

tioning market system through privatization and the creation of a financial infrastructure. The authors report the differing experiences and successes of the various CEECs between economic and social shock therapies and gradualism. In addition to an account of the financial and technical assistance given by the EU and others, the reader also finds a — necessarily speculative — perspective on budgetary developments after accession. Of particular interest is a critical evaluation of the progress concerning democracy, protection of minorities and respect of human rights in the candidate countries, which highlights possible sources of tension among potential EU Member States, as well as first steps towards equitable and permanent solutions. Last but not least, the authors analyse the impact of an Eastern enlargement on the EU Common Foreign and Security Policy and the security interests of the CEECs. The final chapter, devoted to the reform of the institutions necessitated by further enlargement, remains largely unaffected by the Treaty of Amsterdam which has postponed the solution of these institutional problems. The text of the book is supplemented by ample statistics contained in Annexes.

However, the excellent impression conveyed by van den Bempt and Theelen's work is slightly diminished by the fact that it does not facilitate further independent research by the reader. Apart from the Presidency Conclusions of the European Council of Copenhagen and the statistics, virtually no official sources for original documents are given. The authors offer to provide copies of the non-published papers from the bibliography mentioned above to the interested public. This service, however, cannot guarantee that the reader will eventually find the documents he or she is looking for.

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Yourow, Howard Charles. *The Margin of Appreciation Doctrine in the Dynamics of the European Court of Human Rights Jurisprudence*. London, New York, The Hague: Martinus Nijhoff Publishers, Kluwer Press, 1996.

One of the most complex features of international human rights law is the challenge of balancing international human rights norms and the particularity of the contexts in which their application arises. Aligned to this is the delicate task of mediating the tension between effective international supervision and the upholding of established human rights norms on the one hand, and primary domestic responsibilities and socio-cultural choices and contexts on the other. The poles in contest may be seen as involving the vertical or horizontal distribution of power, as well as the (absolute or relative) nature of the rights at issue.

The balancing involved in any human rights system is an ineluctable one, involving the problems of objective and discernible standards as well as a recognition of the subjectivity of contexts and fact. Beyond this, the balancing needed in relation to all human rights would appear to be heightened in the context of international human rights supervision, even in a relatively cohesive regional system such as the European Convention on Human Rights. These competing considerations form a symbiosis which an international supervisory body such as the European Court of Human Rights must continually define in its interpretative and supervisory role.

The margin of appreciation may be the single most distinctive interpretative feature of ECHR jurisprudence: it has defined not only the interpretative methodology of Strasbourg jurisprudence but also the substantive import of Convention rights. It remains pivotal to the operation of a critical symbiosis between national upholding of the Convention and the supervision of the ECHR mechanism: it lies at the heart of the ineluctable and perennial mediation of consensus and relativity,

supremacy and national autonomy as well as uniformity and diversity.

Yourow's work provides a strong and scholarly base for a theoretical and doctrinal analysis of the concept of the margin of appreciation. His work tracks the evolution of the doctrine within Convention jurisprudence as well as the internal development of the doctrine itself. His analysis illustrates the complexity of the doctrine in its case-by-case evolution and as a mediating touchstone concept which controls the essential balance required by the system.

Yourow is painstaking in the detail he devotes to the various categories of rights he analyses in respect of the margin of appreciation. He exposes the evolution of the Court's approach within these categories as well as the nuances which exist between the treatment afforded different substantive rights.

What is also noted is the way in which a wide margin has become coterminous with maximum state discretion, which in turn invariably translates into unsuccessful petitions on the part of individual applicants and an erosion of the substantive import of the particular rights in question. Conversely, a narrow margin will accord with a stricter scrutiny and the adoption of 'autonomous interpretation' on the part of the Court with a tendency to find in favour of individual applicants. These trends would seem to indicate that the fact that what is indeed balanced in such cases is the effective protection provided by ECHR supervision on the one hand, and the legitimate discretion of states on the other.

Yourow accurately links different approaches taken to the margin of appreciation to different approaches adopted in interpretation: the outcome of the margin's deployment will depend on whether the Court opts for a hierarchy of rights determined by a schema of 'preferred rights', such as the due process rights contained in Articles 5 and 6, as contrasted with a balancing approach applied in respect of personal freedoms contained in Articles 8–11 (the text of which explicitly admits of a margin of appreciation), or the very wide margin afforded states under Article 15 to derogate in times of war or emergency.

Yourow succeeds in exposing the fact that the margin is not a free-standing concept or a self-defining norm: as with any proxy for proportionality, it is determined by context and by the essence of a right, as well as the countervailing interest and object of its limitation. What is also made clear is the fact that those interests requiring balancing are equivocal in themselves: consensus may be deemed objective (Dudgeon) or subjective (Handyside) arguably depending on what substantive outcome the Court favours. Similarly, interests such as the public interest may provide a justification to uphold a right or restrict it (*Sunday Times*): in this way there exists no strict demarcation between the public and the private in the way the margin operates, and there are frequently contradictions. Yourow's work raises the question of whether, given the patterns and evolution of the margin of appreciation in ECHR jurisprudence, the law of the ECHR might not amount simply to the consensus between Member States. In this he highlights the need for the Court to articulate clearer, overarching principles to the operation of the margin in an in-depth and doctrinal manner, so as to offer greater consistency and strength to the law of the Convention in a way that offers the greatest substantive protection of fundamental rights. Rather than being determined by the politics of power dynamics between Strasbourg and states, the margin should be that which assures cultural diversity and respects domestic autonomy while ensuring that the essence of a right is never encumbered.

While Yourow's work is one of undeniable excellence, and while the detail of his review of the jurisprudence on the margin makes his work invaluable for anyone interested in the fundamentals of the ECHR's operation, it is regrettable that the in-depth normative analysis he notes to be absent in the Court's treatment of the margin of appreciation is not developed in his own work. Given the calibre of this work, such an addition would provide this area of law with the invaluable prescriptive scholarship it still needs.

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