

## TRACK ELEVEN:

### DON'T BE TOO HARD ON HYPOCRISY

DOUBLE STANDARDS ARE VALUABLE AS LONG AS THEY DON'T LAST TOO LONG

### AN IRISH MORALITY TALE

Last week saw a very important abortion case in the European Court of Human Rights [A, B and C v Ireland](#). It may well have brought closer the prospect of women being able to end their pregnancies when their lives are threatening by continuing to term – without as now having to leave Ireland in order to do so.

If this does happen it will have been Ireland's double standards on abortion that have brought this about.

Few subjects can be as riven with hypocrisy as is abortion law in Ireland. The procedure is still prohibited under the Victorian [Offences Against the Person Act 1861](#), sections 58 and 59. But the Irish escape the consequences of this by their proximity to 'Godless' Britain, to which (at great financial and emotional cost and at risk to their health) Irish women have long been travelling in their tens of thousands in order to do that which the Irish proudly say they refuse to countenance. There are even a couple of constitutional provisions (in Article 40.3.3. of the [Irish Constitution](#)) specifically designed to ensure that women can leave Ireland to get abortions and that they can access information about such abortion services outside the state.

You may find such hypocrisy ludicrous and distasteful – but it beats the consequences of moral certainty.

These rights to travel and to information were not in the Irish constitution when an amendment was made (in 1983) acknowledging 'the right to life of the unborn'. In the years that followed, various interest groups – supported it has to be said by the law officers of the state and many in the Catholic church – chased and hounded anyone in Ireland who had the temerity to assist women who felt they had to have abortions in Britain. No hypocrisy there, just cruelty.

Then in the notorious [X case](#), the state overreached itself, seeking to trap within the jurisdiction a fourteen year old girl who had become pregnant as a result of having been raped.

'No this isn't what we meant' chorused the Irish – 'we can't impose this baby on her.' After the High Court insisted that words mattered and this was exactly what they meant, the Supreme Court relented, saying that an abortion would be lawful in Ireland as long as there was a 'real and substantial risk' to the life of the mother, including a risk from self-destruction. The amendment of 1983 had referred to having 'due regard to the equal right to life of the

mother' and from the point of view of purist pro-lifers (so pure they'll kill a mother to save her unborn child) this proved to be their beloved guarantee's Achilles heel.

A constitutional amendment to *save Ireland from abortion* for all time had *brought abortion about!*

Or had it?

The state responded by ensuring the rights to travel and information were added – the amendments mentioned above. But the Irish did nothing about tackling the question of abortion services *within* the state.

The country carried on as though nothing had happened, as though women did not have the right the top court in the country had just declared was theirs.

No laws regulating abortion were passed. No doctors' association insisted on providing such services. No politician forced the issue.

Just look the other way – the [Ryanair](#) answer to Ireland's moral dilemma.

This is the specific hypocrisy that the Strasbourg court has now blown apart.

Interestingly the European Court of Human Rights was fairly relaxed about Ireland prohibiting abortion where the health and well being of the putative mother were concerned. What angered the judges was Ireland's acceptance of a constitutional right to an abortion where there was a risk to the life of the mother and its refusal despite this to put its claim into effective law. One of the three women who took the case fell into this category and she won (the other two lost).

Without this double standard in the law Ireland would not now be inching towards confronting its larger hypocrisy, the way it lets the UK deal with the consequences of its stance on abortion.

## PROGRESS NEEDS DUPLICITY

Hypocrisy works as a way of forcing social change. Pointing out double standards has always been a way of getting people to see things in a fresh light and therefore to be more open to viewing them differently.

First a community (or state or nation or company) commits to a general principle, one that they see as important because they are thinking only of people like themselves.

They ignore entirely the way the fair application of this principle across the board would benefit others as well.

When these double standards are pointed out (by campaigners, the marginalised, or independent reporting bodies) they have a choice –

- ditch the general principle

or

- keep it and embrace hypocrisy

or

- seek to close the gap between theory and practice.

Eventually most places/states/companies choose the last of these. The principle is too important to them to dump and the double standards too glaring an abnegation of reason to be long sustained.

Progress is the only real option!

- universal suffrage (for the rich) becomes universal suffrage (for men) becomes universal suffrage
- non-discrimination on grounds of race extends to gender extends to sexual orientation extends to ... much else of great importance
- self-determination for our own people leads to self determination for our colonies
- the courts are open to all (as long as they can pay) becomes the courts are open to all (with state support if necessary)
- abortion as a right when life is at risk becomes in such circumstances a legal right to an abortion

## IS HYPOCRISY ALWAYS A SIGN OF IMMINENT PROGRESS THEN?

No

It all depends on the route the law and practice is taking. If the momentum is towards closing the gap between talk and practice, then there is bound to be evidence of double standards along the way as the new forms of law gradually kick in.

These are the kinds of double standards we should relish as signs of progress.

[General Pinochet](#) was in a unique position when he was dramatically arrested in Britain with a view to his extradition to Spain to stand trial for crimes committed during his time as Head of State in Chile. The case became one of

the most famous of the 1990s, and we can fairly say that the law generated by these [proceedings](#) kick-started a whole new field of law, and caused many state killers to think twice about visiting London.

Of course Pinochet was not the only one. Of course, other mass murderers were out and about at the same time. ([Henry Kissinger](#) was mentioned a lot at the time and still is.)

- But Pinochet was there
- He was available
- It was do-able, sort of (and very nearly got done)

Double standards on the road to progress. Without Pinochet we wouldn't have had the Livni case earlier this year – when the former Israeli foreign minister Tzipi Livni came close to [arrest](#) in London for her part in the attacks by Israel on Gaza.

Much the same can be said of the [International Criminal Court](#) today. Of course as things stand most of those indicted are from African countries, and these include – astonishingly – one serving head of state [President al-Bashir](#) on charges that include genocide.

Does this mean that the system is unfair? That it goes after Africans only? That it is colonialism by another name?

Well up to a point yes. But these are the cases the system has thrown up, as the ICC's feisty prosecutor Luis Moreno-Ocampo explained at a [talk](#) he gave at LSE's centre for the study of human rights in 2008.

'This is the start, not the end' is a summary of what he said on that occasion.

Impunity cannot be tackled overnight. And as some get charged and some do not of course there will be injustice that will not just be apparent, it will be real.

Real – but short term. That is the key.

Is there a journey here, a move to close down the double standards that a tentative search for justice has thrown up?

If so hypocrisy is the price we (temporarily) pay for embarking on this journey to justice.

## DUPLICITY IS BAD WHEN IT IS DURABLE

But if the hypocrisy we have uncovered is designed to be permanent, a way of throwing us of our guard, we should have nothing to do with it.

An example that comes to mind is Burma's [constitutional guarantees of freedom](#) Or [President Alexander Lukashenko](#) of Belarus imminent fourth

election 'victory'. Or [Robert Mugabe of Zimbabwe](#). Sadly there are many such examples of 'bad faith hypocrisy'.

What about the decision by [China](#) to amend its constitution to include human rights guarantees in 2004: double standards on the road to justice, or simply a Burma-style diversion? A bit of both I'd say – I looked at the whole issue of Asia and human rights, including China, in [common track five](#)).

## AND IS ENDING DUPLICITY ALWAYS SUCH A GOOD THING?

Closer to home, how do we feel about the Coalition Government's [decision](#) to scrap various health targets including ambulance response times? Or the [dumping of the annual Foreign Office human rights report](#) in favour of a vaguer system of assessment and the use of a new [advisory group](#)?

A sensible move to end a system which caused so much anger for targets missed and spurious claims to ethical supremacy too often honoured only in their breach, perhaps?

But how will we like *not* having these targets and authoritative reports with which to be able to attack the government for its duplicity?

Are these decisions really about focusing on the quality of care (the Health Secretary on the removal of the ambulance target) or doing human rights more effectively than Labour (the Foreign Secretary on his new system). Or are they a way of ensuring that the double standards point is now harder to make?

Perhaps it is time for a new campaigning slogan:

'Bring back overt hypocrisy!'

## TWO FINAL THOUGHTS

*Double standards are okay as long as they are the consequence of well motivated but incomplete action, showing a desire to change without the capacity (yet) to change entirely.*

*Human rights activists need to work the space left available to them by such double standards, to first mind the gap they have left open, and then to close it.*