

RESPONSES TO TRACK ELEVEN

WHAT TO DO ABOUT HYPOCRISY?

You were fairly easy on me in my (qualified) salute to double standards. Duygu Akdag captures the consensus well in one of the last posts, when he frames ‘hypocrisy as a temporary weapon of human rights’.

Lee is harder than I am on the ICC. Okay there is a point here, but honestly I think it’s too early to tell. There is a dynamic character to the ICC which there was not with the trials after World War Two.

Luis Paolo Bogliolo says we should ‘fight against double standards wherever we find them’ – I agree entirely. I like double standards not because they are good in themselves but because they are a sign of weakness in my opponent, or (to put it more positively) a chink of ethical light in their darkness that I can try and open them up to more and more.

Not that all hypocrisies are valuable, that is clear – as Favio Farinella puts it there are ‘good’ and ‘bad hypocrisies’ and part of what I was intent upon in this track was sorting out which was which.

But that we should fight them was clear to me. Certainly I agree we ‘should be wary of accepting a culture of hypocrisy’ (Duygu).

THE BIGGER QUESTION IS ABOUT PRIORITIES

Should we direct our energies to tackling durable hypocrisies or go for the fragile ones that we are more likely to defeat? – this is how Richard Buck put it.

I’d say both – vulnerable hypocrisies collapse and bring down other, stronger ones in their wake: hypocrisies falling like dominos the way anti-communist states were supposed to if the Americans did not [make their stand](#) in Vietnam.

Of course all that will happen is that new double standards will arise, (Duygu again: ‘hypocrisy itself is never entirely destroyed’) but they’ll be less malevolent and we hope more easy to resolve than what went before. I acknowledge that there is no human rights Nirvana, just ongoing struggle in a field in which (we hope) the basis conditions of the battle are gradually going our way. Favio again: we must create space for progress ‘to advance new solutions for old dilemmas by thinking freely while breaking dogmas’.

AN ECHO FROM THE PAST

Colin Harvey is wonderfully spot on here – there is a connection between this and old politics, ‘immanent critique’.

This is *exactly* what our project is about, ploughing down into old ground to turn up new (and we hope more effective) ways of saying what has always been true but which we are in danger of forgetting.

For all its faults the language of human rights is indispensable because – like it or loathe it – it is our contemporary ethical vernacular. In the best sense, we are stuck with it. . Our values will guide us to a judgment on how best ‘to close the gap’ between theory and practice, something that from his intervention clearly (and rightly) concerns Colin.

LAW RETURNS

Holly Bontoft warns us against a particular kind of hypocrisy – ‘codifying a right is no replacement for working towards its practical use’. This is one of the reasons I was so critical of law in [Track Nine](#) – law lures us into the false belief that its enactment means the job is done when in fact it is just about to begin. As Holly puts it, ‘we must be careful that saying we will do something is not the end of the story’. I’d say it’s almost the start.

But the human rights idea is not comfortable with struggle – another theme of these essays that comes up time after time.

Christina raises the feminist dimension to this, and reminds me of a [Radio 3 programme](#) I made once on the US abortion case of [Roe v Wade](#). What came through so clearly from my interviews was how the liberal response to that decision was ‘job done’ whereas the conservative reaction was ‘job about to start’. The cleavage that was allowed to grow around that case, partly I’d say because it was so poorly defended by those who believed in it, has done immense damage to the whole American system, political and judicial.

Craig Valters takes me to task for downplaying the importance of law in [Track Nine](#) while seeming to need it to counter double standards in this essay. Is he right that there is a tension here? Like me in [common track three](#), Craig is very critical of the UN and in particular of its double standards – as you may recall in my [essay on this](#) I saw these hypocrisies as inevitable parts of the systemic failure of the UN to put human rights about sovereign power. (Lee: ‘The international system of delicate, diplomatic relationships between sovereign equals lends itself to entrenched hypocrisy. The system is designed so that the hypocrisy will be permanent.’)

Craig is very critical of the UN too but does see the importance of its normative arm as part of what he describes as a ‘tentative search for justice’. Perhaps Lee goes too far, and leaves us without hope?

Well I agree with Craig that ‘such efforts’ by the UN, defective and all as it might be ‘are valid’. These UN norms are important.

But:

- This is not handing things over to lawyers. Such norms invariably provide platforms for social action.
- These UN norms need to be made tangible (for those said to benefit) and then universalised (to help those who ought to be but are not included). Neither of these jobs is for lawyers, these tasks are for civil society and law-makers.
- Of course UN norms may produce legislation at the national level further down the line and lawyers may then become engaged. But that it the right place for them to be, actualising

democratic legislation, not imposing their versions of broad words on the population as a whole – that is what [Track Nine](#) was mainly about.

- I am with Richard who says in answer to Craig (and implicitly Lee in his later post): ‘I have to believe the world would be a worse place if there were no UN’. Now of course there are problems and these will not be automatically transcended by reforms like expanding the Security Council or anything along similar lines. But they will open space for further ‘tentative’ moves in the ‘search for justice’.

As ever it’s not about getting to the destination, it is knowing what destination you are aiming for – struggle and movement again. Once again I say exposing double standards helps getting us to where we want to be travelling.

THE IRISH ABORTION CASE

Luis Paulo is disappointed with the case and rightly reminds me that the Court might even have rejected Ireland’s tough anti-abortion law without the crutch of double standards upon which all the judges were able to rely. Perhaps so, but as Luis Paulo acknowledges the court took a very lenient line towards Ireland – perhaps without double standards the judges would not have been unanimous on C, Ireland’s hypocrisy made the case easier.

Since my track a new and harrowing case of Ireland’s approach to abortion has emerged; see the article in last week’s [Irish Times](#)

Luis Paulo is absolutely right that the Court’s finding for Ireland in the cases of A and B makes a liberal reform much more difficult – this is another reason for being wary of law – a further dimension to the discussion in [Track Nine](#). Human rights cases that go the anti-human rights way (or what protagonists of change see as the anti-human rights way) can make change much harder than if they had never occurred.

It is the same with the efforts by lawyers now underway to hold the London police [accountable for their kettling](#) of students: a big [House of Lords case](#), saying it is fine by human rights standards, stands firmly in their way.

KANT?

There is a nice interchange this week between Craig and Richard on utility and the value of hypocrisy in the pursuit of human rights.

Can you lie in the public good?

When I am asked that I often think of [John Major](#) and his denial of any engagement with the IRA – at a time when his government was wisely engaging in exactly this so as to pave the way for peace with justice.

As Churchill said, 'In wartime, truth is so precious that she should always be attended by a bodyguard of lies'. Does the sentence work if we substitute 'pursuit of human rights' for 'war-time' – ah that will expose the true utilitarians!

THE LIMITS OF WORDS

Reading the very first comment this week, from Paul Bernal, I was struck – once again – by how limited is our ability to express ourselves in words, especially when it comes to the feelings that underpin human rights. I know we have already reflected on this, especially in [track four](#) and in the [response](#) I gave to your engagement with that essay. But it occurs to me that at the end of this project we may need to be saying something about the limits of language and of how there are other ways in to (human rights) truth.

As Christina so neatly puts it, 'language [is] the impossible tool we have to attain a better standard of living.'

(incidentally, the Michael Mandel piece Paul refers to is long but excellent – this link to the [article](#) takes you to its opening, but you may have library access to it where you are, and if you have the time it's an essay that repays careful attention.)

LAST WORDS

Luis Paolo says:

'We cannot bring justice to everyone all the time' but 'this should not stop us from actually being just to some whenever possible'

And I would add...

'and striving all the while, against the odds, to do justice for all, or at least reveal injustice where we find it'.

Anthony - that great proponent of a theory of justice from earlier tracks - would definitely approve!