

Cutting through the noise: The legitimacy of the European Convention on Human Rights in the British press

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Abstract

This article presents the first systematic analysis of British press coverage regarding the legitimacy of the European Convention on Human Rights and European Court of Human Rights over 25 years (1997–2022). It finds that coverage undermining legitimacy falls into three main areas: limiting or eroding national sovereignty, inadequate performance or effectiveness and disrupting the ‘natural order’. Coverage supporting or defending legitimacy is about providing a safety net, maintaining the international human rights system, and protecting freedoms and liberties. These are distributed unevenly across the six newspapers included in the sample. Critical coverage maps closely to legal scholarship on challenges for legitimacy associated with the identity of the United Kingdom as a political constitutionalist state. Supportive coverage, however, does not fully reflect the broad range of arguments in favour of the legitimacy of the European Convention on Human Rights as identified by human rights campaigners; it is also less abundant, narrower and more tactically defensive.

Keywords

European Convention on Human Rights, European Court of Human Rights, human rights, legitimacy, British press

Introduction

There has been much made of an apparent decline in the resilience and integrity of the global human rights regime in the 21st century and the role of the media in this (Balabanova, 2025). Governments have been accused of cherry-picking or disregarding their legal obligations (Human Rights Watch (HRW), 2024). United Kingdom (UK) government proposals in 2022–2023 to leave the European Convention on Human Rights

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(ECHR) not only illustrate this growing crisis of legitimacy faced by international human rights institutions but also raise questions about the role of national media. The ECHR has long been the subject and target of negative, hostile reporting in the British press (see Mead, 2015). This article presents the first systematic analysis of media coverage of the Convention and the Court encompassing the period 1997–2022. It goes beyond the description of specific instances of misinformation, potential bias, and skewed or misinforming coverage. Instead, it asks how and in what ways the legitimacy of the European Convention on Human Rights (ECHR) and the European Court of Human Rights (ECtHR) is discussed by national mainstream print media, and how arguments have changed over time. The article does not seek to establish causal linkages between this coverage and public opinion or policymaking. It does, however, recognise the political significance of the media and agrees with the need to ‘understand the structure and content of media coverage of prominent political issues, particularly where coverage is heavily structured and persists over time’ (Gavin, 2018: 840). It develops a systematic analysis of legitimacy in media coverage that engages with normative arguments for, and critiques of, international human rights institutions derived from human rights advocacy (Liberty, 2023) and political constitutionalism (Bellamy, 2014). It does this through thematic analysis (Braun and Clarke, 2006) identifying the key narratives deployed in the British mainstream press to talk about the ECHR and the associated ECtHR.

Legitimacy is understood here as a crucial attribute that political institutions rely upon to operate effectively. Legitimacy is ‘important to the success of authorities, institutions, and institutional arrangements since it is difficult to exert influence over others based solely upon the possession and use of power’ (Tyler, 2006: 375). The question of legitimacy is particularly relevant in the context of the human rights system, and the international agreements and arrangements that constitute it, because it exists above or beyond the nation-state (where power to enforce is stronger and political legitimacy is more embedded).

A partisan media plays a potentially crucial role in informing perceptions of legitimacy because of its important function in transmitting information about judicial decision-making. Previous research on the United States (US) Supreme Court and the role of the media has highlighted a relationship between ‘specific’ and ‘diffuse’ kinds of public support (Gibson and Nelson, 2014). If media coverage regarding the legitimacy of specific decisions or performance adopts a conflictual win/lose (‘game’) frame, it is argued that this can in turn impact upon ‘diffuse’ support which refers to the general attitude towards, or support for, the legitimacy of the institution (Hitt and Searles, 2018). While it is tempting to apply this logic to the ECtHR, and the ECHR on which it is based, this would underplay the potential significance of national differences and ideas about sovereignty, judicial constitutionalism and international human rights. In the UK, attitudes towards human rights tend to reflect political orientation or party affiliation, which also relate to these norms. For example, a poll carried out in 2014 found that nearly half of UKIP voters (46%) (a political party founded on the idea of ‘reclaiming sovereignty’) said that human rights ‘do not exist’, while that number dropped to 13% for Liberal Democrat voters (Bartlett, 2014). An analysis of the role of the media in sustaining or undermining legitimacy for the ECtHR/ECHR in the UK therefore needs to assess how coverage has systematically deployed or amplified such normative critiques.

This article focuses on the underpinning question of legitimacy in media coverage of the ECHR in the British mainstream press. It asks whether there are particular arguments about legitimacy prioritised according to the political orientation of different

publications, and the extent to which these align or ‘fit’ with different conceptions of the UK as a polity. The article provides new insights into the ways in which the changing UK position has been underpinned by ideas about legitimacy communicated by the mainstream media. It proceeds in four parts. First, the article examines the legitimacy question in relation to the context of the UK’s membership in the ECHR/ECtHR and existing scholarship on media coverage of the Convention and the Court. Second, it outlines the methodological approach and the data sample. The subsequent section presents the findings of the study, developing a typology of the arguments used to either support or undermine the legitimacy of the Convention and the Court and tracing changes across time and by newspaper. The concluding section reflects on the significance of the results in relation to the role of the media in the longer-term erosion of legitimacy for the UK’s membership of the ECHR.

UK and ECHR/ECtHR: Theoretical and practical dimensions of legitimacy

Those who support the ECHR and the UK’s membership point to different sources of legitimacy – by guaranteeing rights, providing universal coverage, and being progressive and integrated (see, for example, Liberty, 2023). First, it guarantees fundamental rights that may be threatened at the national level, for example, playing a role in safeguarding the Northern Ireland peace process, and generally allowing individuals to challenge injustice. Second, it is universal – protecting everyone, not just British citizens or the privileged. Third, it is progressive, responding through case-law to help advance human rights in the face of new problems and challenges. Fourth, it is integrated into UK law through the 1998 Human Rights Act (HRA), meaning the protections and positive obligations on the state are mainstreamed, reducing the need for individuals to take new cases to court.

Despite these positive normative arguments, several high-profile cases have brought the ECHR and its legitimacy to the centre of UK politics in the 21st century. These include a case regarding prisoners’ voting rights, where, in 2005, the ECtHR declared in *Hirst v UK* (No.2) that prisoners should have a right to vote in free elections as per Article 3 of the ECHR, a decision subsequently rejected by the UK parliament (Bates, 2015). The UK was also determined to have breached the ECHR post 9/11, when in 2015 the detention of enemy combatants in Afghanistan and Iraq was ruled by the Court of Appeal to be in breach of Article 5 of the ECHR (Fenwick, 2017). Successive Labour and Conservative Home Secretaries have seen efforts to deport high-profile individuals frustrated on human rights grounds due to appeals either in-country via the HRA or in the ECtHR itself (Bates, 2015; Klug, 2007). In June 2022 the ECtHR ruled that the UK government must pause its plan to send asylum-seekers to Rwanda until British judges had been given a chance to rule on its compatibility with the ECHR, throwing into doubt a centre-piece of the then government’s policy on irregular migration (Blewett, 2023).

Paradoxically, the Rwanda ruling occurred after a period when the number of cases concerning the UK coming before the Strasbourg Court had been steadily declining. While Britain was one of the last member states to integrate the Convention into domestic law (Besson, 2008), since the significant step of the HRA coming into force in 2000, fewer and fewer judgements have been made against the UK. In 2022, there were only two (Donald and Grogan, 2023). Despite this, threats by UK

politicians to leave the ECHR have become increasingly prominent (e.g. Lynch, 2024). Scholars have put forward various explanations for this: suggesting the relationship has become strained partly due to misrepresentation of the Convention as ‘foreign’, when the UK played an active role in its drafting (Ziegler et al., 2015). Or that the roots lie in the manner in which the HRA was introduced, as a technical change, rather than something requiring an effort to gain cross-party consensus and broad public consent. It has been argued that this left the ECHR ‘wide open for the furtive imagination of the tabloids, in search of easy copy, to exploit with fervour’ (Klug, 2007: 14).

The argument here is that beyond the problems of misrepresentations and tabloid culture, the mainstream media provides a key space for arguments to develop regarding the very legitimacy of the ECHR and ECtHR with respect to the UK. These can be traced back to fundamental questions, such as whether there is an irresolvable contradiction between the British political system and the international human rights order? Historically, the UK Parliament has been portrayed as being able to ‘make or unmake any law whatever: and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament’ (Dicey, 1959: 39–40). But this depiction of Parliament (the ‘Westminster model’) has been challenged on multiple fronts in the contemporary era. Successive developments have expanded the scope, and legitimacy, of judicial authority in the UK, for example, through European integration or devolution in Scotland, Wales and Northern Ireland or the creation of the UK’s Supreme Court (Gordon, 2015). Likewise, the description of the ECHR as an entirely cosmopolitan legal order, while supported by some (e.g. Bjorge, 2020), sits at odds with the pragmatic way in which it has developed its operating style, dependent on (and to some extent controlled by) the consent of the association of states which set it up (Bellamy, 2014).

To what extent does media coverage reflect such assumptions regarding the legal order supposedly embodied by the ECHR, and understandings of the UK as a unique polity? Legal scholars would argue that these ideas are often inaccurate or anachronistic (e.g. Gordon, 2015). Nevertheless, as Bellamy (2014) points out, the UK’s particular brand of political constitutionalism (i.e. its ‘unwritten’ constitution) does lead to a set of logical challenges regarding legitimacy of the ECHR. They fall into four main areas: (1) ‘exclusive democratic control’, (2) ‘global democratic deficit’, (3) ‘constitutional transfer’ and (4) ‘judicial discretion’. While several of these involve quite technical legalistic terminology, in practice they speak of fairly basic and fundamental political ideas which we summarise as accountability, democratic deficit, mission creep and ‘misfit’ (Bellamy, 2014: 1020). The first of these asserts that the existence of the ECHR means citizens are ‘subject to an authority that is not exclusively accountable to them’. The second, that it is part of a wider, global ‘democratic deficit’ where the international system is ‘controlled by unaccountable elites’. Third, that there has been mission creep where the ECHR decisions have incrementally moved it beyond its original and more limited conception. And fourth, that the system means people in one country may be ‘inappropriately’ bound by decisions taken by judges relating to entirely different contexts or circumstances. Bellamy argues that the way the ECHR has operated in practice has recognised and addressed all four of these areas to a large degree. The ECHR’s continued existence is effectively dependent upon the consent of its membership of democratic states, and the challenges represented by the arguments above have led to it developing a clear preference for ‘weaker’ over

‘stronger’ forms of judicial review, where a decision on incompatibility ‘is either advisory or can be overridden or put to one side by the legislature’ (Bellamy, 2014: 1021).

ECHR and ECtHR in the British media

Previous research on the British media and ECHR/ECtHR has confirmed the press as being central to political ‘battles’ (Wagner, 2014) with the institutions targeted by hostile reporting from ‘certain media outlets’ (O’Cinnéide, 2019), particularly after the incorporation of the ECHR via the HRA (Gies, 2022). As Gies (2019: 95, 86) points out, in the UK ‘human rights went from being low profile to becoming one of the most controversial topics in its national media coalescing around a particular type of narrative’ while ‘British domestic concerns about the ECHR attract comparatively little coverage in the European press’. Not all media coverage has been negative, the most notable exceptions have included the in-depth coverage from the *Financial Times* and *The Economist* (Startin, 2015) and the more favourable coverage of the HRA in the devolved territories after Brexit, arguing that the repeal of it and a ‘possible replacement by the ‘home grown’ Bill of Rights constitutes an assault on devolved government itself’ (Gies, 2022: 414).

This work has highlighted how media coverage is skewed, biased, misleading or dominated by misinformation, but there has been no systematic analysis of the ways in which the press is supporting or undermining the legitimacy of the ECHR. Research has identified that content tends to ‘play into a narrative of fear and security . . . and a narrative of Englishness, and of European “otherness” and invasion’ (Mead, 2015: 454). Conflation of the ECHR/ECtHR with the European Union (EU; McNulty et al., 2014; Masterman, 2016; Mead, 2015; Murray, 2019), for example, has led to ‘confusion about what the Court does and to which parent body is accountable, as the Court is subsumed by the better-known EU’s more expansive remit and more direct influence over domestic law’ (Jay, 2022: 564). The *Express* has campaigned to leave the ECtHR, advocating withdrawal from both the EU and the ‘alien, pan-European tribunal’, that is, the European Court of Human Rights from which ‘it is time to break free’ (Daddow, 2012: 1225–1226). This ‘rhetorical shorthand’ (Jay, 2022: 564) has been particularly unhelpful considering that the coverage of the EU in the British media has been notoriously negative and often-times promoting a ‘Eurosceptic’ view of the Union (Machill et al., 2006; Usherwood and Startin, 2013).

Scholarship has demonstrated how high-profile cases before the ECtHR have become opportunities for the media to air xenophobic, discriminatory or chauvinistic opinions about marginalised groups – those considered undeserving of ‘the legal protection of their human rights’ (Gies, 2015; Gordon, 2019: 225). Examples include the case of prisoners being given the right to vote (McNulty et al., 2014) as well as the deportation of terror suspects such as Abu Qatada (Jay, 2022; Rowbottom, 2019). Tabloids, in particular, portrayed these groups as wrongdoers and established the logic that because these people may be protected under the ECHR, as a consequence the rights of those who are law-abiding citizens who do not benefit from the Convention could be eroded (Bell and Cemlyn, 2014; Gies, 2011).

Adverse rulings in cases like this ‘make up a tiny fraction of the total cases brought against the UK’ (Jay, 2022: 567) and the decisions ‘are frequently made on grounds other than the Human Rights Act 1998’ (Mead, 2015: 458). This has not affected the prominence of high-profile cases on front pages of newspapers with evidence of misrepresentation,

selective omission or inclusion of details (Mead, 2015). Such discourse echoed the results from a study carried out by the Equality and Human Rights Commission in 2009 where 80% of respondents agreed with the statement that ‘some people take unfair advantage of human rights’ (p. 16). Older people and readers of tabloids were found to be more likely to adopt this position.

Questioning the Court’s legitimacy is often identified as a key tactic in research on media coverage, where the Strasbourg Court and the Convention are accused of taking away national sovereignty and ‘disrupting the balance in the UK between individual human rights and national and public security, and threatening the right of the directly elected and sovereign parliament to legislate as it saw fit’ (Jay, 2022: 567). As a response to this alleged ‘excessive power’ that judges have, the UK is portrayed as needing to take back its ‘laws and destiny’ and one way to achieve this is through the creation of a home-grown British Bill of Rights (Lambrecht, 2016).

There are layers to such challenging of legitimacy, because human rights norms also impact on what the press can, and cannot, do. The ECHR’s support for ‘people to claim a right to privacy to stop the exposure of their celebrity lives for commercial gain’, for example, has been highlighted, too (Gearty, 2016: 3–4). The former editor of the *Daily Mail*, Paul Dacre (2008), has criticised and publicly lambasted Justice Eady for decisions made in relation to the right to privacy under the HRA.

Finally, while it is difficult to establish direct causal linkages between media coverage and public opinion (and this research is also not seeking to assert such causal claims), not least because polling is notoriously unreliable, data show a powerful influence in the way ECHR membership is communicated, with two opinion polls in September 2023 demonstrating this very clearly (Pack, 2023). In an Amnesty International MPs and Public Poll where the ECHR was described as ‘an international treaty agreed in the aftermath of World War II to protect people’s basic rights’, 57% supported continued membership. In the same month, another poll by New Conservatives suggesting that ‘replacing the current European system of human rights laws’ would ‘enable the Government to promptly deport illegal migrants’ led to 54% of respondents agreeing to leave the ECHR. This points to the significance of the way in which the Convention and the Court are discussed in public debates in general, but particularly in relation to their legitimacy as international human rights instruments. This legitimacy has been increasingly called into question within the UK political arena. Over the course of 25 years, the British government’s position has moved from introducing a HRA to integrating the European Convention more thoroughly into UK law, to proposals for a British Bill of Rights and leaving the European Convention altogether.

Methods

This study used historical data covering the period 1997–2022: starting from the year before the adoption of the HRA and tracing the coverage until the point when the then-Conservative government was publicly considering withdrawal. Newspaper articles were collected using the Nexis database from six national newspapers: *The Guardian*, *The Times*, *Daily Telegraph*, *The Sun*, *Daily Mail* and *Daily Mirror*. The longitudinal approach necessitated a decision to look at ‘traditional’ or ‘legacy’ print media because they were operating throughout this period. This is both a strength – allowing us to zoom out and look at the question of legitimacy over a relatively long period of time – but also a

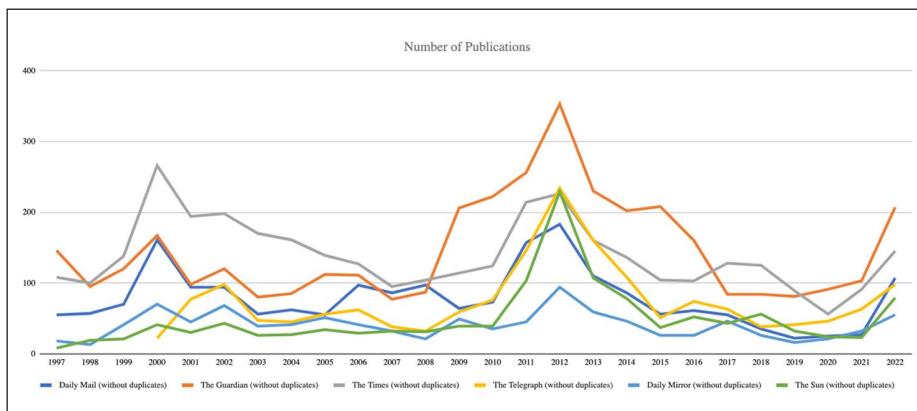


Figure 1. British press coverage of the ECHR/ECtHR (1997–2022).

Table 1. Total number of articles per newspaper and number of articles included in the analysed sample.

Newspaper	Number of articles	Sample
<i>Daily Mail</i>	2047	208
<i>The Guardian</i>	3785	380
<i>The Times</i>	3615	361
<i>The Telegraph</i>	1734	177
<i>The Sun</i>	1282	128
<i>Daily Mirror</i>	1056	109

limitation. The study can thus say little in relation to the relevance of the rise of social media during this period, or any related changes to patterns of news production or consumption, but it should be noted that research suggests that legacy print media maintain wide reach and continue to play an agenda-setting role (Barnett, 2024).

Several keywords were used to capture relevant data: ‘ECHR’, ‘European Convention on Human Rights’, ‘Strasbourg Court’, ‘European Court of Human Rights’, ‘ECtHR’. After the removal of duplicates, the search resulted in an overall sample of 13,519 articles. Figure 1 shows the fluctuation of coverage across time from 1997 until 2022.¹

It demonstrates that peaks in the coverage are generally synchronised across the six newspapers. There is significantly more coverage in 2000, when the HRA came into force in the UK and in 2012, coinciding with the case of Abu Qatada and his deportation to Jordan (resulting in an ECtHR ruling against such action). A third peak shaped up for 2022/2023, reflecting the intensification of the discussion around the UK leaving the ECHR. Overall, this suggests a consistent pattern of peaks and troughs correlated with high-profile, high-visibility developments in the country’s political arena.

In order to explore the arguments used to undermine or support the legitimacy of the Convention and the Court, a sample of approximately 10% was generated using a random generator to allow for deeper qualitative analysis. This resulted in 1363 articles. Table 1 shows the breakdown of articles per newspaper and the analysed sample.

Thematic analysis following Braun and Clarke (2006) and using NVivo was then carried out to identify and explore how different topics and arguments undermine or support the legitimacy of the Convention and the Court and how this changes over time and across newspaper titles. Thematic analysis was deemed most appropriate due to its nature as an inductive approach that is 'sympathetic to the emergent properties of the data and those themes of interest that are actively chosen by the researcher' (Clark et al., 2021: 538). The analysis was undertaken by the authors, supported by three other researchers. Familiarisation with the data involved repeated reading of newspaper articles. This was followed by a line-by-line coding ensuring that important aspects are not overlooked. A subset of articles were read and coded independently by all researchers, who met frequently to discuss the meaning of the codes, the ways in which they can be categorised into broader themes, as well as to resolve any disagreements. Once a set of codes were agreed on, this was used to guide the coding of subsequent articles. Initial themes were determined on the basis of identified areas of overlap, with the names of the themes further refined and agreed by the authors.

The following sections elaborate on these themes, noting that often the arguments being used in relation to the legitimacy of the ECHR/ECtHR combined and interwove justifications reinforcing the overall message of either support or criticism. The results and analysis explore how these inductively derived themes connect with, and/or speak to (1) the logical challenges identified by Bellamy (2014) regarding legitimacy of the ECHR from the perspective of political constitutionalism (accountability, democratic deficit, mission creep, and 'misfit') and (2) the positive normative arguments for the ECHR (rights guarantee, universal, progressive and integrated). The aim of this approach is not to quantify specific arguments or to make claims about their prevalence in absolute terms. Rather the study aimed to provide a systematic and nuanced understanding of how the legitimacy of the Convention and the Court is defended or undermined in the British press, as a context within which different political decisions about the country's commitments to human rights play out.

Results and analysis: ECHR/ECtHR legitimacy in the British press

Six overarching themes in relation to legitimacy were identified. These were ordered and grouped into those undermining legitimacy (Limiting or eroding national sovereignty; Inadequate performance or effectiveness; Disrupting the natural order), and those supporting/defending legitimacy (Providing a safety net; Maintaining the international human rights system; Protecting freedoms and liberties). Subthemes for each are included in Table 2.

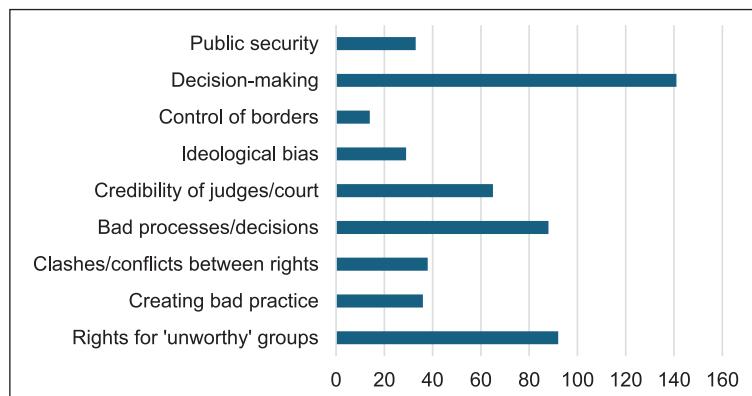
Undermining the legitimacy of ECHR/ECtHR

The arguments used by the British press that undermine the legitimacy of the ECHR and ECtHR fall within three main themes: disrupting the natural order; inadequate performance or effectiveness and limiting or eroding national sovereignty. The most often observed subthemes in the sample were those that highlighted the rights for 'unworthy' groups, the bad processes/decisions of the ECtHR and the limits on national decision-making (see Figure 2).

The themes and the key subthemes associated with them are examined and analysed below.

Table 2. Overarching themes and subthemes.

Undermining the legitimacy of ECHR/ECtHR	Supporting/defending the legitimacy of ECHR/ECtHR
<ol style="list-style-type: none"> 1. Limiting or eroding national sovereignty <ul style="list-style-type: none"> • Decision-making • Control of borders • Public security 2. Inadequate performance or effectiveness <ul style="list-style-type: none"> • Credibility of judges/court • Ideological bias • Bad processes/decisions 3. Disrupting the natural order <ul style="list-style-type: none"> • Rights for 'unworthy' groups • Clashes/conflicts between rights • Creating bad practice (compensation culture) 	<ol style="list-style-type: none"> 4. Providing a safety net <ul style="list-style-type: none"> • Route to seek justice • Source of redress for those who have been wronged 5. Maintaining international human rights system <ul style="list-style-type: none"> • British role in history/creation of ECHR • Negative consequences of withdrawal/non-compliance with rulings/British Bill of Rights/redrafting ECHR 6. Protecting freedoms and liberties <ul style="list-style-type: none"> • Recognition and strengthening of human rights norms

**Figure 2.** Undermining the legitimacy of ECHR/ECtHR: Themes and subthemes.

Limiting or eroding national sovereignty

The term 'sovereignty' is one used frequently in the sample we analysed with the effect of questioning the legitimacy of the Convention and the Court. References to the different variations of this argument dominate and can be divided into sovereignty over decision-making (the UK parliament or criminal justice system), control of borders (migration, asylum, etc.) and public security (particularly with regard to the ability to detain and deport terrorist suspects). This group of subthemes strongly overlap and align with the normative critiques around accountability, democratic deficit, and mission creep that one might expect from the perspective of political constitutionalism. However, there are clear attempts to strengthen or exaggerate these arguments by confusing, or misrepresenting, different European institutions and their respective powers, and by generating moral panic through the use of lurid or shocking examples of criminal behaviour.

The restrictions on national decision-making in our sample are highlighted primarily by the *Daily Mail*. The newspaper is vocal on this topic throughout the whole examined historical period arguing for the supremacy of the British law and criticising the acceptance of the Court's judgements as a 'craven surrender to Strasbourg . . . which has left us looking impotent and unable to protect our citizens' (*Daily Mail*, 28 April 2013):

How can we remain a member of ECHR, if it continues to mock our own courts, parliament and people? (*Daily Mail*, 18 April 2012)

The Court itself is described as 'an unaccountable body', 'a cosy, arrogant, unaccountable elite' that is 'remote or bureaucratic' (*Daily Mail*, 25 June 2001). The arguments that are being used refer to the European Convention 'undermining the fundamental basis of our legal system' and 'plung[ing] [it] . . . into chaos' (*Daily Mail*, 13 April 2000), as well as pointing out that the UK Parliament's sovereignty is undermined and European judges influence UK policy, very much echoing findings of other research (e.g. Jay, 2022):

The European Court of Human Rights said politicians have no right to keep a person in jail if a Parole Board recommends release. Sun readers are outraged. (*The Sun*, 3 June 2002)

It's about who sets our taxes and interest rates, who makes our laws and whether we control our own borders. Should those decisions be made in London, by elected politicians that we can remove from office, or by bureaucrats in Brussels and judges in Strasbourg, who have jobs for life? (*Daily Mail*, 12 February 2011)

This quote is illustrative of the conflation of EU and Brussels, on one hand, and European Convention, Court and Strasbourg, on the other, which is something that is known to happen in reporting on these issues (Masterman, 2016; Murray, 2019). This appeared to be the case particularly in the context of Brexit and despite clarifications being provided by *The Sun* and the *Daily Mail* that the two are completely different. While sometimes these clarifications were offered in a footnote, they could also be made and dismissed within the article itself, as the below example illustrates:

Nor is it by accident that the European Court of Human Rights – no relation to the EU but a bulwark of its aims and objectives – is stymying the UK's right to control its national borders. (*The Sun*, 18 June 2022)

When it comes specifically to the control of borders argument the *Daily Mail* is not alone in making the case that the UK should be the one deciding whether migrants and asylum-seekers can stay in the country or be deported:

Ministers were powerless to deport the illegal Bolivian immigrant because he had successfully argued that his right to a family life, conferred by Article 8 of the European Convention on Human Rights (ECHR), included living with his cat. (*The Times*, 5 October 2011)

How can a court in a foreign country decide which migrants should stay in this country? Who rules Britain? (*Daily Mail*, 16 June 2022)

The third dimension of the argument presenting the Convention and the Court as eroding and limiting national sovereignty highlights the public security implications of Strasbourg decisions. These range from 'put[ting] the human rights of paedophiles and

rapists before public safety' (*Daily Mail*, 17 February 2011) to 'stop[ping] us from deporting terrorists and extremists, forcing us to accommodate people who are a danger to the state' (*Daily Mail*, 26 June 2006) and not being able to deport asylum-seekers 'who have been given leave to remain on condition that they do not break that law. . .if doing so breaches the European Convention on Human Rights' (*The Telegraph*, 23 December 2006):

We have been prevented, on the most spurious grounds, from deporting evil terrorists and foreign-born criminals who have committed the most egregious crimes. (*Daily Mail*, 10 February 2011)

Inadequate performance or effectiveness

The second set of themes revolved around the inadequate performance or effectiveness of the Court. These included a range of claims about the credibility of the judges and the Court itself, the presence of an ideological bias and complaints about bad – inefficient, unfair – processes for decision-making and decisions, resulting in delays, slowness, different rulings for similar cases and so on. To some extent, these again follow or continue the normative critiques around accountability and democratic deficit, serving as illustrations of potential negative consequences of these issues, and connecting somewhat with the critique of 'misfit', where it is seen as unfair for people in one country to be bound by decisions taken in a different context. There is a notable chauvinism that emerges in the way that non-British judges are assessed as 'inferior' or more biased than their British counterparts.

The credibility of judges was raised in relation to their prior experience (or lack of judicial experience), the overrepresentation of smaller countries, as well as them representing countries with poor human rights records. A standard shorthand for this was to highlight the 'foreignness' of judges, alongside their 'anonymity', 'unelectedness', 'distance' and how ill or barely qualified they were. Below is an example of how some of these claims were combined by the *Daily Mail*, which was the newspaper that very obviously dominated the discussions around the judges' credibility:

In truth, the ECHR's judges are too often miserably undistinguished. Most have no judicial experience. Some come from countries smaller than the London borough of Islington yet have votes equal to Germany's or Britain's. (*Daily Mail*, 31 December 2013)

The ideological bias was expressed through comments that labelled the ECHR as a 'left-wing' project. They referred to the existence of a politicised agenda and often mentioned 'activist lawyers' who stand to benefit from the application of the Convention:

More than that, human rights law is a veritable article of faith (and rich pickings) for the many lawyers at the core of New Labour. (*Daily Mail*, 26 June 2006)

There was also a lot of criticism of the Court highlighting its presumed bad decisions and processes. The former was described as 'incomprehensible' (*Daily Mail*, 16 July 2014) and 'completely offensive' (*Daily Mail*, 5 February 2011) and 'mak[ing] it up as it [the Court] goes along' (*Daily Mail*, 29 May 2002). The references were particularly to

the prisoners' right to vote, the review of sentences for prisoners jailed for life, as well as the non-deportation of Abu Qatada:

Thanks to yet another ludicrous decision by the European Court of Human Rights prisoners will soon be entitled to vote. (*Daily Mirror*, 4 April 2004)

Do the idiots making these decisions ever give a second's thought to the feelings of the families of victims? (*The Sun*, 3 June 2002)

The European Court of Human Rights (ECHR) has ruled that Abu Qatada, a radical Islamic cleric, cannot be deported to his native Jordan. The consequences of this ruling are bizarre, counterintuitive and troubling. These should be problems as much for the ECHR as they are for the British Government. (*The Times*, 8 February 2012)

The Guardian was the lone voice identifying as problematic the ECHR's ruling dismissing the challenge put forward by the family of the Brazilian Jean Charles de Menezes killed in 2005 by the Metropolitan police:

This failure by our only international human rights tribunal to nail responsibility for a glaring miscarriage of justice not only impoverishes human rights everywhere but reinforces those who would dismantle what remain of post-second-world-war safeguards against abuse of power. (*The Guardian*, 4 April 2016)

When it comes to the Court's processes, complaints are raised by a wide range of newspapers and a varying degree of understanding is displayed. For *The Guardian*, it is the large number of cases that is affecting the Court and the resultant need for it 'to focus on the most serious human rights violations' (19 April 2012):

The European Court of Human Rights, with its large backlog of cases, has caused problems of process rather than principle. (*The Guardian*, 14 November 2012)

The Telegraph also highlights the 'hefty backlog of cases' (7 November 2011) but seems to be willing to explain this as 'partly a product of the court's success', while also highlighting the need to 'improve awareness of the workings of the court, and what cases are in its scope' alongside 'screening mechanisms that sift out irrelevant cases early on'. Despite these examples, the prevalent narrative appears to be that of a 'time- and fund-consuming' (*The Sun*, 13 December 2019) 'Mickey Mouse courts' (*The Telegraph*, 23 May 2012) that is 'swamped with low-level cases' (*The Sun*, 20 April 2012):

If the High Court grants permission to appeal, the hearing might not be until early next year. Rebecca Niblock, a partner at Kingsley Napley, said an application to the European Court of Human Rights could be 'a very, very slow process'. (*The Times*, 18 June 2022)

Disrupting the natural order

The third set of themes centred on disruption of the natural order, constructed through the use of claims suggesting and highlighting the existence of a clash between different rights and values. These connect with the normative critique of 'misfit' and established left-right differences about the idea of human rights mentioned earlier, but the coverage

develops these arguments in a very particular direction that implies an assumed consensus in the UK around conservative moral values and a rejection of individualism. One example is the claim that the European Convention protects and prioritises the rights of individuals over the safety of the majority of the community, echoing what Bell and Cemlyn (2014) noted: that law-abiding citizens do not benefit from the Convention. In some cases, the point was made very generally and emotively, as the below example illustrates:

The bitter irony is that ever-increasing rights for minorities damage the rights of the wider public. People who don't want terrorists living in their midst? Or who feel queasy at the prospect of gay sex in public? Or who worry about their children being knocked down by reckless, speeding motorists? Who cares? After all, they're only the majority. (*Daily Mail*, 9 August 2018)

In other cases, the specific clashing rights were explicitly highlighted, such as the right to silence versus the public's right to be protected in relation to cars being photographed speeding or the rights of sex offenders versus the right of the public to be protected from the risk of reoffending or the right to privacy versus the right to freedom of speech. Two further instances of conflict between rights are highlighted in the quotes below:

... The judges in Strasbourg have put the rights of murderers above those of law-abiding citizens who should be protected from such criminals. (*The Sun*, 3 June 2022)

Most importantly, it has become apparent to ministers that the fight against terrorism is being hampered by the ECHR. A convention that was drafted after the war to stop fleeing political dissidents being sent back to countries where they would be tortured or killed is being used to offer sanctuary in Britain to those who would do the nation harm. (*The Telegraph*, 27 January 2003)

A second group of claims pointing out how the natural order is being disrupted stressed that the ECHR promotes rights for groups that are considered unworthy, such as prisoners, criminals, most often foreign ones, terror suspects and illegal migrants. This is also something that has been noted in prior literature (Gordon, 2019). Implicit here, or underpinning this, is a fundamental disagreement with the notion that human rights are for everyone, as exemplified by the following statement in *The Sun*: 'Currently, the illegals come to Britain and, thanks to the European Convention on Human Rights (ECHR), get all the rights that come with being in the country they have broken into' (18 August 2015).

Foreign criminals were specifically targeted:

Figures last week showed foreign criminals are using the so-called Article 8 of the European Convention on Human Rights in more than half of all successful appeals against deportation. Dominic Raab, the Tory MP who campaigns for a review of human rights laws, said: 'It is a warped notion of human rights that allows a convicted rapist to claim the right to family life to avoid deportation'. (*The Telegraph*, 21 September 2011)

Still, the two most prominent examples were those of voting rights for prisoners and the deportation of Abu Qatada. As has been previously examined, coverage of the

Convention and the Court tends to be more extensive when there are high-profile cases concerning those who are considered to be underserving (Gies, 2015). Both of these cases triggered extensive debates on the pages of the newspapers, and brought together different arguments aimed at undermining the ECHR's legitimacy:

The Strasbourg court complained that Parliament had never debated this question, but if that is so, it is surely because there was no call for it. The vote is a right that goes with free citizenship. Prisoners convicted of crimes are deprived of that freedom, including the right to vote, as a punishment. Most sensible people agree with that. It was not thought necessary to labour the point. (*The Telegraph*, 15 February 2011)

The final subtheme challenging the Convention's legitimacy on the grounds of it disrupting the natural order referred to the creation of a 'compensation culture'. This specifically highlighted how 'every school, hospital and public service, every police station and military commander will be open to claims of human rights "abuse"' (*Daily Mail*, 1 August 2000). Different cases when the British government had been ordered to pay damages to criminals, prisoners, suspected terrorists were described and the 'millions of pounds a year', 'hundred thousands of pounds in compensation' (*Daily Mail*, 27 September 2006) were highlighted pointing out the cost to the taxpayer of the Court decisions:

Up to 1,000 inmates and ex-prisoners are set to claim compensation for having to 'slop out' while in jail. The actions could leave taxpayers facing a multimillion pound bill. (*Daily Mail*, 19 January 2005)

Supporting/defending the legitimacy of the ECHR/ECtHR

As with the above sections covering themes questioning or undermining the legitimacy of the ECHR/ECtHR, positive arguments about legitimacy can be divided into three overarching themes: providing a safety net; maintaining the international human rights system; and protecting freedoms and liberties. These contain a mixture of supportive or positive normative claims, but also counterarguments responding to criticisms. The supporting and defending the legitimacy of the Convention and the Court arguments were more evenly spread in the sample, with only the British role in history being mentioned notably less, whereas the recognition and strengthening of human rights norms was encountered most often (see Figure 3).

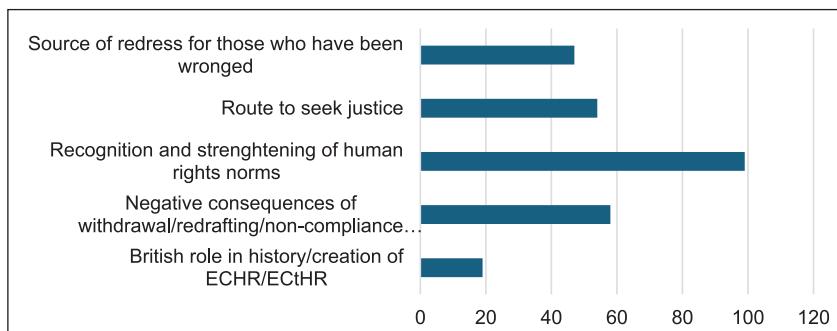


Figure 3. Supporting/defending the legitimacy of ECHR/ECtHR: Themes and subthemes.

Providing a safety net

The first theme in coverage supporting the ECHR/ECtHR was arguing for it as a route to seek justice and a source of redress for those who have been wronged – a safety net. This aligns with the positive normative arguments about the Convention as guaranteeing rights and being progressive. In most coverage concerning this, specific cases that are being taken to the ECtHR as a ‘last resort’ in an attempt to seek justice are discussed. In particular, quotes from sources are used emphasising this point, including from the actual individuals who intend to take their cases to the courts because they see the ECtHR as their ‘only hope that the truth will finally be heard’ (*Daily Mail*, 5 June 2005):

Any ban on hunting could be fought in the European Court of Human Rights. It could provide better protection than Parliament. (*The Times*, 2 May 1998)

. . . following a series of unfavourable rulings in the UK courts, these cases are now before the European Court to see whether some sanity can be restored to our legal system. (*Daily Mail*, 13 June 2013)

In some cases, coverage ostensibly supportive of the legitimacy of the ECHR and ECtHR provides a weak justification, adopting a similar frame to that seeking to undermine it – pointing a finger at the judiciary rather than drawing on positive normative arguments. Negative arguments about the inadequacy of ‘foreign judges’ are simply echoed and reversed with criticisms of British judges and bureaucrats:

In order to reclaim their rights British trade unions will thus have to join the bloated carriages of the Eurostar carrying other disappointed litigants to Strasbourg (changing at Lille), frustrated by British judges who seem to see human rights as an indulgence rather than an entitlement. (*The Guardian*, 8 March 2010)

Justice and fair play were once watchwords of the British ethic, but faceless British bureaucrats have ducked their duty. Now, we feel, is the time to appeal to the European Court of Human Rights to administer the justice due to those who fought for freedom all those years ago. (*The Times*, 1 August 1997)

Maintaining the international human rights system

The second set of supportive of the legitimacy of the ECHR and ECtHR themes refer to the genesis of the international human rights system, with a focus on Britain’s role in the history and creation of the ECHR. There is a focus on how the Convention was drafted following the conclusion of World War II and the role that Britain played in helping to set it up:

We, MORE than any other paper, have condemned the complicity by our agencies, and of course, protection from torture was one of the main reasons for post-war Britain setting up the Convention in 1950. (*Daily Mail*, 20 February 2011)

After all, the Convention, inspired by the Universal Declaration of Human Rights and drafted largely by a Conservative, David Maxwell Fyfe, is a blueprint for spreading traditional British values on human rights across Europe. (*The Telegraph*, 7 November 2011)

Interestingly, the more universal and progressive arguments for the Convention are trumped by claims of British ‘authorship’. This strategy is used in different ways: some examples include historical references to confirm the Convention’s legitimacy and also emphasise the potential negative consequences of Britain leaving the ECHR:

Britain would be going down the path of Nazi Germany if it quits a human rights pact, a United Nations official warned yesterday. Professor Francois Crepeau, who focuses on migrants’ rights, spoke out amid fears the Tories will pull out of the European Convention on Human Rights as part of plans to axe the Human Rights Act. (*Daily Mirror*, 1 June 2015)

The prospect of the UK leaving the ECHR even provides an opportunity to explain how its legitimacy is dependent upon the continued support and consent of its members, a point Bellamy (2014) makes in response to the accusations of distance, sovereignty and accountability:

Placing ourselves outside the Convention will seriously damage its operation. Its success is dependent on peer group pressure among its adherents to promote respect for it and help to ensure that its judgments are implemented. (*The Times*, 28 May 2015)

Other examples use the same history to respond to normative critiques around the legitimacy of the Convention in a defensive, or corrective manner, but only in order to pave the way for a knock-out blow, with accusations of ‘misfit’ or ‘mission creep’: that is, that the Convention is now anachronistic and should be abandoned. Discussion of Britain’s role is followed by discussion of how ‘times have changed’ and how the Convention no longer represents what had been envisaged in a post-World War II climate. Ironically, a (limited) historical basis for the legitimacy of the Convention is used to support the (fresh) legitimacy of the campaign for a new British Bill of Rights.

Protecting freedoms and liberties

The invocation of history also plays an interesting role in the third theme of ‘protecting freedom and liberties’. It could be interpreted as an expression of the positive normative argument about guaranteeing fundamental rights, but could also be seen as a response to the accusations around loss of sovereignty. The patriotic reframing of the Court as a British invention also appears to be a direct retort to chauvinistic and misleading coverage of other publications that highlight the ‘foreign-ness’ of the ECHR. While the press has criticised the Court and the Convention for protecting certain groups’ rights, they have also been vocal in discussing the history of the Convention and why it was introduced into the UK, namely to protect freedoms and liberties following World War II:

The human rights Convention was originally conceived to promote a particular agenda. Drafted in the wake of World War II, it was an attempt to lay down a set of principles to ensure that the tyranny of fascism would never deface Europe again. (*Daily Mail*, 29 May 2022)

Those who drew up the Convention wanted the fundamental freedoms that we took for granted bestowed upon the people of countries who had never known them. (*The Telegraph*, 5 October 2009)

Further arguments in support of the legitimacy of the Court appear when there is an agreement with the judgement being made. For example, when cases concerning Article

10 (the right to freedom of expression) have gone to Strasbourg and have been won, the press have declared this to be the correct decision that shows the Court's commitment towards protecting freedom of speech:

The European Court of Human Rights has – as the master of rolls accepted in the Brady case – a better record of protecting the freedom of the press than the English courts. (*The Guardian*, 12 July 2002)

The ECHR landmark ruling unshackled what Evans called Britain's 'half free press' and bolstered the public's right to know. (*The Telegraph*, 9 January 2016)

It is noteworthy that this is often done alongside a backhanded compliment:

For the free Press, this is a signal victory. And for the European Court this is a rare, if welcome, expression of common sense and common decency. (*Daily Mail*, 11 May 2011)

The protection of freedoms and liberties and the role of the ECHR and ECtHR in this respect sometimes stretches even to those individuals who are most likely to be considered undeserving of rights. *The Guardian* is the obvious example for this:

Is voting a privilege or a right? The European Court of Human Rights recently reminded the United Kingdom that a feature of an effective democracy is the right to vote, even in the case of prisoners. (*The Guardian*, 18 October 2005)

Allowing prisoners to vote – and to feel part of the society that all bar a tiny number will eventually rejoin – would be a progressive move, but the MoJ and the prison service don't do progressive. (*The Guardian*, 17 December 2009)

Changes across time and newspaper

While this study's main interest is in the nature and the range of arguments used in the British press, it is still possible to highlight some indicative trends among the identified themes over time and across newspapers. Different newspapers prioritised different arguments in the sample we analysed, with specific discourses appearing regularly on the pages of some while being completely absent from others, as Figures 4 and 5 illustrate.

The Daily Mail was the newspaper that engaged with the questions of legitimacy more than any other news outlet in the sample. The paper was very vocal particularly with regard to the loss of national decision-making, the credibility of the European Court and its judges and the rights for 'unworthy' groups. While the claims made tended to predominantly undermine the legitimacy of the ECHR and ECtHR, the *Daily Mail*'s articles also offered some supportive arguments, particularly along the lines of recognition and strengthening of human rights norms. Arguments about rights for people deemed unworthy were common on the pages of *The Telegraph*, though the newspaper appeared to be more focused on the bad processes and decisions of the Court. The limiting of national sovereignty over decision-making is an issue of concern for *The Sun* and *The Guardian*, though not at all to the extent to which this preoccupies the *Daily Mail*. The support and

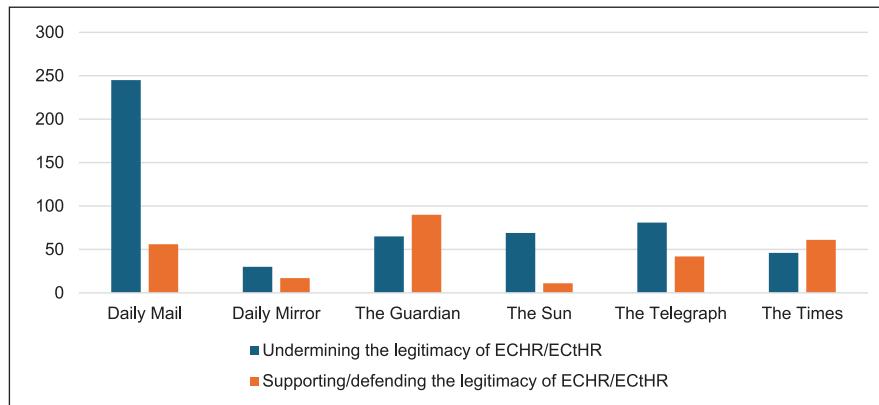


Figure 4. Supporting and undermining the legitimacy of ECHR/ECtHR by newspaper (1997–2022).

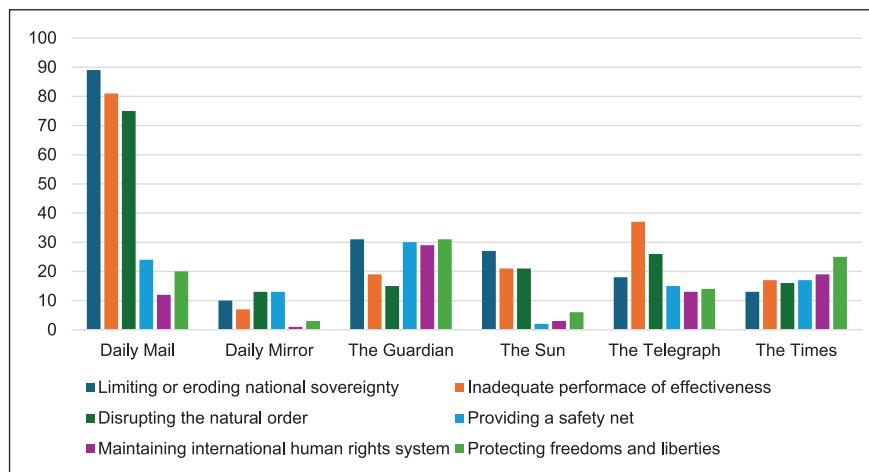


Figure 5. Supporting and undermining the legitimacy of ECHR/ECtHR by newspaper themes and subthemes (1997–2022).

defence of the legitimacy of the ECHR and ECtHR is most visible on the pages of *The Guardian*. *The Times* joins *The Guardian* in this support, particularly around the recognition and strengthening of human rights norms and the negative consequences of stepping away from the Convention and the Court.

Figure 6 illustrates how the arguments supporting or undermining the legitimacy of the ECHR/ECtHR changed over time. What is evident is that all themes are consistently present during the observed time period. On two occasions there is an increase in the undermining and challenging the legitimacy arguments – in 1999–2000 and more significantly in 2011–2013. Both of these correspond to the moments, when there was a significant increase in the coverage of the Convention and the Court in the British press. This potentially suggests a correlation between the increase in the number of articles and the use of claims undermining the ECHR and ECtHR.

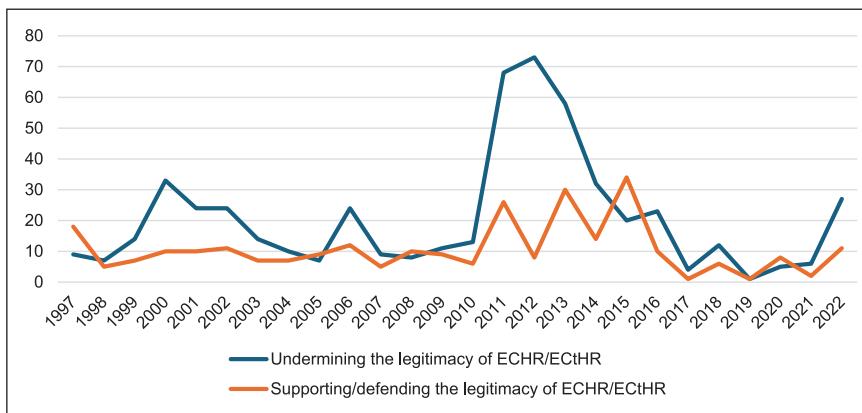


Figure 6. Supporting and undermining the legitimacy of ECHR/ECtHR across time (1997–2022).

Discussion and conclusion

The results of this research provide important new evidence that goes beyond the specific examples of misinformation, bias, skewed or biased reporting in the UK press. They identify the ways in which the legitimacy of the ECHR and ECtHR has been systematically challenged and supported across time in the British print media. The negative coverage aligns fairly closely to debates about the legitimacy of these kinds of institutions for political constitutionalist states such as the UK. The print media repeats many of the core normative critiques identified by legal scholars: focusing on questions of accountability, democratic deficit, mission creep and ‘misfit’ of the Court and the Convention. They do, however, go beyond these arguments and strengthen and exaggerate them by continuously confusing different European institutions, indulging in discriminatory language, highlighting particularly shocking individual criminal behaviour, presenting non-British judges as ‘inferior’ and biased and implying a consensus across the UK around conservative moral values. This happens regardless of the actual number of cases concerning the UK and the number of judgements against the country at the ECtHR, which have steadily declined since 2000.

By contrast, coverage supporting or defending the legitimacy of the ECHR/ECtHR does not map so neatly onto the core positive sources of legitimacy identified by human rights organisations. This coverage is not only less abundant, it is less diverse with respect to the arguments deployed. The press coverage supporting legitimacy relies primarily on just one of the positive normative arguments: the role of the Convention and the Court in guaranteeing fundamental rights. Aside from this there is a notable pattern of responding to attacks rather than making positive arguments. This includes resort to history: drawing on post-war memory and representing the Court as a British ‘invention’ to counter the tendency for critical coverage to focus on its foreign-ness. This finding, alongside research suggesting that the reporting on press freedom and Article 10 of the Convention specifically tends to be supportive (Horton and Balabanova, 2026), demonstrates that the British press overall struggles to support the ECHR and its value effectively.

This is more than simply a lack of balance between critical and positive positions, which one would expect given the UK’s media environment. It is a deficit which should

be a strategic and tactical concern for those who seek to support the legitimacy of the ECHR and ECtHR, especially given the clear intent of some senior politicians to leave. For those who support the ECHR, there are comparisons worth drawing with the way that British press coverage of the EU conditioned the debate and prepared the ground for Brexit (see Simpson and Startin, 2023). If only some of the possible arguments are aired, and priority is instead given to correcting misinformation, then the result is that 'territory' in the debate is conceded. There are a number of possible explanations for this deficit in the coverage from the field of (political) communication. The concept of 'news values' (Galtung and Ruge, 1965; Harcup and O'Neill, 2017) is helpful for explaining how controversial/conflictual stories about a court case would gain more coverage than wider benefits of membership. This also connects with research that highlights the consequences of a dominant 'game' framing where participants in such court cases are seen as either 'winners' or 'losers' and where a focus on specific legitimacy comes at the expense of diffuse support for an institution (Gibson and Nelson, 2014; Hitt and Searles, 2018). Finally, indexing (Bennet, 1990) explains why there is a tendency in mainstream media to follow – and reflect – the opinions of elites. As mentioned at the start, both Labour and Conservative governments have expressed frustration over the involvement of the ECtHR in policymaking.

Analytically, the support we found for the ECHR/ECtHR's legitimacy remained predominantly at the level of ideas. Our data show that this was in stark contrast to coverage undermining of the legitimacy of the Convention and the Court which not only encompassed ideas or 'norms' about freedom, rights and sovereignty, but also included extensive and detailed analysis of decisions and performance.

What can we conclude from our results in relation to the role of the media in the long-term erosion of legitimacy of the UK's membership of the ECHR? The institutional and political context is of course important. We know that, unlike in the US with the Supreme Court, positions regarding the legitimacy of the ECHR are correlated with political ideology. In the UK, there has historically been a clear left-right split on human rights and the mainstream print media is dominated by right-wing titles. However, the relevance of 'high politics' also needs to be factored in, especially since the interventions in Iraq and Afghanistan. The imperative to protect military forces from human rights scrutiny may have emboldened newspapers seeking to challenge the ECHR's legitimacy while prompting those who ordinarily defend the institution to pull back. While we did not attempt to draw out causal linkages, the growing existential threat to UK membership of the ECHR is certainly correlated with the persistence of the critique of international human rights in UK mainstream media. Our findings demonstrate how closely aligned this debate is to enduring understandings of Britain as a 'political constitutionalist' state (as opposed to a legal constitutionalist one).

Previous work that has differentiated between 'specific' and 'diffuse' types of legitimacy might have expected that, as the number of cases against the UK heard in Strasbourg falls, the undermining role of the media might also diminish. We did not observe this: a relatively small number of topics or rulings dominated across the sample. We found that a single, specific case could generate a peak in coverage, and our analysis showed how this was then used to make both specific and general arguments about the legitimacy of the UK's membership of the ECHR. While these individual topics or cases have changed over time, there is strong evidence that particular publications have devoted resources to focus on the ECHR as part of concerted and ongoing campaigning.

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Note

1. *The Telegraph*'s coverage starts from 2000, as this was the earliest available comprehensive archival data.

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