Public Lecture Series Spring 2018

—

Thursday, 24 May 2018
Hospitality Denied: The European Court of Human Rights’ Take on Migrant Issues
Prof. Marie-Bénédicte Dembour, Brighton Business School, University of Brighton

Discussant: Prof. Alberto Achermann, Institute of Public Law, University of Bern

18:15 – 19:45 h
Location: University of Bern, UniS, Schanzeneckstrasse 1, Room A 022.
Abstract
What would it take for the human rights of migrants to be respected in Europe today? This lecture presents some of the findings of Dembour’s book When Humans Become Migrants, which shows, on the basis of a close review of six decades of Strasbourg jurisprudence, that the European Court of Human Rights too rarely finds for the migrant applicant. The book’s counter-intuitive conclusion is that the Court generally privileges state sovereignty over migrants’ rights. Dembour calls this process “the Strasbourg reversal”.

Granted, the Strasbourg case law counts resounding judgments which establish protective standards for migrants. However, a comprehensive examination of the case law must include judgments of non-violation and decisions of inadmissibility. When this is done, the protective edifice supposedly represented by the European Convention on Human Rights reveals itself to be full of cracks, if not with entire walls missing.

One telling example is the little known Bonger case law, where the Court repeatedly declares complaints regarding lack of access to a residence permit inadmissible. The applicants, who cannot be returned to their country of origin, are left by the Court to live under an “illegal” status, unable either to access social benefits or to work legally. The Court says the situation falls outside the ambit of the European Convention on Human Rights. One should not have to point out that for individuals to be unable to live legally anywhere on earth should be considered hugely problematic in a human rights perspective. An oxymoron, the outcome is nonetheless logical in that it follows a series of jurisprudential paths adopted by the Court since its inception.

So, what do human rights mean? Is it possible to agree on what they require? In a different vein, are the politicians and the media who accuse the Court of trampling over national sovereignty wrong? Most importantly, can we expect the Court to stem the present inhumane treatment of migrants? And if not, who else can do this?

Curriculum Vitae
Marie-Bénédicte Dembour is Professor of Law and Anthropology at the University of Brighton. An accomplished researcher and teacher as well as a passionate advocate for migrants’ human rights, she recently authored When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American Counterpoint (Oxford University Press, 2015). You can discover its main ideas in 30 short podcasts available on Marie-Bénédicte Dembour’s blog.

Selected Publications