

Contents

<i>Table of Cases</i>	xiii
<i>Table of Legislation</i>	xvii
Introduction	1
1. Human Rights, Legality, and the ECHR	17
Introduction	17
Background to and a Very Brief History of Human Rights	18
No One-Size-Fits-All Theory of Human Rights	21
Human Rights as Conditions of Legitimacy	26
Human Rights, Legal Rights, and Interpretivism	29
Conclusion	36
2. Autonomous Concepts, Conventionalism, and Judicial Discretion	37
Introduction	37
The Emergence of Autonomous Concepts	40
Good-Faith Violations of the ECHR	43
A More Recent Example of an Autonomous Concept	46
Autonomous Concepts and Judicial Discretion	48
Need for Harmonization and Uniform Application?	49
Autonomous Concepts as Disagreement	51
Does Disagreement Entail Judicial Discretion?	53
Possible Choices	56
3. Intentionalism, Textualism, and Evolutive Interpretation	58
Introduction	58
Originalism in Constitutional Law	60
<i>Golder v UK</i> : VCLT and the Case of Unenumerated Rights	61
After <i>Golder</i> : the ECHR as a Living Instrument	65
The Failures of Originalism	68
The Object and Purpose of the ECHR	72
Evolutive Interpretation: Truth Not Current Consensus	74

4. Two Concepts of the Margin of Appreciation	80
Introduction	80
Theories of International Human Rights Law	81
The Substantive Concept of the Margin of Appreciation	84
The Structural Concept of the Margin of Appreciation	90
Consensus and Public Morals	92
5. Liberal Principles of Human Rights Interpretation	99
Introduction	99
Rights, Interests, and Reasons	99
Liberal Egalitarian Theories of Rights: Rawls and Dworkin	105
Rawls's Theory of Rights	105
Dworkin's Rights as Trumps	110
Liberal Egalitarian Principles for the Interpretation of the Limitation Clauses	117
6. Public Morals, Consensus, and Rights Inflation: A Critique	120
Introduction	120
Public Morals and the Moralistic Preferences of the Majority	120
Consensus, Piecemeal Evolution, and Legality	123
Rights Inflation: <i>Hatton</i> and the Right to Sleep Well	126
<i>Bibliography</i>	131
<i>Index</i>	137