Cambridge University Press 978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European Convention Marie-Benedicte Dembour Table of Contents More information

General table of contents

	Acknowledgements	page xvii
	Table of cases	XX
	List of tables	xxvii
1	Introduction	1
2	The Convention in outline	19
3	The Convention in a realist light	30
4	The Convention in a utilitarian light	68
5	The Convention in a Marxist light	114
6	The Convention in a particularist light	155
7	The Convention in a feminist light	188
8	The human rights creed in four schools	232
9	Conclusion: In praise of human rights nihilism	272
	Appendices	278
	Select Bibliography	285
	Index	296

Cambridge University Press 978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European Convention Marie-Benedicte Dembour Table of Contents <u>More information</u>

Detailed table of contents

Acknowledgements	page xvii
Table of cases	XX
List of tables	xxvii
1 Introduction	1
Human rights as an article of faith	1
The short-sightedness of the universal assertion	2
Practical and conceptual critiques of human rights	
Liberal and non-liberal critiques of human rights	6
Linking the classical critiques to the Strasbourg human	8
rights case law	
A kaleidoscopic reading of the Convention	10 10
Not one, but several concepts of human rights The moral stance of human rights nihilism	
2 The Convention in outline	19
The work of the Council of Europe	19
The rights guaranteed by the Convention	
General principles of interpretation	
The original mechanism of enforcement	22
The current mechanism of enforcement: Protocol 11	24
The future mechanism of enforcement: Protocol 14	25
Conclusion	26
3 The Convention in a realist light	30
The 'Anarchical Fallacies' denounced by Bentham the 'rea	dist' 30
'Look to the letter, you find nonsense'	32
'The order of chaos'	33
'Look beyond the letter, you find nothing'	34

Cambridge University Press
978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European
Convention
Marie-Benedicte Dembour
Table of Contents
More information

Detailed table of contents	
The relative protection of the European Convention and	
the margin of appreciation	
Negating the Convention system? Derogations under Article 15	
Realism in international relations: Virtuous or vicious	
raison d'état?	
Comparing Bentham and IR realism	
The creation of the doctrine of the margin of appreciation	
in the First Cyprus Case	
Underlying political games: The Second Cyprus Case	
Realism and the Convention: Forsythe versus Allott and Imbert	
The position of the Court in cases involving Article 15	
Aksoy: Both a realist and a supranational decision	
No realism without idealism, and vice versa	
Benhebba: The statism of the French judge versus the	
idealism of other judges	
A Court ready to stand up to the state: The remarkable examples of <i>McCann</i> and <i>Selmouni</i>	
Conclusion	
4 The Convention in a utilitarian light	
To affirm or not to affirm rights: Utilitarianism and its liberal detractors	
The balance of interests in the Convention and the	
proportionality test applied by the Court	
The margin of appreciation and the proportionality test:	
Dudgeon versus James and Others	
'Rights as Trumps': The absolutism of Dworkin	
Article 3 lays down a negative absolute obligation:	
Selmouni's reiteration	
Relative or absolute protection under Article 8? The Court's	
majority versus Judge De Meyer in Z v. Finland	
Consequentialism versus absolutism, and the law of double effect	
The recognition of positive obligations by the Court:	
Utilitarian logic or application of the law of double effect?	
Absolutism: Possibly utilitarian up to the point of transgression	
Pretty: A mixture of absolutist and consequentialist logics	
Soering: Going beyond the absolute obligation contained in Article 3	
From negative to positive obligations: The loss of the human rights core	

Cambridge University Press
978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European
Convention
Marie-Benedicte Dembour
Table of Contents
More information

Detailed table o	f contents
It all depends': From Bentham's felicific calculus to the proportionality test of the Court	87
The here and now of the casuistic approach of the Court:	90
Van Drooghenbroeck's critique	
Ever-changing context or permanent rules? The practical resolution of the dilemma	91
The moral limitation of the absolutist position: The example of torture	92
A v. United Kingdom: The devastating consequences of an absolute privilege	93
What the general interest does not require: The erosion of	95
civil liberties during the War on Terror Chassagnou: Where is the general interest?	97
<i>Jersild</i> : 'The individual versus the state' as a	97 99
fallacious dichotomy	
Conclusion	102
5 The Convention in a Marxist light	114
On the Jewish Question': The denunciation of bourgeois rights	114
Does the Convention serve selfish man? Cosado Coca versus Janowski	116
Balibar and Lefort: The man is the citizen	119
Sunday Times and Janowski: Which interests are being pursued?	119
On the Jewish Question' as a Marxian text	121
The rich more equal than the poor at Strasbourg? Morvai's account	122
Gaining procedural efficiency: At the cost of bureaucratic twitching?	125
<i>Dragoi</i> and the thousands and thousands of forgotten cases: The indecency of the Strasbourg procedures	127
The legally-legal issues which retain the attention of the Court	130
The persisting ignorance of racial discrimination by the Court: The false promise of <i>Nachova</i>	133
The capitalist foundation of the ECHR: <i>Messochoritis</i> and the whole case law	138
Human emancipation: Found neither in human rights nor, of course, in the Stalinist gulag	138
Thompson and Lefort: A valuable rule of law even in the face of objectionable legal rules	140
lpek: Law is not just a sham	142
1 /	=

Cambridge University Press	
978-0-521-68307-4 - Who Believes in Human Rights?:	Reflections on the European
Convention	
Marie-Benedicte Dembour	
Table of Contents	
Moreinformation	

6 The Convention in a particularist light	1
The AAA Statement of 1947: An outdated view of culture	1
Cultural relativism: An embarrassing doctrine but also a	1
valuable legacy	
Handyside: The margin of appreciation as – seemingly – an	1
expression of cultural relativism	
Masquerading as an expression of cultural relativism: The	1
abuse of the cultural argument	
The real problem with cultural relativism: The tolerance of	1
the intolerable – T v. United Kingdom	
The good side and inescapability of cultural relativism	1
Delcourt versus Borgers: Inaction versus action, or when is action required?]
Johnston: An unfortunate cultural relativist application	1
The gloss of universalism in the application of Article 3	1
of the Convention: Tyrer	
Rethinking the terms of the opposition: Universalism versus particularism]
A brief but crucial point: Universalism is a doctrine too	1
Oscillating between universalism and particularism	1
Conclusion	1
7 The Convention in a feminist light	1
Feminism and feminisms	1
The feminist liberal agenda: Working for sex equality	1
The presence of female judges at Strasbourg	1
Championing the equality of the sexes since ABC	1
What's in a name: Burghartz	
The shortcomings of the 'Add Women and Stir' liberal approach]
The woman's voice feminist agenda: Calling for women	1
to be recognized as different from men	
Is a distinctly female voice heard within the Court? An open question]
Buckley and Chapman: Applicants who are mothers	1
The radical feminist agenda: Getting rid of patriarchy	2
A disappointing record on rape: X and Y, SW, Aydin and Stubbings	
The right to have an abortion: Neither in the Convention	
nor in Open Door, Bowman, Tokarczyk or Odièvre	

Cambridge University Press 978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European Convention Marie-Benedicte Dembour Table of Contents <u>More information</u>

Detailed table	of contents
Women's 'non-feminist' choices: False consciousness or essentialism?	210
The post-modern feminist critique: Recognizing women	211
as different from one another	
When the Other is ignored: Karaduman and Dahlab	212
What is not in a name: The simply and shockingly inadmissible <i>Halimi</i>	213
Airey: An amazingly progressive judgment	215
Conclusion	218
8 The human rights creed in four schools	232
Wittgenstein's concept of 'family resemblance'	233
Human rights approached through a family resemblance matrix	234
The soothing or unsettling effect of the universality of human rights: Donnelly versus Haarscher	236
Haarscher's human rights vision: Asceticism or evangelism?	237
The foundational case law on transsexualism	238
Van Kück's 'normalization' from the perspective of the natural and the protest schools	241
Can we <i>have</i> human rights? The responses of the natural and protest scholars	243
Can human rights law embody human rights? The responses of the natural and protest scholars	244
Both natural and protest scholars believe in human rights	246
What is the basis of human rights? The response of the natural scholars	246
What is the basis of human rights? The response of the protest scholars	247
Those who do not believe in, but are committed to, human rights: The deliberative scholars	248
Those who are sceptical of human rights: The discourse scholars	249
Mapping the schools	253
Who's who: Naming some representatives of each school	253
Moving within the liberal and the non-liberal schools	258
The concept of human rights: Spun by the four schools	260
9 Conclusion: In praise of human rights nihilism	272
The appeal of the critique(s) of human rights	272
Challenging the orthodoxy: In Nietzsche's footsteps	273
Why be afraid of human rights nihilism?	274

978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European
Convention
Marie-Benedicte Dembour
Table of Contents
More information

xvi Detailed table of contents

278
283
285
296