

Introduction

Over the past century a view of fundamental human freedoms as superseding national sovereignty has slowly emerged on the world political stage. Since its advent in 1950 the European Convention for the Protection of Human Rights and Fundamental Freedoms has been intended, along with other international treaties on the subject, to shine a light into the murky waters of international human rights law. The European Court of Human Rights was created to interpret and apply the Convention, and most importantly to adjudicate individual cases with respect to the Convention. The combination of the Convention and the Court has become the most effective tool in existence to probe, albeit within the limited sphere of the signatories to the Convention, the depths of international commitment to these ideas. International law, as does domestic law, thrives on precedent. Therefore there is good reason to believe that as the world grows more accepting of the idea of supra-national judiciaries (and as the political and economic might of the EU grows) the European Court of Human Rights will exercise a deep influence on the shape of supra-national judiciaries to come.

The purpose of this essay is to ask one specific question regarding one type of case to have come before the Court. To what extent, and on what principled basis, could and should the Court allow a measure of discretion to a national government faced with a uniquely threatening situation within its borders the handling of which may bring it to cross purposes with the Convention?

Article 15 of the European Convention on Human Rights is one of its most controversial. It allows signatories to the Convention to derogate from some of its obligations thereunder in a “time of war or other public emergency threatening the life of

the nation.” It may only do so, however, provided it has given the Court proper notification, and the rights from which it plans to derogate are not among the fundamental rights explicitly excluded from such possible derogation (those described in articles 2, 3, 4, and 7).

The specific question I would like to address regards the application of this standard in the historical case law of the court. I will focus on two cases in particular: the case of *Lawless v Ireland*, and the Greek case.

There are several legal questions associated with this debate which I would like to set aside in order to concentrate on the issue which I want to bring to light. First, there is the question of what constitutes proper notification of such derogation on behalf of the derogating government. Such an issue, while important, is not to be addressed here. The question of whether the measures taken were proportional to the situation is to be set aside for now. The issue of what exactly constitutes an ‘emergency that threatens the life of the nation’ is not the one I want to address. Much of the dissenting jurisprudence in the *Lawless* case (particularly the dissenting opinions of M. Eustathiades and M. Süsterhenn) deals with how a precise definition of this phrase should be construed, and much is made of the intent of the framers of the convention during the drafting process of this article. It is not the criteria concerned with facts on the ground that I want to discuss; rather, it is the particular threshold the respondent government must meet in such a case in order to justify a finding in their favor. Is there a legitimate ‘margin of appreciation’ within which the respondent government must show its actions to lie in order to gain approval for said derogating actions? Or is Article 15 better suited to a straight-forward reading and application of the text without a margin of appreciation?

A straight-forward reading of Article 15 would seem to indicate that what the respondent government must show is that there actually existed a situation at the time of the derogation that qualified under article 15 as a ‘war or other emergency threatening the life of the nation.’ I will call this the ‘objective standard.’ A careful reading of the opinions of the Commission and Court in the Lawless and the Greek cases, however, indicates that at least some of the judges considered a somewhat less objective standard. In varying formulations both the majority and minority opinions in the cases under question illustrate the application of what I shall call a ‘good faith’ standard. By this I mean that the respondent government must show that they were acting in good faith in responding to what they *understood* to be an ‘emergency threatening the life of the nation.’ Such a good faith standard may be expressed in looser or stricter terms, the strictest of which may come close to the objective standard; and the opinions of the judges which invoke such a standard run the gamut. Nevertheless, no matter what terms the good faith standard is expressed in, it is a significantly different standard than one requiring an actual qualifying ‘emergency.’

Unlike the objective standard, such a ‘good faith’ standard involves an implicit margin of appreciation. The good faith standard makes the epistemic status and intent of the respondent government with regard to the ‘emergency’ the central issue which determines legitimacy, rather than the existence of the emergency itself. The subjective nature of the respondent government’s epistemic status and intent undermines the application of any objective standard. The margin afforded the respondent government may be very small (other factors such as the history of the government in question as well as the nature and scope of the rights derogated from may determine the size of the

margin) nevertheless it leaves open the possibility that what constitutes a legitimate derogation in one signatory's situation may not in another. The question du-jour then, is whether such a margin is appropriate in Article 15 cases before the court.

There are two approaches I would like to take in addressing this question.

1. Which of the two interpretations has the court understood the convention to require? In this capacity I will examine more closely the judgments of the commission and court in the two most prominent cases featuring an Article 15 derogation: *Lawless v. Ireland* and the Greek case.
2. I would also like to make a cursory examination of the ethical question of which standard would be the more appropriate from a purely conceptual standpoint. Is it more appropriate given the purpose and scope of the Convention to hold governments to the objective standard which focuses on the actual situation? Or is it more appropriate to hold them to the subjective standard which focuses on their having acted in good faith, and which requires some margin of appreciation?

The Lawless Case

In the *Lawless* case the government of Ireland was required to respond to the individual application to the court by one Gerald Lawless, erstwhile member of the Irish Republican Army. His application was made in light of the fact that he had been held in detention by the Irish government without trial for approximately 5 months during the latter half of 1957. The application alleged primarily a violation of Article 5 of the convention which covers the rights of prompt judicial appearance and due process. In their response the Irish government invoked Article 15 of the Convention claiming that the detention was a lawful derogation from Article 5 in light of the situation in prevailing in Ireland at the time of the detention.

The decision eventually reached by the Commission and the Court was in favor of the Irish Government. But what standard was applied? While D. G. Valentine in his

article on the margin of appreciation finds a clear cut standard to have been applied and claims that in the Lawless case the court “has adopted a limiting interpretation of Article 15 [in which] an emergency threatening the life of the nation must in fact exist, and this existence is to be determined by the court.”¹ Other authors who have written on the subject have a different view. Paul Mahoney writes that the “formula employed comes close to the “good faith” standard of review.”² A closer look at the actual supporting texts of the Commission’s report in the Lawless case as well as the eventual Court judgment gives a good indication of why two readings of the Court’s texts may be at odds. The sum of the judges opinions seem, at the very least, to leave the question open. Let us examine the relevant texts more closely beginning with the opinions of the Commission.

The 5 line paragraph that is the summary opinion of the Commission does indicate that the standard to be applied is one of the actual existence of such an emergency. However, several factors undermine an attempt to take this short statement at simple face value. First and foremost, the opinions of the majority judges who voted for the summary opinion explicitly state only that the government was within its bounds to have adduced such an emergency.

“the situation, in our opinion, had clearly become one in regard to which the Government of the Republic might make a determination that a public emergency threatening the life of the nation existed, without being held to have gone beyond the proper limits of a Government’s appreciation under Article 15, paragraph 1, of the convention.”

And several pages later:

“we conclude that in making a determination on 5th July 1957 that there existed in the Republic of Ireland a public emergency threatening the life of the nation, the Respondent

¹ Valentine, D. G. “The European Court of Human Rights. The Lawless Case” *The International and Comparative Law Quarterly*, Vol. 10, No. 4. (Oct., 1961), pp. 899-903.

² Mahoney, Paul. “Marvelous Richness of Diversity or Invidious Cultural Relativism?” *Human Rights Law Journal*. Vol. 19, No. 1, (Date?) P. ?

Government did not go beyond the proper margin of discretion allowed to it under Article 15, paragraph 1.”

Both of these statements of finding, while they are couched in the strictest of terms, are clear examples of the application of a ‘good faith’ standard. The relevant factor in determining in the respondent government’s favor is not the actual situation, but the determination by the government that there was such a situation. Such statements are at least logically consistent with a situation in which there was *not* actually a situation on the ground which would have qualified under the objective standard as a national emergency justifying derogations under Article 15. This may have been so despite the fact that the respondent government made the opposite determination while within the limits of the margin of appreciation inherent in such a subjective standard.

An argument may be made that since the Commission saw the determination of the respondent government to have been legitimately within the margin of appreciation this indicates that the Commission, therefore, understood there to exist an actual emergency qualifying under an objective reading of Article 15 of the Convention. I do not believe this to be a sound argument. Had the Commission been guided by an established legal precedent stating that the margin of appreciation only extends to governmental determinations of an emergency should such an emergency actually exist then any finding in favor of the respondent government would have implicitly indicated that the Commission was satisfied that the objective standard was met. Such a clear limit to the margin of appreciation, however, is precisely what we are missing. The texts indicate that the Commission was aware that they were themselves setting the limits of the margin of appreciation, not applying pre-set limits.

Even if such a limit were imposed, would it provide an answer to our problem of which standard to impose? A closer look at the idea will show us that this is no the case. Suppose we limit the margin of appreciation for the determinations of appropriate ‘emergencies’ by respondent governments such that their determination will be accepted as justifying the derogations in question only if such an emergency actually existed. This would mean that any such acceptance by the Commission of a respondent government’s determination would imply that the Commission was satisfied that the objective standard had also been met. This would serve to make the margin itself irrelevant; effectively replacing the subjective standard with the objective one by stipulating that the subjective standard is only met when the objective one is. Therefore it is not the case that any determination by a respondent government of a qualifying emergency which the Commission (or Court) deems to be within the limits of the margin is within the margins only because it is a determination that aligns with the objective standard about the actual existence of such an emergency.

Considering the above, any judgment of the Court which bases its decision explicitly on whether the determination of the respondent government was within the margin, rather than on whether the Court has determined there to have been a ‘public emergency’ qualifying under the objective standard can be counted as good evidence that the Court has applied the good faith standard. Further, since the Irish government’s argumentation in the case explicitly asserted the good faith standard, and the Commission did nothing to deny its validity, we must question any reading of the Commission’s report that claims it to have applied a straightforwardly objective standard.

Next we will examine the final judgment of the Court itself in the hope that it will shed some clarificatory light on the subject. Unfortunately the opposite seems to be the case. As was pointed out by Michael O'Boyle in his illuminating article on the margin of appreciation³, considering the amount of discussion of the margin of appreciation in the Commission's report, the lack of clarity, or even verbiage, regarding the issue of having met that margin in the Court's judgment is difficult to understand. What is clear is that the court recognized this issue as one which it considered better to steer clear of at the time.

While the Court's judgment does quote the summary opinion of the Commission which, on its face, sets an objective standard, again, this standard is undermined by the supporting verbiage which is an explicit invocation of the a good faith standard. The good faith standard applied by the Court is couched in much weaker language than that of the Commission. The Court very notably only concludes that "the existence at the time of a 'public emergency threatening the life of the nation', was *reasonably deduced* by the Irish Government from a combination of factors"⁴ (my emphasis). The relevant combination of factors (i.e. the details from hearings regarding the facts about the situation at the time) could have been held to show that such an emergency in fact existed. Instead, the court chose to say that these factors only showed that the fact of such an emergency was 'reasonably deduced.'

Thus, the thin veneer of the Commission's objective summary judgment in the Lawless is in fact supported by what appear to be clear applications of the subjective

³ O'Boyle, Michael. "The Margin of Appreciation and Derogation Under Article 15: Ritual Incantation or Principle?" *Human Rights Law Journal*. Vol. 19, No. 1 (Date) pp. ?

⁴ *Yearbook of the European Convention on Human Rights, 1960*. Ed. Martinus Nijhoff. The Hague, 1961. p. 475.

‘good faith’ standard. The Court’s judgment exposes the same ambiguity. This shows that the Commission and court, while perhaps recognizing the objective standard as the legitimate one were nevertheless moved by arguments which explicitly invoked a less rigorous standard allowing for a margin of appreciation. Next we will examine the Greek case.

The Greek Case

Almost a decade after the Lawless case the Commission would have the opportunity to clarify the issue substantially, this time with the advantage of hindsight regarding the consequences and international reaction to their ruling in the Lawless case. The Greek case is one of the most notorious of the Court’s cases. In April of 1967 a military Junta seized power in Greece following an upsurge in civil unrest capping two decades of political instability. The generals summarily suspended large portions of the Greek constitution and forcefully suppressed dissenting voices via arbitrary detention and brutal mistreatment of political adversaries. The clear intent of the Junta was to quell the unrest, and in particular, to disenfranchise anyone and any political party which was leftist enough to be considered part of the international ‘communist threat’ from power.

Here again we have a number of interesting questions which I will set aside. In addition to the other issues at play in the Lawless case the sudden appearance of a revolutionary government in a high contracting party to the convention brought with it a number of challenges. Not the least of these was the fundamental question of what standing such a revolutionary government had as a party to the convention. During the next year and a half most of these issues were resolved or set aside, resulting in a case

before the commission in which the (self-described) Revolutionary Greek Government explicitly invoked the doctrine of the margin of appreciation in relation to its claim of legitimate derogation under Article 15 of the Convention.

The majority opinion of the Commission in this case is lengthy and complex, and the dissenting opinions lengthier yet. A close reading of them clearly implies that one of the primary points of difference between the majority and dissenting opinions is which standard to apply. Was the burden on the respondent government to prove there existed an actual emergency threatening the life of the nation, or was the burden on the respondent government to prove that they had acted in good faith? First let us look at the relevant passages from the majority opinion.

The task of the Commission is to examine whether, on the evidence before it, the three factors described were together of such scope and intensity as to create a public emergency for the purpose of Article 15[.] In particular, the criterion of actuality or immanence imposes a limitation in time. Thus the justification under Article 15 of the measures of derogation adopted by the respondent Government on 21st April, 1967, depends upon there being a public emergency, actual or imminent, at that date.⁵

This language seems quite clear, the emergency must have been actual, not reasonably determined in good faith. Further, in this case we do not have a seeming discrepancy between the Commission's summary opinion and the supporting detailed opinion of the majority as was evident in the Lawless case. The majority opinion explicitly gives a negative answer to the "concrete question before the Commission [...]"

⁵ *Yearbook of the European Convention on Human Rights, The Greek Case*. Ed. Martinus Nijhoff. The Hague, 1972. p. 73.

whether, on 21st April, 1967, there was a threat imminent [...] of such political instability and disorder that the organized life of the community could not be carried on.”⁶

If the Court has now made up its mind that the standard to be applied in these cases is the objective one this is a large step forward. While it may threaten the Court with allegations of inconsistent application of the margin of appreciation between the Greek and the Lawless cases at least we would have the benefit of a clear precedent which would serve to render decisions such as the Lawless decision as standing on one side or another of a clear line. Had the Greek decision predated the decision in *Ireland v Lawless* it may have done much to rescue the Courts decision in that case from ambiguity. So we can safely say from the clarity of the majority opinion in the Greek case that the court has moved significantly toward applying an objective standard. The dissenting minority opinions (which are numerous and lengthy) in the case, however, show that this is far from a completely settled question.

Among the dissenting opinions, of which there are five, only one (Busuttil) dissents from the majority opinion by claiming that there definitely did exist an emergency in Greece on 21st April 1967. One (Triantafyllides) dissented for procedural reasons. The remaining chorus of Judges Delahaye, Eustathiades and Süsterhenn⁷ all dissented by expressing, in various phrasings, that “the existence of an imminent danger has reasonably been inferred by the respondent Government from the known facts taken as a whole.”⁸ The obvious implication in this response as a dissent from the majority

⁶ Yearbook, *The Greek Case*, p. 74

⁷ Interestingly, the latter two were also among the dissenting votes in the *Lawless* case. In that instance they were both advocating a much more stringent definition of a “public emergency threatening the life of the nation.” Apparently they felt that in this situation the Revolutionary Greek Government had in good faith determined the existence of even such a dire situation as they required in the *Lawless* case for the invocation of Article 15.

⁸ Dissenting opinion of Delahaye, *Yearbook*, P. 80.

opinion is that the objective standard applied in the majority opinion is not the correct standard to be applied in adjudicating instances of questionable derogation. While I do not want to read too much into it I find it very interesting that the dissenting opinions did not dissent by explicitly saying that they found the objective standard the wrong one to apply. Instead their opinions read as though they disagree with the majority on whether the Greek government was acting in good faith. This would imply that they felt that if the court had been convinced that the respondent government was acting in good faith they might have found that their derogations were legitimate under Article 15. Such an implication directly conflicts with the clear formulation of the objective standard in the majority opinion. What this indicates about the deliberative process of the Court I do not know, but what we can conclude is that a large portion of the Court considered the question of which standard to apply not one which had been decisively answered.

Aside from the case law, are there ethical arguments which advocate in favor of one standard or another? The next section of this essay is an attempt at one way of approaching this question.

The Self-Defense Analogy

The administration of international justice by a juridical body such as the European Court of Human Rights is such a novel enterprise that, aside from its own jurisprudence, there is a lack of any directly relevant precedent to consider. In such a situation it may be appropriate to consider what well established domestic legal principles one can draw into the debate in order to provide some clarity. These principles will have been forged in an entirely separate judiciary, i.e. that of one or several of the national judiciaries of the

contracting parties. Nevertheless, provided they are sufficiently analogous, they may provide some heuristic aid in addressing the question at hand.

In responding to a 'threat to the life of the nation' by abrogating the rights of some who are involved in the threat, a government is acting in a broadly similar sense to an individual infringing on the rights of an attacker in self-defense. There is a long legal history surrounding cases of self defense and the defense of others which we may examine as sufficiently analogous to the (much larger in scope) case of legitimate derogation from the Convention under Article 15. Article 15 may generally be seen as the self-defense, and defense of others, clause in murder statutes. As to this last point it is unclear whether the governments in question are defending themselves (as instruments for the preservation of the nation's interests) or the nation and its peoples directly. I believe, however, that we may set aside this issue for the moment as the relevant aspects of the cases to be discussed, while they are most clearly showcased by the case of self defense, will apply *mutatis mutandis* to cases of the defense of others as well.

If we accept this parallel as offering some guidance in our discussion of legitimate derogation the relevant question to ask is: in cases of self defense, or the defense of others, occurring in the jurisprudence of the contracting states, is the legal threshold for a legitimate defense that of an actual threat, or a reasonably perceived threat on the part of the defender? Though examining the jurisprudence of the states which are party to the convention in any detail is beyond the scope of this essay, it is most likely not necessary. It seems clear to me that in western jurisprudence the standard to be met in cases of self defense or the defense of others is generally that of reasonable perception or belief.

While this standard may be applied to varying degrees of strictness in different signatory states it is nevertheless a strong convergence of legal opinion among the states to have come down on the side of reasonable belief rather than actual threat. A convergence of legal opinion toward a “common ground” among the democratic societies is, according to Paul Mahoney, at least an indicator of where the margin of appreciation should be a small one.⁹ Can such a consideration also be used as an indicator in the present question of how to apply Article 15 of the Convention? There are several issues which we must address before answering this question.

The analogy between traditional cases of self defense and derogation under article 15 is far from perfect. The first discrepancy between the case of an individual engaging in an act of self defense and a state derogating from its citizen’s rights in self defense is the following. The individual must be responding to an immediate threat instantiated in the form of one or more (perceived) hostiles who, if the perception is accurate, clearly possess the power, on their own, to make good on the threat and harm or kill those threatened. A state government, on the other hand, is responding to a perceived threat by abrogating the rights of individuals who, on their own, often can present no real threat to the overpowering might of a national government. This amounts to an asymmetry in power between the government and the individuals whose rights are abrogated which does not exist (to anything like the same extent) in cases of individual self defense.

The second disanalogy is, I believe, an even more important one. Governments have institutional duties and obligations which the average individual who acts in self defense does not. Governments are charged with anticipating and preventing such threats to the nation, and also with preparing for the eventuality of such a threat arising. They are

⁹ Mahoney, Paul p. ?

provided with vast resources with which to fulfill these responsibilities. Individuals have neither such role responsibilities nor, generally, the resources to carry them out.

We may narrow, if ever so slightly, the gap between the two cases by focusing on a special sub-class of self defense cases. Police officers, as representatives of their governments, regularly are faced with situation in which they must act in self defense or the defense of others. Not only are they generally in possession of superior physical power in these situations, they also operate under the umbrella of institutional duties which, for obvious reasons, are very closely related to those of a government defending its people against a national threat. Police departments are charged with anticipating and preventing criminal threats to the segments of the population for which they are responsible. Additionally, like governments, they are charged with preparing the appropriate response should such a threat arise. So while the asymmetry between criminals and the police in terms of physical power is not nearly as great as that which can exist between a terrorist and a government, it is still generally a relevant aspect of criminal crisis situations. It is true that the playing field can be leveled or turned due to localized circumstances (an organized criminal network in an under-policed region) something similar may be said to occur should a terrorist get hold of a nuclear device. Aside from the question of firepower, however, and more importantly, what makes the analogy between a defensive police action (of self or others) against a criminal threat and that of a government against a threat to the nation better suited to our question is the parallel institutional responsibilities (otherwise called positional duties) embodied in each.

What effect do the presence such institutional responsibilities on the side of the defender have on the legal jurisprudence we are probing? Generally, the criteria for a justified defensive action, as well as the application of those criteria, are significantly more stringent. A police officer, who has been trained to remain cool and observant in crisis situations, must meet a much higher threshold of evidence to show a reasonable belief in an imminent threat than a civilian. Interestingly, however, the basic criterion remains the same. If a police officer can show he had a reasonable belief in an immediate threat, even if that threat proved in hindsight not to be actual, he is legally free of guilt for the action he took.

So the very least we can conclude is that even if the standard to be applied is a 'good faith' standard, any government claiming derogation on the basis of defense against an imminent threat to the life of the nation must clear a *very* high bar of proof regarding their perception of that threat. This does not seem, however, to have added anything significant to our discussion. Presumably the bar is set very high even without such considerations. Are there further asymmetries in the analogy that may push the bar beyond a good faith standard to an objective standard? Should we not ask more of a government than of a police officer? And if so, why?

There are still two very large differences between the case of an officer of the law's defensive action and that of a state. The first is the direct relation which necessarily exists between the persons whose rights the officer is abrogating in the course of the defense and the attackers. Generally, this is a relation of identity. There are instances where an officer may abrogate a bystander's rights in the course of action (perhaps by commandeering a car) but these abrogations are severely limited, and may be set aside

for the present case. An officer in the line of duty must only use force against those who directly threaten him or those for whom he is responsible. A government, on the other hand, once a legitimate situation of derogation is adduced, is allowed a much freer hand. True, actions must be proportionate, but still, due to the often amorphous nature of the threat many who have nothing or little to do with it may have their rights violated on the slightest suspicion. The detention of Gerald Lawless is a prime example (provided we accept he was not a direct part of some violent revolutionary plot).

The second difference involves the time frame and the resources involved in the assessment of the threat. A police officer, though he may be trained to the highest standards, still must often make a decision based on momentary impressions under highly imperfect conditions. A government, on the other hand, while a threat may arise relatively quickly (an intelligence intercept regarding an imminent attack) is still able to assess the threat under vastly more advantageous circumstances and with the aid of much greater resources. In the two European Court cases we are considering the buildup of the threat was a matter of months or years. The governments in question were able to address the building threat with a huge array of resources in the form of time, money and personnel.

So while the change from a civilians defense to a police officer's defense pushes the threshold from one of 'reasonable belief' to what may be the limits of the 'good faith' defense, there is good reason to believe that the further circumstances involved in national self-defense should push the threshold even higher. While the police have the institutional responsibilities, they often do not have the time and resources to fully assess the threat. Also they are severely limited in terms of against whom they may exercise the

additional permissions granted them in a defense situation. Governments, on the other hand, presumably have the time and resources (at least in the cases at hand) to fully assess the threat and as well as the institutional responsibilities not to act unless the threat is actual. Also, once they are granted a derogation, their actions, while restrained to some degree by proportionality considerations, are given a much broader area of legitimate infringement. These factors indicate that it would likely be best to hold governments to a higher threshold than the strictest 'good faith' standard. Therefore, the Court's majority decision in the Greek case seems to be the correct one. A government, acting in defense of itself or its population may only derogate from its obligations under the Convention in the case that there is an actual 'threat to the life of the nation' which it must counter. Any government that deduces such a threat, and infringes upon the rights of its citizens, only later to find out that the threat was not real should be held accountable. The resources it possessed, in terms of time, money, personnel and firepower should have precluded such a mistake.

It may be argued that while all of the above is true, we should not hold governments to such a difficult standard for fear of restraining them from acting when they should. And in the case of a threat to the life of a nation the risk of harm is so great that we should err on the side of caution in granting the government a little more leeway in derogating from human rights. I will accept that the exceptional dangers inherent in a threat to the life of an entire nation do weigh against the points I have made above in favor of an objective standard. Against this, however, I would place the equally exceptional danger of a government with too much power in its hands. I would challenge those who advocate a freer hand for government to look to history and see how often a

terrorist threat, or a revolutionary plot, brought suffering onto the backs of a peoples rather than an overly powerful government. Give me either dictatorship or a democracy under threat of revolutionary terrorism and I will choose the latter every time.

References

Yearbook of the European Convention on Human Rights, The Greek Case. Ed. Martinus Nijhoff. The Hague, 1972.

Yearbook of the European Convention on Human Rights, 1960. Ed. Martinus Nijhoff. The Hague, 1961.

O'Boyle, Michael. "The Margin of Appreciation and Derogation Under Article 15: Ritual Incantation or Principle?" *Human Rights Law Journal*. Vol. 19, No. 1 (Date)

Valentine, D. G. "The European Court of Human Rights. The Lawless Case" *The International and Comparative Law Quarterly*, Vol. 10, No. 4. (Oct., 1961).

Mahoney, Paul. "Marvelous Richness of Diversity or Invidious Cultural Relativism?" *Human Rights Law Journal*. Vol. 19, No. 1, (Date?)