
General table of contents

<i>Acknowledgements</i>	<i>page</i> xvii
<i>Table of cases</i>	xx
<i>List of tables</i>	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
<i>Appendices</i>	278
<i>Select Bibliography</i>	285
<i>Index</i>	296

Detailed table of contents

<i>Acknowledgements</i>	<i>page</i> xvii
<i>Table of cases</i>	xx
<i>List of tables</i>	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	4
Liberal and non-liberal critiques of human rights	6
Linking the classical critiques to the Strasbourg human rights case law	8
A kaleidoscopic reading of the Convention	10
Not one, but several concepts of human rights	10
The moral stance of human rights nihilism	11
Neither simply for nor against human rights	12
2 The Convention in outline	19
The work of the Council of Europe	19
The rights guaranteed by the Convention	20
General principles of interpretation	21
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 ‘realist’	30
‘Look to the letter, you find nonsense’	32
‘The order of chaos’	33
‘Look beyond the letter, you find nothing’	34

xii	Detailed table of contents	
	The relative protection of the European Convention and the margin of appreciation	35
	Negating the Convention system? Derogations under Article 15	37
	Realism in international relations: Virtuous or vicious <i>raison d'état</i>?	39
	Comparing Bentham and IR realism	41
	The creation of the doctrine of the margin of appreciation in the <i>First Cyprus Case</i>	41
	Underlying political games: The <i>Second Cyprus Case</i>	44
	Realism and the Convention: Forsythe versus Allott and Imbert	45
	The position of the Court in cases involving Article 15	47
	<i>Aksoy</i>: Both a realist and a supranational decision	49
	No realism without idealism, and vice versa	53
	<i>Benhebbba</i>: The statism of the French judge versus the idealism of other judges	54
	A Court ready to stand up to the state: The remarkable examples of <i>McCann</i> and <i>Selmouni</i>	56
	Conclusion	58
4	The Convention in a utilitarian light	68
	To affirm or not to affirm rights: Utilitarianism and its liberal detractors	69
	The balance of interests in the Convention and the proportionality test applied by the Court	70
	The margin of appreciation and the proportionality test: <i>Dudgeon</i> versus <i>James and Others</i>	71
	'Rights as Trumps': The absolutism of Dworkin	73
	Article 3 lays down a negative absolute obligation: <i>Selmouni</i>'s reiteration	74
	Relative or absolute protection under Article 8? The Court's majority versus Judge De Meyer in <i>Z v. Finland</i>	75
	Consequentialism versus absolutism, and the law of double effect	78
	The recognition of positive obligations by the Court: Utilitarian logic or application of the law of double effect?	78
	Absolutism: Possibly utilitarian up to the point of transgression	81
	<i>Pretty</i>: A mixture of absolutist and consequentialist logics	81
	<i>Soering</i>: Going beyond the absolute obligation contained in Article 3	85
	From negative to positive obligations: The loss of the human rights core	87

	Detailed table of contents	xiii
'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: Van Drooghenbroeck's critique	90	
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. <i>United Kingdom</i> : The devastating consequences of an absolute privilege	93	
What the general interest does not require: The erosion of civil liberties during the War on Terror	95	
<i>Chassagnou</i> : Where is the general interest?	97	
<i>Jersild</i> : 'The individual versus the state' as a fallacious dichotomy	99	
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? <i>Cosado Coca</i> versus <i>Janowski</i>	116	
Balibar and Lefort: The man is the citizen	119	
<i>Sunday Times</i> and <i>Janowski</i> : 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	
<i>Ipek</i> : Law is not just a sham	142	
Conclusion	144	

xiv	Detailed table of contents	
6	The Convention in a particularist light	155
	The AAA Statement of 1947: An outdated view of culture	156
	Cultural relativism: An embarrassing doctrine but also a valuable legacy	157
	<i>Handyside</i> : The margin of appreciation as – seemingly – an expression of cultural relativism	159
	Masquerading as an expression of cultural relativism: The abuse of the cultural argument	162
	The real problem with cultural relativism: The tolerance of the intolerable – <i>T v. United Kingdom</i>	163
	The good side and inescapability of cultural relativism	165
	<i>Delcourt</i> versus <i>Borgers</i> : Inaction versus action, or when is action required?	166
	<i>Johnston</i> : An unfortunate cultural relativist application	168
	The gloss of universalism in the application of Article 3 of the Convention: <i>Tyrer</i>	170
	Rethinking the terms of the opposition: Universalism versus particularism	176
	A brief but crucial point: Universalism is a doctrine too	178
	Oscillating between universalism and particularism	178
	Conclusion	179
7	The Convention in a feminist light	188
	Feminism and feminisms	189
	The feminist liberal agenda: Working for sex equality	190
	The presence of female judges at Strasbourg	191
	Championing the equality of the sexes since <i>ABC</i>	192
	What's in a name: <i>Burghartz</i>	193
	The shortcomings of the 'Add Women and Stir' liberal approach	194
	The woman's voice feminist agenda: Calling for women to be recognized as different from men	195
	Is a distinctly female voice heard within the Court? An open question	196
	<i>Buckley</i> and <i>Chapman</i> : Applicants who are mothers	197
	The radical feminist agenda: Getting rid of patriarchy	201
	A disappointing record on rape: <i>X and Y</i> , <i>SW</i> , <i>Aydin</i> and <i>Stubbings</i>	202
	The right to have an abortion: Neither in the Convention nor in <i>Open Door</i> , <i>Bowman</i> , <i>Tokarczyk</i> or <i>Odièvre</i>	206

	Detailed table of contents	xv
Women’s ‘non-feminist’ choices: False consciousness or essentialism?	210	
The post-modern feminist critique: Recognizing women as different from one another	211	
When the Other is ignored: <i>Karaduman</i> and <i>Dahlab</i>	212	
What is not in a name: The simply and shockingly inadmissible <i>Halimi</i>	213	
<i>Airey</i> : 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	
<i>Van Kück</i> ’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	

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](#)

xvi	Detailed table of contents	
	<i>Appendix 1</i>	278
	<i>Appendix 2</i>	283
	<i>Select bibliography</i>	285
	<i>Index</i>	296