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978-0-521-68307-4 - Who Believes in Human Rights?: Reflections on the European Convention

Marie-Benedicte Dembour

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Who Believes in Human Rights?

Reflections on the European Convention

Many people believe passionately in human rights. Others – Bentham, Marx, cultural relativists and some feminists amongst them – dismiss the concept of human rights as practically and conceptually inadequate. This book reviews these classical critiques and shows how their insights are reflected in the case law of the European Court of Human Rights. At one level an original, accessible and insightful legal commentary on the European Convention, this book is also a ground-breaking work of theory which challenges human rights orthodoxy. Its novel identification of four human rights schools proposes that we alternatively conceive of these rights as given (natural school), agreed upon (deliberative school), fought for (protest school) and talked about (discourse school). Which of these concepts we adopt is determined by particular ways in which we believe, or do not believe, in human rights.

MARIE-BÉNÉDICTE DEMBOUR is Senior Lecturer in Law at the Sussex Law School, University of Sussex.

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To Bob, again

To Ellis too, of course

To Françoise and all judges and lawyers like her

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Given my Belgian origin, I had thought it would be a good idea to meet the Belgian judge at the European Court of Human Rights. What I had not been expecting was to be invited to be on *tutoiement* terms immediately (using 'tu' rather than 'vous!'), being offered the keys of her flat in her absence and being encouraged to carry on an intellectual exchange. Françoise Tulkens offered both general and specific comments on drafts of virtually the whole book. My thanks go to her for her warmth, generosity and intellectual engagement. Françoise is not the only exceptional person I have met at the Court. I wish to single out Magda Mierzevska, from the Registry, with whom I have had the good fortune to co-author two articles and who also read some chapters. Unfortunately I shall merely list the other people I have met at Strasbourg alphabetically in order to avoid increasingly impossible refinements. In the course of four periods of one week I have spent at Strasbourg between July 2001 and April 2003, I was privileged to meet the following judges: Corneliu Bîrsan (Romanian), Giovanni Bonello (Maltese), Josep Casadevall (Andorran), Jean-Paul Costa (French), Marc Fischbach (Luxembourg), Lech Garlicki (Polish), Hanne Sophie Greve (Norwegian),

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Each reference comprises the name of the case, application number, date of the judgment or decision, location of the official report (when available) and publication in the *European Human Rights Reports* of Sweet and Maxwell (when available). The official reporting was in Series A Nos. 1–338 until 1996 and in the *Reports of Judgments and Decisions* between 1996 and 1998. Since 1999, it takes place in the Reports cited by the Court as ECHR.

Whether reported or not, all judgments and decisions of the Court can be freely accessed on <http://www.echr.coe.int/echr> by searching the Court's HUDOC database.

- A and Others *v.* Secretary of State for the Home Department [2004]
 UKHL 56, [2005] 3 All ER 169, [2004] EWCA Civ 1123, [2004]
 All ER (D) 62 page 64, 111
- A *v.* United Kingdom (Application 25599/94) 23 September 1998, RJD 1998-VI,
 (1999) 27 EHRR 611 185
- A *v.* United Kingdom (Application 35373/97) 17 December 2002, ECHR 2002-X,
 (2002) 36 EHRR 917 93–5, 110, 229
- Abdulaziz, Cabales and Balkandali *v.* United Kingdom (Applications 9473/81
 and 9474/81) 28 May 1985, Series A, No 94, (1985) 7 EHRR 471 135, 151,
 192–3, 194, 222
- Ahmed *v.* Austria (Application 25964/94) 17 December 1996, RJD 1996-VI 2195,
 (1997) 24 EHRR 278 108
- Airey *v.* Ireland (Application 6289/73) 9 October 1979, Series A, No 32,
 (1979–1980) 2 EHRR 305 27, 215–18, 230
- Aksoy *v.* Turkey (Application 21987/93) 26 November 1996, RJD 1996-VI,
 (1997) 23 EHRR 553 49–53, 58, 65
- Angelova *v.* Bulgaria (Application 38361/97) 13 June 2002, ECHR 2002-IV,
 (2004) 38 EHRR 31 134–5, 150

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- Baghli *v.* France (Application 34374/97) 30 novembre 1999, ECHR 1999-VIII 55, 66
- Bankovic *v.* Belgium and Others (Application 52207/00), decision of 12 December 2001 63
- Benhebba *v.* France (Application 53441/99) 10 July 2003 54–5, 56, 58, 66
- Borgers *v.* Belgium (Application 12005/86), 30 October 1991, Series A, No 214, (1993) 15 EHRR 92 167–8, 184
- Bowman *v.* United Kingdom (Application 24839/94) 19 February 1998, RJD 1998 I-175, (1998) 26 EHRR 1 65, 207, 208–9, 228, 229
- Brannigan and McBride *v.* United Kingdom (Application 14553/89 and 14554/89), 26 May 1993, Series A, No 258-B, (1994) 17 EHRR 539 48, 50–1, 61, 65
- Brogan and Others *v.* United Kingdom (Applications 11209/84, 11266/84, and 11365/85), 29 November 1988, Series A, No 145-B, (1989) 11 EHRR 117 48, 64
- Buckley *v.* United Kingdom (Application 20348/92), 25 September 1996, RJD 1996-IV 1271, (1997) 23 EHRR 101 197–9, 210, 223
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