

# Contents

<i>Acknowledgements</i>	<i>page</i> xiii
<i>Table of Cases</i>	xv
<i>Table of Treaty Provisions</i>	xxv
<i>List of Abbreviations</i>	xxix
<b>Introduction</b>	<b>1</b>
<b>1 Theories of Democracy</b>	<b>5</b>
Liberal Democracy	6
Representative Democracy	9
Substantive Democracy	14
The Convention, the Court and Liberal Representative Substantive Democracy	15
Beyond Liberal Representative Substantive Democracy	18
Participation	18
Deliberative Democracy	23
Equality, Difference and Inclusion: Parity Democracy, Group Representation, Consociationalism	26
The Challenges of Governance	27
Conclusion: Towards Deliberative, Inclusive and Participatory Democracy	31
<b>2 Council, Convention and Court: Origins and Evolution</b>	<b>33</b>
The United Nations and the Universal Declaration of Human Rights	33
European Regional Developments: Integration Movements	36
A Question of Democracy?	38
The Council of Europe	41

	Drafting the European Convention on Human Rights	43
	Convention Rights: Inclusion and Definition	46
	The Convention Institutions	50
	Evolution of the Council of Europe and the Convention Institutions	51
	Competences of the Modern Court	54
	Other Council of Europe Institutions	57
	The International Law Context	59
	Conclusion	63
<b>3</b>	<b>European Principles of Interpretation and Application</b>	<b>65</b>
	The Interpretation of the Convention	65
	The Principles on Limitations of Rights	70
	Positive Obligations	75
	The Margin of Appreciation	78
	Convention Principles and Democracy	80
	Conclusion	83
<b>4</b>	<b>Freedom of Expression</b>	<b>84</b>
	General Approach	84
	The Importance of Free Expression	87
	Liberal Democracy	89
	The Liberal Democratic State and National Security	92
	Substantive Conception I	95
	Substantive Conception II	99
	Deliberative and Participatory Democracy	108
	Free Expression during Campaigns and Political Advertising	109
	<i>Animal Defenders International</i> and Deliberative Democracy	113
	Participation and Freedom of Information	115
	Conclusion	116
<b>5</b>	<b>Association, Assembly and Political Parties</b>	<b>120</b>
	Liberal Democracy	120
	Political Parties	123
	Substantive Democracy	128
	Deliberative and Participatory Democracy	133
	Conclusion	141
<b>6</b>	<b>Scope of the Electoral Rights</b>	<b>143</b>
	Legislature	144
	Other National Political Institutions	147

	Federal, Devolved and Local Institutions	152
	Globalisations	155
	The Convention and International Institutions	158
	Conclusion	163
<b>7</b>	<b>The Right to Vote</b>	166
	Identifying the Rights in P1–3	167
	The Right to Vote	170
	Substantive Democracy	197
	Participation and Effective Inclusion	198
	Deliberative Democracy	200
	Conclusion	201
<b>8</b>	<b>The Right to Run for Election</b>	204
	Legitimate Aim	204
	Legality or Lawfulness	207
	Proportionality	210
	Substantive Democracy	217
	Inclusion	218
	Deliberative Democracy	224
	Conclusion	225
<b>9</b>	<b>Regulation of Elections</b>	228
	Types of Electoral System	229
	Proportional Representation Systems: Thresholds	233
	Proportional Representation Systems: List Membership, Closed Party Lists and Bonus Seats	241
	Electoral Systems and Constituencies	244
	Clarity of Electoral Legislation	247
	The Timing of Amendments to Electoral Laws	247
	Electoral Commissions	250
	Integrity of the Electoral Process	252
	Campaign and Party Finance	258
	Electoral Systems and Minorities	261
	Conclusion	264
	<b>Conclusion: Deliberation, Inclusion and Participation</b>	268
	<i>Bibliography</i>	281
	<i>Index</i>	287