

# **40 years since the First Enlargement**

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## **Ireland, Europe and the Moral Order.**

**Draft paper: Please do not cite.**

When sending my proposal I initially planned to speak of “Ireland, the Catholic Church and the Moral order issue in the first years of membership”. However the recent event which took place in Galway – I mean this young mother-to-be who found death after having a miscarriage at the end of the last October – re-launched the debate over abortion in Ireland. That led me to re-evaluate this proposal, and to integrate the abortion issue that I did not intend to initially. In this way, I won't focus on the mere first years of membership but I will attempt to give a general overview of the whole period.

When you go through the Irish Government Website, there is a special section on the European Union Anniversary. It is not as important as what I could have expected but, yet it is there. Anyway, it is to be said that one can note the main economic benefits and results coming from the Irish European Membership, quite easy to calculate, but nothing is said nor mentioned on the society impact Europe could have had on Ireland. It is true that it is quite difficult to evaluate. However the main reason lies on the fact that any kind of debate was to be avoided. Indeed in such a context, the Government did not want to create a new kind of division, which is quite likely to happen when talking of morality.

At the beginning of the 1950s, most of the members of the Catholic Hierarchy vigorously mobilized to fight Continental influences. Having remained neutral during the Second World War Ireland had been rather sheltered from inherent developments. Homilies and parish news bulletins show how the priests attempted to prevent their faithful communities from the BBC which was available along much the east coast, from the contemporary songs which were preoccupying with their sensuous delights of love and so on. These mentality changes which took place in European society caused considerable anxiety in Catholic Ireland. To the Catholic Church, Europe did not respect Family, gave women a position outside home, promoted Divorce, was on the verge of legalizing feminine contraception. Europe weakened the moral order. However, despite this deep reservation, Irish mentalities were to evolve. At the end of the 1950s the dreadful Irish Economic situation emphasized the need for Ireland to look towards Europe. In this way, at the end of July 1961, Sean Lemass officially applied to become an EEC member. The process took over 10 years but eventually Ireland became an official member, 40 years ago. Since 1973, Ireland has been showing a very evolving figure in its mentalities. Very Catholic when it became a member, Ireland made legislation over sexual discrimination in the 1970s, accepted feminine contraception under conditions in 1979, decriminalized Homosexuality in 1993 and legalized divorce in 1995. Each of these reforms leads us to wonder: were the 1950s priests not right to be so suspicious of Europe?

These rights now recognised by the state have been revealed by the courts, both Irish and European. But the Irish courts interpret laws according to current notions of the common good and morality, so their judgment take into account the socio-moral climate they perceive out there: it is thus necessary for them to have perceived such a trend towards the de-catholicisation of morality among citizens.

In this way, this paper will try to evaluate the real influence of Europe over Irish mentalities and its moral order.? In order to answer such questions we're going to adopt a thematic outline.

Firstly, we will show how the Europe legislation had a real impact on the evolution of Irish sexual morality legislation. Then, we will observe that the Irish law also evolved because of what the mentality historians call the “European Prism of attitudes”, all these elements which led to a socio-moral evolution. Eventually, we will have a quick focus on abortion, kind of bastion of resistance.

## **I- The Influence of the European Law on the Discrimination Issue**

### **A- The Irish Women benefit by the European Membership.**

The article 41.2 of the 1937 Constitution states that:

“In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.”

It shows how the Social doctrine of the Catholic religion influenced its writing. This puts to the fore a patriarchal society which leads women to play a part of spouses and mothers, Family value protectors. However, the stronger the European commitment to promote sexual equality became, the more influenced the Irish legislative system was.

The article 119 of the Treaty of Rome required equality for employment. Ever since, the Community has got involved in few programs to promote women’s rights. In Ireland, women had to wait for the mid 1970s, that is to say the Irish membership of the EEC, to see the end of discriminatory laws. They were the logical result of European directives. In 1973, following the Irish membership of the EEC, the Civil Service Act Employment of Married Women was promulgated, meaning that married women could eventually become civil officers. Besides, the EC made the Irish government introduce an equalitarian legislation for men and women regarding salaries. In 1974 the Anti-Discrimination Pay Act brought in the principles of “Equal pay for like work” and “Equal pay for work of equal value”. In 1977, the Unfair Dismissals Act forbade redundancy for pregnancy. In 1981, the Maternity Protection for Employees Act gave women the right of a 14 week Maternity Leave. Eventually, in 1989, the Parental Leave Act allowed fathers to get an unpaid leave until their children are three years old.

For these reasons, according to the Joint Parliament Committee on Secondary Legislation published by the European Commission in 2000, women benefit by Irish membership in Europe the most after the farmers.

### **B- Homosexuality**

Regarding Homosexuality, it is to be said that it does not strictly belong to the European scope as we understand it today. Indeed it is Ireland’s membership in the Council of Europe which made the things evolve on this issue. For these reasons, we are going to give you a very quick overview. The end of the homosexual discrimination is mainly the work of one person, David Norris, an Irish politician very much committed to the gay cause. As the Irish law saw homosexuality as a criminal offence and having lost his appeal before the Supreme Court, he appealed to the European Court of the Human Rights and won. In 1993 homosexuality was decriminalised.

The acceptance of the Lisbon Treaty and the adoption of the Charter of Fundamental Rights would have led to the same results but many years later.

## **II- The European Prism of Attitudes on the Irish Family**

Although the influence of the European legislation is unquestionable, there are some fields where it has very little power, not to say none. Indeed, on the one hand as the Minister of Justice of the time Desmond O'Malley underscored the European community would have had absolutely no impact on the contraception legislation; and on the other hand as Chrystal Hug observes in her book *The Politics of Sexual Morality in Ireland*, the right to divorce is not recognised by any international body, neither the European Convention of Human Rights nor the International Convention on Civil and Political Rights of the UNO. Still today, the Charter of the Fundamental Rights of the European Union is no way binding regarding Family Law.

### **A- Another set of factors to be taken into consideration**

When the European law has no direct impact, other elements have to be taken into account. The Irish courts interpret laws according to current notions of the common good and morality, so their judgment take into account the socio-moral climate they perceive out there. In this way, to deal with Irish laws and politics of sexual morality and in order to show that Europe influenced Irish political and legislative evolution in other ways imply to seriously take into consideration what the Historians of mentalities call "Prisms of Attitudes".

The first thing to underscore is, as the Irish Government website shows it, Ireland has enjoyed an amazing economic development since it became a member of the EEC. This deep improvement led to the intrusion of a new society organisation at the expense of a more traditional society organisation – mothers no longer staying at home. Such an economic development led to industrialisation and a greater need for the service sector. Such a call for workforce and the end of Employment discrimination had a real impact on the part women could play in the society. Indeed, that is an evolution that all Europe had gone through. What makes the Irish case slightly different is firstly the delay and secondly its link with its European membership. Besides strict economic and social considerations, it is to be underlined the real improvement of communication means (transport system and media). One can observe on the one hand the development of contacts between Ireland and the Continent thanks to commerce and tourism; and on the other hand a rising interest in the Irish papers for the meetings among Irish representatives and their European counterparts. All of that together would radically change the attitudes.

However, beside the European integration influence, one has to think of the worsened situation in Northern Ireland which definitely led to an evolution of the mind. Let me quote the then Prime Minister Garret FitzGerald who said during an interview

“If I were a Northern Protestant today, I cannot see how I could be attracted to getting involved with a state that is itself sectarian... The fact is our laws and our Constitution, our practices, our attitudes, reflect those of a majority ethos and are not acceptable to Protestants in Northern Ireland.”

In this way a number of factors have contributed to the evolution of Irish mentalities on Family, among them: Europe

## **B- Making the Family perception different**

### *Contraception*

Regarding contraception, according to an Irish Times report, 15 000 women were on the pill in 1967, 25% using it for medical reasons and 75% for “social” reasons. However, in the debate on artificial contraception, only the voices of married women and mothers were sought. Whereas birth planning would be an integral part of the demands made by Western women in the 1960s, together with the right to freely dispose of their bodies, the situation was different in Ireland. However, giving in to the growing pressure of feminist demands and that provoked by the prospect of joining the EC, the government set up the Commission on the Status of Women in 1970, even though there is little doubt that it viewed it with ambivalence and paternalism!

Anyway, after a few unsuccessful attempts led by Senator Mary Robinson, things evolved. Fianna Fáil regained power in June 1977 and the Taoiseach, Jack Lynch, announced the intention of his government to introduce a law on family planning, and the task was given to Charles Haughey, Minister for Health. The law was enacted in 1979 and in force as from 1 November 1980. The text is seen as very restrictive as the bill limited the provision of contraceptives to bona fide "family planning or for adequate medical reasons". However the 1979 law will remain, despite its limitations, the first in the socio-moral area to be detached at its basis from the teaching of the Catholic Church. Moreover, it is a real step regarding the history of Irish women, their right to freely dispose of their bodies and to limit births in Irish families.

### *Divorce*

Divorce is definitely another key issue as it has always scared the Catholic thought. To it, divorce would be the symbol of a society in distress. Many articles of the 1950s reveal how the Catholic hierarchy considered Europe as a factor of family dissolution.

The higher proportion of women in the working world indeed provoked many changes. Yet, there is a deep gap between this section of the article 41.2 stating : “The State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.” and the new model of society coming up at the end of the 1970s. As Marguerite Arnal-Corish put it in her PhD thesis, the fact that women played a greater part in the society definitely led to an acceleration of the secularization process as they became able to think on their own, outside the Catholic dogma, and became more and more aware of their likely autonomy. This awareness is definitely one of the major consequences of the Irish economic development due to Irish membership into the EEC, even though it is not a direct consequence. So, after having rejected a law in favour of divorce in 1986, Irish voters accepted it by referendum in 1995.

### **III- Abortion as a Bastion of Resistance**

The decision of choosing abortion is a decision that the Catholic Church does not recognise since it views abortion as an “abominable crime” which no circumstance, however exceptional, can make into a moral act.

Republic of Ireland joined the European Community in 1973 → source of anxiety and worry: legislation of abortion might be imposed as Ireland was the only country in the EC where all abortions were illegal.

a recommendation from the European Parliament in June 1981 → not the impact of a directive but revived the anxieties of Irish MEPSs and the opponents of abortion

⇒ Pro-Life Amendment Campaign (PLAC) was launched in April 1981: fierce campaigning, from January 1981 to September 1983, the eighth amendment to the Irish Constitution was accepted in a national referendum. It says:

“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate that right.” (art. 40.3.3)

⇒ 1991-1992 Maastricht Treaty: anti-abortion veterans had the idea of inserting a protocol that would protect Ireland against any future European decisions → Protocol 17 stated that nothing at European level would “affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.” → expression of a collective paranoia BUT protocol was accepted before the X case. The case of the young girl being raped by a family relative questioned the right to travel between member states which had not been challenged up to then. European partners did not accept such an addendum to the Protocol 17 stipulating the right to travel instead it was suggested that the Twelve sign the Solemn Declaration stating that

“The protocol shall not limit freedom either to travel between member-states or... to obtain lawfully available in Ireland, information relating to services lawfully available in member-states.”

Both the solemn declaration, which was accepted by referendum and became the 13<sup>th</sup> and 14<sup>th</sup> amendment of the Irish Constitution, and the Maastricht Treaty were accepted by referendum on 18 June 1992.

The Galway event which happened at the end of last October has revealed how the abortion issue remains a problem in Ireland, despite 40 years of European membership.

**Conclusion:**