendan Howlin in 1995 and 1997.

Deputy Joe Higgins: Is the problem the fact we live in a capitalist society that allows private interests, banks and develops to make massive profits on the backs of people buying homes? Is that the source of many of the problems rather than direct corruption?

Dr. Elaine Byrne: We live in a free market. The pursuit of profit is not an illegal or unusual concept. The regulation of behaviour of people and their proximity to power is one that was largely absent.

Deputy Joe Higgins: Let us explore more about why or why not people in power might be partial to substantial business interests.

In her written submission, Dr. Byrne referred to a culture of deference between State authorities, political parties and elected representatives. She stated: "This culture of deference operated in a context where political parties and individual politicians were especially financially vulnerable." She gave the examples of the Guinness Mahon Bank and the Ansbacher affair and the example of the former Taoiseach, Charles Haughey's indebtedness to Allied Irish Bank and the writing off of substantial debt. Did any other former taoisigh receive favourable treatment from a bank when they were financially vulnerable?

Dr. Elaine Byrne: Yes, Garrett FitzGerald. AIB wrote off debts of almost £200,000 in 1993. That followed the collapse of aircraft leasing company GPA, Guinness Peat Aviation, in which he was a shareholder. His write-off, by contrast with that of Taoiseach Charles Haughey, occurred after he had left politics, six years after he had been Taoiseach and a year after he had retired from backbench politics. That matter, the write-down of Garret FitzGerald's £200,000 debt by AIB, was investigated by the Moriarty tribunal which made the contrast between Garret FitzGerald and Charles J. Haughey. Charles J. Haughey largely kept all of his assets virtually intact, while Garret FitzGerald sold his family home and virtually everything else he owned in a bid to pay off the money he owed.

Deputy Joe Higgins: Nevertheless, a bank advanced very substantial amounts of money to a former leader of the country to gamble on speculative shares. The Government that person led had actually rescued Allied Irish Banks from its significant loss in respect of the Insurance Corporation of Ireland.

Dr. Elaine Byrne: Is the Deputy asking me to comment on that?

Deputy Joe Higgins: Yes. Does it or does it not back up the culture of deference between politicians, banks, etc?

CONTEXT PHASE

Chairman: I will ask Dr. Byrne to move to the more macro-scale of the point being made, rather than discussing individuals. In fairness to her, we cited a number of individuals this morning, but in terms of the macro-point-----

Dr. Elaine Byrne: Again, I refer back to what I mentioned about the Moriarty tribunal's findings. The culture of deference in Ireland was not just in politics; it was within the Church, the police, as we have seen, hospitals and every sector of Irish society.

Deputy Joe Higgins: Is it not unlikely that the plumber down the road would be treated in a similar way to both former leaders by the banks?

Dr. Elaine Byrne: I do not know, but I do know that, in that instance, former Taoiseach Garret FitzGerald was not the only individual who had his debts written off by GPA.

Deputy Joe Higgins: Dr. Byrne stated that from 1997 to 2007 Fianna Fáil received 35% of its income from property and construction interests. The Progressive Democrats received 34%. Dr. Byrne has stated it appears "the property barons of the 1990s and 2000s replaced the beef barons of the 1980s." Was the financing of political parties at the time wider than this? Is Dr. Byrne aware that in the 1990s there was substantial controversy about the financing of the Fine Gael Party relative to the second mobile phone licence and that in 2000, €50,000 each was donated to three major parties, namely, Fianna Fáil, Fine Gael and the Progressive Democrats, by a single business donor? Is it the case that instead of having sectionalised interests, we have party-supporting big capitalists in general who underwrite the system, which allows them to make substantial profits on an ongoing basis?

Dr. Elaine Byrne: What is the question?

Deputy Joe Higgins: Rather than narrowing down the issue to property barons replacing the beef barons, it must be realised it is much wider, as I illustrated, in that big, wealthy businesspeople in general-----

Chairman: The Deputy should ask a question.

Deputy Joe Higgins: -----support the political system because of the gains they can make from policy.

Dr. Elaine Byrne: When I looked at the disclosed donations to Fianna Fáil between 1997 and 2007, I found that over one third had come from property and construction interests. In the 1990s and late 1980s the main money was from the beef sector. That is not to say the party or other political parties did not get money from other sources and other individuals in large amounts also.

Deputy John Paul Phelan: I welcome Dr. Byrne. On page 4 of her opening statement she refers to the 2007 general election. I was looking at the members of the inquiry and saw that many of us had been candidates in that election. Dr. Byrne has referred to the fact that only €1.3 million was disclosed of the €10.1 million spent in the entire election campaign. Has she analysed the amounts of funding individuals put into their own election campaigns? I was an unsuccessful candidate and virtually everything I spent on the campaign was money I had saved myself, rather than funding from the party as such.

Dr. Elaine Byrne: Yes, that is a really good point. I am aware that right across political parties individuals would have self-financed their campaigns considerably. There are people

who are still paying off credit union loans and things like that. This begs the question as to whether the political system is predisposed to attracting people of financial means rather than people who may have less access to money, which prevents people from particular areas of life from entering politics as they may wish to do. The answer to that question is “No” because it is about what is disclosed to the Standards in Public Office Commission. What I examined were the facts on the Standards in Public Office Commission’s annual register over ten years. These figures were not put on it. As I have stressed throughout, all this can do is infer patterns. It is not a complete picture of how political parties or political individuals have funded their campaigns, which is why I argue that one perhaps might need to have an electoral commission or an independent commission to look at how politics in general is funded to address the questions the Deputy has just raised.

Deputy John Paul Phelan: Following on from that - Dr. Byrne has touched on this in a couple of previous answers - if the funding of the political system in general is to be based on the historical performance of political parties, there is an automatic bias against new entrants and new political parties. Can this be squared? How could a funding system be designed that would allow equal access?

Dr. Elaine Byrne: I think it is important for the public to know that money for election purposes is very different from money outside them such that the money political parties receive from the Exchequer cannot be used for campaigning. There is absolutely no evidence whatsoever of that ever occurring. Political parties, for their referendums and election campaigns, must raise the money from political donations. Political parties do not set the rules for where their constituency boundaries should be. When the national coalition did this in the 1970s, disaster followed and a new system was introduced. On the same principle, why should political parties decide how political parties are funded? It does not make sense. It would allow for new entrants to political life to have an alternative income source.

Deputy John Paul Phelan: To change tack, does Dr. Byrne believe the Standards in Public Office Commission is sufficiently empowered to enforce the current ethics legislation? As I was a child politician, I have been a politician for about 16 or 17 years. It is all about voluntary disclosure. Is the commission in a position to investigate thoroughly whether that disclosure is complete?

Dr. Elaine Byrne: No, I do not think so. A balance has to be struck, too. The members are all people in professional life. Does one create a system in which absolutely every part of one’s behaviour is regulated? There has to be some trust. The costs of a false declaration are so high in terms of reputation that one really would have to have a very brassy neck to do such a thing. The vigilance of the public is also so high. I urge people to look at the recommendations the Standards in Public Office Commission has made repeatedly in its annual reports. In particular, it sought what it termed an “inquiry officer”, who would have the role of making independent inquiries. There is no such role.

Deputy John Paul Phelan: I have a brief final question. Dr. Byrne stated, I think in answer to Deputy Michael McGrath, that a lot of political donations have tended to follow those who have been in power. Has Dr. Byrne conducted any research into the permanent government, effectively, those in the Civil Service, whether they are in local authorities or-----

Dr. Elaine Byrne: Donations to the Civil Service?

Deputy John Paul Phelan: Not donations but corruption within the permanent govern-

ment, effectively. Is there any evidence? We have seen some evidence, I suppose through some of the recent tribunals, of certain activities but has there been any extensive research into that area? That is the question I am trying to ask.

Dr. Elaine Byrne: No there has not, and I think we must also remember that Ireland is different to some countries in that we have a very meritoric, in theory, Civil Service and local government system. The Local Appointments Commission and the Civil Service Commission, both established in the early 1920, ensured that the local government positions and Civil Service positions were not politicised, in contrast to America where, when a new President comes in to office, all the civil servants leave. We do not have that system in Ireland. As I outlined in the book in regard to the beef tribunal in particular, certainly there have been senior civil servants who subsequently went to work for the individuals they had been regulating. Therefore, there was this revolving door culture of gamekeepers turned poachers. It is now in some of the agencies in the State managing some of the property assets as well

Chairman: I call Deputy Pearse Doherty.

Deputy Pearse Doherty: Go raibh maith agat. A quote from Dr. Byrne's book, *Political Corruption in Ireland 1922-2010: A Crooked Harp*, which has been mentioned before states, "A corrupt Act can be camouflaged by lawful justification". I think Dr. Byrne has referenced events which may have happened in the 1970s and 1980s. Legislation was not in place at the time but if today's legislation was applied then, it would be questionable to say the least. In regard to the subject matter that this inquiry is investigating, primarily the banking collapse but many other areas from 1992 onwards, does Dr. Byrne believe that statement holds for that period of time and the subject matter under this investigation, or that it is not relevant to the issues we are discussing?

Dr. Elaine Byrne: Is the Deputy is asking if certain behaviour committed by politicians was lawful but irregular since 1992?

Deputy Pearse Doherty: Yes. Was it camouflaged by lawful justification as in the words used by Dr. Byrne?

Dr. Elaine Byrne: I would like the answer to some of those questions that I mentioned about why decisions were made about particular tax incentives and the relationship that individuals had, in particular insider positions and their access to those in power. The Department of Justice and Equality is introducing what is known as a trading in influence clause in the corruption legislation. That certainly regulates that kind of behaviour. The answer to that question is "Yes".

Deputy Pearse Doherty: I will move to page 12 of Dr. Byrne's book where she introduces a term, which has not been discussed by the inquiry so far, "mediated corruption". Will she explain briefly to the committee the concept of "mediated corruption", who it benefits or who it does not benefit, particularly in regard to the investigations which the committee is taking on?

Dr. Elaine Byrne: This mediated corruption goes back to something that may be undue influence but not necessarily illegal. The trading in influence provision in the new corruption legislation seeks to regulate that. GRECO and various bodies looking at Ireland's governance framework for many years have been criticising the absence in our legislation of trading in influence. With that in mind I will quote the definition of "mediated corruption". I cannot recall the name of the author but it was in relation to the Keating Five. The gain that the politician

sees is political, not personal, and it is not illegitimate in itself as in conventional corruption. How the public official views the benefit is improper, not necessarily the benefit itself or the fact that the particular citizen receives the benefit. The connection between the gain and the benefit is improper because it damages the democratic process, not because the public official provides the benefit with a corrupt motive. I guess this goes back to my experience of working in the United Nations anti-corruption unit where my boss used to say, just because a behaviour is not corrupt in the legal sense it might be morally corrupt. If one is advising somebody about their behaviour, one might be within the letter of the law but one might be outside the spirit of the law. For politicians the tide water mark of expectations is very high and often an unfair one. It is not just about what one is legally obliged to do but what is also morally expected of one.

Chairman: The four minutes for Deputy Doherty-----

Deputy Pearse Doherty: There has been a lot of discussion about donations and so on. Mr. Simon Carswell who appeared before the committee yesterday spoke about the access he got to the Galway tent and that he would love to have known the conversations that were taking place. Correct me if I am wrong on my understanding of what Dr. Byrne said about mediated corruption. There was a fixation in the past in different types of tribunals to follow the money but is it the case that we should always be following the money but also following the influence and the power?

Dr. Elaine Byrne: Yes, I would agree with that. It is not just about what decisions have been made but why they have been made and the process of that decision making.

Chairman: I will take a final question, Deputy.

Deputy Pearse Doherty: In chapter 5 of Dr. Byrne's book, she mentions golden circles of the 1980s and 1990s. In page 103, she states, "This period was distinct from previous scandals because it marked the possibility of the gravest form of corruption, that of State capture within political decision making". Will Dr. Byrne speak to the committee about State capture and the type of actors involved - we are not discussing individuals - bearing in mind the inquiry's terms of reference starting in 1992?

Dr. Elaine Byrne: That would involve individuals close to power who would have had undue influence. State capture involves individuals determining what that legislation is, that they would have a greater influence over forming that legislation than an ordinary citizen by virtue of their access to decision makers, perhaps because of influence they have, such as the donations that they have given.

Chairman: I call Senator Susan O'Keeffe.

Senator Susan O'Keeffe: I thank the Chair and Dr. Byrne. Going back to the €10.1 million figure in the 2007 election, there is no available information for the remaining €8.8 million. Deputy John Paul Phelan mentioned individual donations but where does Dr. Byrne think the €8.8 million came from or does she not know?

Dr. Elaine Byrne: I can only speculate. It may be membership fees, national draws and I would assume a large proportion of that would have been donations underneath the legal disclosure limit as well but in the absence of the political parties releasing all of their political statements and financial statements it is difficult to know.

Senator Susan O'Keeffe: So there is disclosed and undisclosed and we know what they

are. Are there also secret payments?

Dr. Elaine Byrne: Secret payments?

Senator Susan O’Keeffe: Yes, either to individuals or to parties.

Dr. Elaine Byrne: I do not know.

Senator Susan O’Keeffe: Has Dr. Byrne ever asked political parties or politicians about that?

Dr. Elaine Byrne: Has anybody in this room ever received secret payments?

Senator Susan O’Keeffe: Has Dr. Byrne spoken to political parties in relation to her own research?

Chairman: I beg your pardon.

Senator Susan O’Keeffe: Did she interview and talk to political parties about what they thought and what they were prepared to disclose?

Dr. Elaine Byrne: Yes.

Senator Susan O’Keeffe: What was their response?

Dr. Elaine Byrne: As I have already mentioned, membership fees-----

Senator Susan O’Keeffe: No, I mean what was their response about disclosure or the lack of it. Were they in favour of further disclosure or are they tight about not wanting to disclose any more?

Dr. Elaine Byrne: I will make the analogy with newspapers. *The Irish Times* recently introduced a paywall, there is speculation that the *Irish Independent* may do the same and the question as to which newspaper will introduce the paywall first has been going on for a year or two. It is about competitive advantage. Political parties are the same in respect of which party will release all its accounts first and so on. Political parties, in their annual conferences or Ard-Fheiseanna, release information about their accounts. However, the difference is that under the draft guidelines, they will be obliged to release that information on particular headings in order that one can compare how much each political party has received and spent under different categories. One can then make an analysis because if a political party simply releases its accounts and states it got X amount of money from donations, one does not know-----

Senator Susan O’Keeffe: One does not know the detail.

Dr. Elaine Byrne: ----- the breakdown of that. Consequently, after the election we in theory will get the real picture for the first time, unless political parties decide to disclose beforehand.

Senator Susan O’Keeffe: Over the period at which the joint committee is looking, going back to the 1990s, is Dr. Byrne aware of whether any political party ever had an offshore account for taking in money from anywhere?

Dr. Elaine Byrne: A political party and offshore accounts?

Senator Susan O’Keeffe: Yes.

Dr. Elaine Byrne: From memory, I cannot recall. However, I think the Moriarty tribunal would have gone into Ansbacher accounts held by particular individuals and so on.

Senator Susan O’Keeffe: Indeed. However, there could have been other offshore accounts; not just through the Ansbacher-----

Chairman: The Senator is speculating. Either one knows or one does not.

Senator Susan O’Keeffe: No, I was just asking. If Dr. Byrne does not know, that is fine. Would it be fair to state the Ansbacher accounts were secret and offshore? Are those fair words to use to describe Ansbacher-----

Dr. Elaine Byrne: Yes.

Senator Susan O’Keeffe: ----- in minimal words? If one considers the property relationships between developers, bankers and some but not all politicians, some of that also comes through. There is a secrecy and there were a lot of offshore bank accounts. I wonder whether a sort of ghost of Ansbacher was still alive in the 2000s in respect of property development and relationships with bankers. Would Dr. Byrne care to make an observation?

Dr. Elaine Byrne: If I did know that, it would have been on the front page of the newspapers for which I have written. I do not know the answer to that.

Chairman: One and a half minutes remain to the Senator.

Senator Susan O’Keeffe: When we talk over this period, I note Dr. Byrne has stated she is not aware of any secret and she asked if members had any.

Dr. Elaine Byrne: Nobody answered.

Senator Susan O’Keeffe: In previous times, in what way was money given to politicians where it was not disclosed or known about? People talk about brown envelopes all the times and is that what one is talking about? What did Dr. Byrne’s research or her knowledge show her?

Dr. Elaine Byrne: All this is in the public domain. I refer to particular prominent politicians receiving money on the day of the election, individuals going to their houses and giving them the money, or donations being benefits in kind, being free cars or facilities or whatever it may be. We often get caught up on the brown envelope thing to the effect that a donation or something like that is a *quid pro quo*. Often, however, it is indirect and is a case of doing someone a favour and thereafter, down along the line, that person will return the favour in an indistinct way. Were one intent on committing corruption, one would no longer be doing it the old-fashioned way. I mean giving money for a favour committed because these things can be traced. What the Moriarty tribunal in particular exposed was benefits in kind through different land transactions that may have arisen. Decisions were made and perhaps down along the line, certain benefits were conferred on individuals. Corruption is not black and white and is not direct. It is indirect and these relationships are very difficult to examine.

Senator Susan O’Keeffe: Finally, Dr. Byrne recommended that the inquiry examine interest-free loans or mortgages on favourable terms being given to politicians. Is this a practice she believes has happened here? Is she aware of it here or was it just a generalised observation?

Chairman: As the Senator is over time, that is the last question.

Senator Susan O’Keeffe: Yes, it is the last question.

Dr. Elaine Byrne: The reason that question is included is because of the excellent “Prime Time Investigates” programme, which looked at those instances to which I referred, in which individuals who were either politicians or close to those in power received interest-free loans or loans on favourable terms. Consequently, these facts are in the public domain.

Chairman: As I wish to move towards a conclusion I invite Senator Michael D’Arcy to ask one supplementary question and then Senator Barrett to ask one supplementary question.

Senator Michael D’Arcy: I thank Dr. Byrne. I started on page 1 and will finish on page 239, which is the final page. In the last sentence of Dr. Byrne’s book, she writes, “Ireland’s loss of economic sovereignty in 2010, due to a perception of political failure and the unorthodox influence of vested interests, may yet motivate Irish public life to engage in state building and re-imagine Irish society with an emphasis on the moral duties of citizenship”. Has the body politic done enough to see a positive outcome in respect of that statement?

Dr. Elaine Byrne: Not yet and it is a common assumption to state that all politicians and all politics are all corrupt and negative. The book really is a positive story about how the foundation of the State was achieved between two world wars, when most democracies were failing but yet that of Ireland was sustained because in the 1920s, the Government introduced measures that deliberately gave away power. It introduced concepts ahead of its time about meritocracy, some of which I have outlined. This was not something that was particular to Cumann na nGaedheal or Fine Gael. An election poster of Éamon de Valera in 1917 in the East Clare by-election, uses the phrase to vote for a patriot, not a place-hunter. That idea of politics, held by the first-generation across all political backgrounds, was one motivated by the words the Senator has just used, namely, by this moral duty to the country.

In many respects, Ireland has a lot of positives and has very robust legislation. For me, it is immensely frustrating to see such silly mistakes being made, these shoelaces over which we continually trip, about public perception over some of the instances I have mentioned, about ringing bells, appointments to the Seanad or whatever it may be, because it generates such attention that does not reflect the legislative regime that we have. It is about leadership and culture just as much as it is about legislation. Those two things go hand in hand.

Deputy Seán Barrett: I thank Dr. Byrne. As did Senator Michael D’Arcy, I liked Dr. Byrne’s last sentence and its call to arms, as well as the identification that the last time we lost a Parliament - I think Henry Grattan is one of her heroes - it was due to the mass corruption used to undermine that Parliament. Can Dr. Byrne relate all these thoughts, as well as her presentation this morning, to what this joint committee should do with regard to banks, their auditors and bank regulators? What principles would she draw from all her work to help this committee in the future?

Dr. Elaine Byrne: When I worked in the United Nations, my boss used to say that the worst thing that could happen to a country is the “three Ps principle” when it comes to ethical legislation, whereby one prints it, one posts it up for everyone to see and one prays to God that it works. In Ireland, we have an implementation deficit, so in terms of principles, it is that we would follow through on the legislation and the eight different recommendations I made. The eighth one is about blaming a small country. In other words, it pertains to the culture we have about blaming things that are outside of our control, rather than focusing on the things that are within our control. One such would be to do an audit of the agencies in this State tasked with

oversight, which do great work, and to consider the resources they need as well as to look at the information overlaps. In addition, we perhaps could now, since the collapse of the economy, take the same approach to economic crime that we took to drugs in the mid 1990s.

Chairman: I will conclude with a few matters to bring proceedings to an end and perhaps invite some comments from Dr. Byrne, by means of giving some additional space to her. She mentioned how political parties are funded and touched on donations coming from abroad. Does Dr. Byrne have a view on those restrictions? Are they too tight or are they too lenient.

Dr. Elaine Byrne: The law changed in 2001. Before, anybody could donate, and now an Irish citizen can donate. I do not think there is anything wrong with Irish citizens donating to Irish public life. I wrote about this last week in the *Sunday Business Post*. It is an issue. I assume the Chairman is referring to Sinn Féin which is enormously funded by organisations outside the State who are not necessarily Irish citizens but donate under the category of friends of Sinn Féin Australia - less so now - or friends of Sinn Féin America. You would ask if that creates a disproportionate influence in political life.

Chairman: I am asking you for a view and you are asking me the question.

Dr. Elaine Byrne: I am the journalist. I am usually asking the questions so I answer-----

Chairman: I am a chairperson and I am used to bouncing them back.

Dr. Elaine Byrne: I answer by being rhetorical.

I wonder if it creates a disproportionate influence on Irish political life with such large amounts of money coming into Ireland. That said, I think it is perfectly reasonable for Irish citizens to donate to Irish political parties. Sinn Féin is not the only political party that does it. Fine Gael regularly has dinners in London. Fianna Fáil regularly has dinners in Brussels.

Chairman: On the issue of whistleblowers, Dr. Byrne referred to the possibility of having a financial incentive or monetary reward for whistleblowers. What sums does she have in mind? How would she avoid vexatious or false complaints given that there would be a financial reward for engaging in this behaviour as opposed to just doing it because it is the right thing to do?

Dr. Elaine Byrne: How it works in the US is that the award is 10% of the fines that the regulator imposes on the bank. That is how the fine is moderated. How one prevents against vexatious complaints is that if the agency that is charged with investigating the information by the whistleblower gets a conviction, then wrongdoing has occurred. I think that answers that question. That is how one regulates it. The information has to be good enough.

Chairman: There are very clear rules about members of this committee of inquiry commenting on any media coverage or any witness contributions that have been made. I know Dr. Byrne has been writing extensively on this issue. An article she wrote recently is not in that space. A significant part of this inquiry is to look to the future and draw on lessons from the past to ensure that the type of crisis we had is not visited upon us again. Dr. Byrne wrote an interesting comment about stating the obvious and that this was one of the things this inquiry could be doing that was not done by others. I ask her to expand on that and add any other final points in conclusion.

Dr. Elaine Byrne: I write every week so I am trying to remember which article that was.

Chairman: It was about two weeks ago.

CONTEXT PHASE

Dr. Elaine Byrne: About two weeks ago. I think that referred to Professor Bill Black's comments, as well as other comments that have been made before the inquiry, that it is not just about looking at the institutions but at the individuals within those institutions. In that article I made reference to legislation and to Judge Rakoff's comments. He is a pretty amazing individual when it comes to economic crime and his comments about wilful neglect. Just because an individual does not know, one also should ask, "Well, should they have known?" There is a responsibility therein. One cannot just hide behind this veil of "I didn't know." The question then arises that one should have known and there is liability therein.

The other piece in that article I referred to was in relation to Europe and penalties that the UK is also trying to bring in on not just fining banks, but fining individual bankers. There has been research done that since 2008 extraordinary fines have been imposed on banking institutions around the world, but behaviour has not changed.

The governor of the Bank of England, who also happens to be an Irish passport holder, has argued very vehemently, "What has changed?" We have had an economic collapse. We have had institutions that have collapsed. We have had massive consequences to individual citizens, but the behaviour of some of these banks has not changed because it is almost like banks are using fines as a line within their accounts. There is an inevitability about it, "We're going to get fined and, sure, that's part of life." So instead of focusing just on the institutions one would also focus on the individuals.

Chairman: Is there anything Dr. Byrne would like to add by way of concluding comments?

Dr. Elaine Byrne: I thank the Chairman for the invitation.

Chairman: I thank Dr. Byrne for attending. I thank her for her participation. Today has been very informative. We have had a valuable meeting which has added to our understanding of the factors leading to the banking crisis in Ireland.

Sitting suspended at 11.46 a.m. and resumed at 12.10 p.m.

Mr. Frank McDonald

Chairman: In session No. 2 we will have a discussion with Mr. Frank McDonald. We are focusing on the theme of relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector. I welcome Mr. McDonald, a former journalist with *The Irish Times*. He commenced his journalistic career as a freelance New York correspondent for the *Irish Press*, subsequently becoming a sub-editor and reporter for the paper. He joined *The Irish Times* in 1979. He was the environment correspondent from 1985 to 2000 and environment editor until his official retirement in January of this year. Mr. McDonald is also author of several books, including *The Destruction of Dublin*, *Saving the City* and *The Construction of Dublin*. He is joint author with Peigin Doyle of *Ireland's Earthen Houses* and with James Nix of *Chaos at the Crossroads*, published in 2005, which documented the environmental destruction of Ireland during the boom years. He is joint author with Kathy Sheridan of *The Builders*, which profiles the developers and others in the Celtic tiger period.

In recognition of his work, Frank was conferred with an honorary doctorate by Dublin Institute of Technology in 2006. He was made an honorary member of the Royal Institute of Ar-