The reform of the European human rights protection system is and has been at the centre of academic debate both before and after the Interlaken Declaration of February 2010, the Izmir Declaration of 2011 and the recent Brighton Declaration of April 2012. Considering the European Court of Human Rights’ (ECtHR, or the Court) skyrocketing number of pending applications it is clear that the ECtHR is in dire need of reform. A number of few states clog the Court with a constant stream of applications and even though new procedures and new admissibility criteria, like the single judge formation, the pilot judgment procedures, as well as the ‘significant disadvantage’ requirement of article 35(3)(b) ECHR are now in place, this stream of applications does not end. Only working on the pending applications without new cases coming in would keep the ECtHR busy for the next 6 years. Despite these obvious statistics, however, there is further reason for concern: considering recent protests of member states against, for example, the Lautsi decision and the decisions of A, B, C v Ireland, as well as continuous protests against the Court and its method of dynamic interpretation, it seems that it is not yet clear which shape the continuing reform proposals need to take. Academia as well as politicians and other stakeholders debate whether or not to work towards a strong ECtHR with ‘constitutional’ powers to strike out decisions lacking constitutional import and an erga omnes effect of its judgments, or an ECtHR devoted to individual justice, which serves the right of individual

2 See the statistics for 2011 (n 1).
3 Based on the figures provided in Wildhaber’s chapter, the Court can handle only about 2000 cases per year.
4 Lautsi v Italy (App no 30814/06) ECHR 18 March 2011; A, B and C v Ireland (App no 25579/05) ECHR 16 December 2010.
petition and individual remedy. Also the recent Brighton conference did not bring this discussion to an end. Whether or not these two trends present an antagonism or are parts of a sliding scale, the picture is disturbed by state demands and political calculus: as part of its very nature, the ECtHR restricts state sovereignty and state interests to the benefit of the individual. As a court for a Europe of 47, it strives to ensure the same standard of human rights protection throughout. States and state representatives are thus very sensitive in letting the ECtHR meddle with national legal standards, in particular when it comes to sensitive areas like abortion or religion.\[7\]

Jonas Christoffersen’s and Mikael Rask Madsen’s book on the European Court of Human Rights between Law and Politics is a timely publication which sheds light on the development of the ECtHR’s role and functions over time, in light of the current reform and legitimacy concerns. The book is interdisciplinary in nature, it spawns legal history, political science and law, in order to answer the central question of ‘what has made the ECHR system develop …[in the way it did], what facilitated and impeded this process and, not least, how will this trajectory impact on the future development of the Court in light of the current legitimacy crisis?’ (p 2). Christoffersen and Madsen use a chronological approach in order to answer that question, starting with the genesis of the ECtHR and ending with a view on the future of the Court. They argue that the ECtHR has at least undergone three major phases of development: one concerning the development of its institutional autonomy and jurisprudence; another, starting with the 1970’s where the ECtHR developed its major doctrinal cornerstones, the margin of appreciation and dynamic interpretation theories; and the third comprising the ECtHR as a major facilitator of transition into democracy and the rule of law, in particular for the newer Eastern European member states. Nonetheless, the ECtHR has now entered its fourth phase, namely one focusing ‘increasingly on the effectiveness of the ECHR in domestic law and developing new methods to cope with the overwhelming caseload’ (p 3).

The eleven chapters of the book are contained in two parts. The first deals with the politics and institutionalisation of the Court, with Ed Bates starting off with a historical account of the birth of the ECtHR and the Convention, Mikael Rask Madsen sketching the institutional development and shifting role

of the Court over its 50 years of existence, Erik Voeten offering some interesting aspects in to the ECtHR’s internal machinery, concerning the election of judges and their decision-making, Rachel A Cichowski writing on the impact and importance of civil society organisations for the Court and Anthony Lester concluding the part with a chapter summarising the ECtHR’s development after 50 years. The book’s second part concerns the Court’s Law and its Legitimization and addresses further institutional concerns with regard to the future development of the ECtHR. Robert Harmsen offers an overview over the reform of the convention system and an in-depth account of the reforms of the latest Protocols 11 and 14, Stéphanie Henette-Vauchez addresses the constitutional versus the institutional paradigm, from the perspective of the national states, and Laurent Scheeck explores the role of the ECtHR as constitutional actor in the European Union, while Kristoffersen’s chapter suggests a constitutional turn for the ECtHR, based on the idea of the principle of subsidiarity, whereas Luzius Wildhaber concludes with a broad sketch for the future of the ECtHR.

As the editors explain in their introduction, the book deliberately lacks a concluding chapter. In light of the ongoing reform, they argue, it seemed impossible to conclude on what they perceive as ‘addressing a moving target’, so that ‘any attempt to provide a final analysis would be bound to fail’ (p 11). This might indeed be a difficult task, but some principal and crucial decisions, as Christoffersen suggests in his own chapter on the legitimacy challenges to the ECtHR, can and should be taken, in particular in light of the current reform debate, which seems to lack an explicit direction. Some sort of concluding remarks, could, however, concern the central question which the book itself brought up, namely, whether the Court should continue to move into the direction of a court of constitutional justice or towards honouring the right to individual. Finding this answer may be difficult, in particular when taking into account the multi-disciplinary nature of the book and the variety of the books’ contributions. However, many individual contributions, such as Lester’s, Christoffersen’s, Henette-Vauchez’ or Wildhaber’s, actually find answers to this question: all agree in that the ECtHR –while paying due regard to the national interests of member states – should perhaps continue on the road towards a constitutional court for Europe. Distilling the essence of this answer is now left to the individual contributions and the reader. This is a minor drawback to this otherwise excellent edition.

Every contribution to the book is relevant, illuminating and worthwhile reading, even against the backdrop that this book on the ECtHR is only one in a flow
of recent publications. The book starts out with an account of Bates, who only a year before the print of this book published a tome on the Evolution of the European Convention of Human Rights, with the same publishing house, which provides an excellent and full account of the ECtHR’s and Convention’s 50 year history.

His chapter is a condensed account of the ECHR’s early history, which sketches out the Convention’s rather staggering start, with a seemingly unsatisfying text, both in terms of the rights guaranteed, which were regarded as too broad, and too imprecise, and in terms of the limitations provided, which were seen as too broad escape clauses for the member states to evade responsibility for human rights violations, highlighting the restrictions of national security and the economic well-being of the community (pp 32, 34). Yet, already this account of the ECtHR’s past brings out some major aspects which are of crucial relevance for the current crisis of the ECtHR, namely that already back in 1950, problems of subscribing to the ECtHR’s powers of judicial review over human rights were regarded by some states, such as the UK and the Scandinavian countries, with great scepticism. Compared to now, the same problems still prevail, with the UK, but also Norway finding it still and perhaps increasingly difficult to subscribe to the judicial powers of the Court. As Bates illustrates, similar concerns existed with regard to the judicial activism or with the Courts encroaching upon State sovereignty at the time of the adoption of the Convention (p 26). This is worth-


while highlighting as many current writers and politicians regard precisely these problems as the most worrisome in the ECtHR’s current development.\textsuperscript{10}

Madsen’s following chapter then draws on the institutional development of the ECtHR, which sketches the four phases mentioned earlier: the slow commitment of major European powers to the Court (p 46ff), the Court as a integrationist and diplomatic institution in the height of the Cold War period and the ECtHR as a major player in the transformation of European societies after the fall of the Berlin Wall (p 55). Madsen convincingly portrays these phases of the ECtHR’s development by references to the broader geo-political setting in which the ECtHR operated at the particular time, as well as to the Court’s early case-law.

Voeten’s fourth chapter is, following on its own account (p 62 and the corresponding n 4) a distillation of his previous works on the election of judges to the ECtHR, and on the voting behaviour of the Court’s judges. Nonetheless, it is worth reading, in particular for the lawyer unfamiliar with empirical studies about the Court. It provides a careful insight into the election and voting habits of the ECtHR’s judicial personnel, and thus provides food for thought for outright claims of judicial activism, or the political bias of the Court’s judges. His studies evidence that such claims must be regarded more carefully. Nowadays, there may be a tendency to appoint more ‘activist’ judges, since more governments support supranationalism (p 67). It may also be suggested that candidates for EU admission support more activist judges (ibid). Nonetheless, these judges, once appointed, do not seem culturally biased and less ‘motivated by the geopolitical objectives of their home governments’ (p 74). In the light of these findings, Voeten concludes that some of the current reform suggestions may actually provide further improvement: judges who know they will be retiring at the end of one term, following the new rules of Protocol 14, ‘are less likely to exhibit national bias’ (p 75).

Also the fifth chapter and study by Cichowski on the involvement and interaction of civil society with the ECtHR may actually disperse some of the current legitimacy concerns. Her chapter concludes that civil society, since the Courts early days, has always had access to the ECtHR and was likewise able to impact the Court’s findings. This follows both from an assessment of the Court’s case law and references to amicus curiae briefs (pp 84–88), as well as from an in-depth study of the civil society involvement in the UK and Turkey (89–95).

\textsuperscript{10} Helgesen and Richmond (n 5). Utredning fra an forskergruppe oppnevnt ved kongelig resolusjon 2003, ‘Makt og demokrati, Sluttrapport fra Makt- og demokratiutredningen’ (Report) (Statens Forvaltningstjeneste Informasjonstjeneste, Oslo 2003).
Lester then ends the book’s first part with his own personal account of the ECtHR’s past 50 years and an view into the ECtHR’s future, which to his view, should be geared even more towards a constitutionalist concept, with possibly the return to a two tier system of a Court or Grand Chamber at the top and a Commission to deal with the admissibility of cases (p 103). Correspondingly, he stresses the importance of the *erga omnes* principle for the future reform of the ECtHR, which emphasises that judgments of general importance should be given effect across Europe (p 115), a proposal which will certainly be rejected by those writers and state representatives, which pray for a less stronger court, which pays due regard to the principle of subsidiarity and the interests of member states.

Harmsen begins the second part of the book on the law and legitimisation of the ECtHR with a good introduction into the geopolitical implications of the current reform process as well as the books underlying claim of the Court’s proper role between individual justice and a constitutional court. His contribution focuses on the changes brought by Protocols 11 and 14, in particular for the ECtHR and the institutions of the Council of Europe. His chapter explains both some of the underlying tenets of the reform as well as the basic decision which needs to be made for any further reform of the Court: into which direction should the ECtHR develop? He concludes with that the Protocol 11 reforms did give a much clearer answer to that question than the current propositions of Protocol 14 (p 140).

The following chapter by Hennette-Vauchez provides a useful contrast to the usual claims for a stronger ‘constitutional’ ECtHR. Her chapter draws on the reception of the ECHR and the ECtHR’s case law in Italy and in France and argues against the in the ECHR context all too common constitutionalist thesis. On the basis of her findings, which evidence the evolution of unique national approaches towards the ECHR in national case law and jurisprudence, Hennette-Vauchez opines that attention should be drawn to these national perceptions of human rights. By so doing, her chapter confirms one of the leading articles on the national court’s receptions of the ECHR, which argues a pluralist European human rights order (p 162).

Scheek’s following ninth chapter draws to the important relationship of the ECtHR and the EU. It illustrates the Court’s growing influence in the EU as result of a continuous effort of public and private actors, legal entrepreneurship and the ongoing judicial dialogue between the Strasbourg and Luxemburg courts and their judges. Most importantly, the chapter points out that even with the prospect of the EU ratification and accession of the ECHR, the relationship between the two courts seems not as clear (p 175ff). Even though accession
would certainly empower the ECtHR and strengthen this court’s role within the EU system, Scheek argues that it is not yet clear whether the ECtHR would move beyond its Bosphorus jurisprudence for the review of EU legislative acts as it would otherwise ‘run the risk of retaliation from the ECJ judges’ (p 177). Despite the foregoing, he concludes that the relationship between the two courts will – also in the future – depend much on the diplomatic goodwill and the ‘shrewdness’ of the judges of the ECtHR and the CJEU (p 180).

Christoffersen’s tenth chapter then paves the way for a true discussion of the proper future role of the ECtHR, taking into account the current exigencies and challenges which the ECtHR faces. Christoffersen argues that the Court’s ability to provide individual justice in a Europe of 47 is limited. It ‘cannot get to the bottom of cases and provide sufficient answers to all disputes’ (p 182). Further exigencies, like the fact that the principle of subsidiarity restricted the Court’s powers of review and placed wider obligations on the member states (p 183), the Court’s own self-restriction with regard to the review of EU legislative acts (p 185), as well as the further review constraints imposed by Protocol 14, all pointed towards the future role of the Court as a constitutional organ. Finally, also the inherent pluralism furthered by the Convention, for example in articles 13, 19 and 56(3) contributed to a strengthening of this role of the Court. Hence, Christoffersen concludes, the key to developing the ECHR system lies with actors other than the Court, in particular national authorities. They should take ownership of the Convention and take the lead on human rights issues (p 203). Perhaps one major argument against entrusting member states with the main responsibility on ECHR issues is that this presupposes a well-functioning national level, with courts as well as institutions in place to address human rights issues at home. The states which actually contribute the most to the Court’s current backlog, Russia, Turkey, Ukraine and Romania, however, have serious problems implementing the ECHR at home, for various reasons. Hence, deferring the main responsibility to the member states would need further measures to strengthen national institutions to take up this important task. These are issues which future research on the ECtHR still needs to address.

The final chapter by Wildhaber presents a future vision of the ECtHR. After outlining some of the Court’s main achievements, namely its binding decisions (p 205),

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11 In Bosphorus, the ECtHR held that there was a rebuttable presumption that a level of fundamental rights protection existed at EU level, which was equivalent to the fundamental rights provided by the ECHR Bosphorus Hava Yollari Turizm ve Ticaret AS v. Ireland (App no 45036/98) ECHR 30 June 2005 [155].
the strengthening of the ECHR’s function as instrument of a European public order (p 206–7), Wildhaber points to some of the major functions of the ECtHR: the adjudication of cases of constitutional import (p 209), the dealing with cases of grave breaches of human rights, and to address structural and systemic problems (p 210). Wildhaber sees one of the main future tasks of the Court as tackling these different issues. He also touches upon the notorious case of evolutive interpretation, which has been subject to much critique, in particular in recent debates in the UK.12 Here, he rightly points to the fact that the ‘evolution of human rights in the course of time is almost unavoidable’ (p 213). The last part of his chapter draws to the further reform of the ECtHR (pp 224ff). He proposes a three-pronged reform of the Court. First, the ECtHR should take up only ‘important’ cases, that is, all those that are not ill-founded, trivial or entailing no significant disadvantage for the applicant. Second, the ECtHR should immediately draw on the merits of the case, if they concerned serious human rights violations, like the right to life or long periods of arbitrary detention (p 225). Thirdly, he suggests a massive filtering of applications to be taken up to the ECtHR (ibid), leaving the Court with a selection of about 1000 cases a year, in addition those cases selected under suggestions one and two. This would certainly abandon the idea of a right to individual petition, but Wildhaber sees it as the only way out of the ECtHR falling victim to its own success (p 229).

After all, despite a lacking concluding chapter, which could have evaluated either the claims for individual justice or those calling for a strong constitutional ECtHR, there is much praise for this fine and small edition on the current and future role of the ECtHR. The editors adequately balanced the contributions from the different disciplines, providing the reader with an informative and nuanced tome for everyone interested in the Court, its work and the wider (legal and political) implications of its case law and jurisprudence. Its purchase is highly recommended and should be a must for those actually involved in the reform process: at the Court, at the Parliamentary Assembly, at government departments, but also for anyone interested in the work of the Court and its functioning. It may be suitable for further reading in graduate courses on the European human rights protection system, both in political science and in law.

12 Lautsi v Italy; A, B and C v Ireland (n 4).