Table of Contents

List of Abbreviations	xiii
1. Introduction Part I—The Crisis of Labour Law Part II—A Purposive Approach Part III—The Purpose of What? Framing the Topic of Discussion Part IV—The Structure of the Book	1 1 4 6 8
I. GOALS	
2. Articulating Labour Law's Goals: Why and How Part I—Why The policy-making level Purposive interpretation Constitutional challenges Part II—How A presumption in favour of private law rules? General and specific goals Justifications or explanations? Goals specific to time and place? Main and ancillary goals Thinking about goals: A multi-disciplinary endeavour Choosing the level of abstraction Conclusion	13 13 14 16 19 21 21 23 24 27 28 29 31
3. The Idea of Labour Law as Addressing Vulnerabilities or Labour Market 'Problems' Part I—Addressing Concrete Vulnerabilities The organizational viewpoint The social/psychological viewpoint The economic viewpoint Conclusion Part II—Addressing Labour Market Problems Systematic market failures Inequality of bargaining power	34 35 36 43 45 48 48 52
4. The Values and Interests Advanced by Labour Law Part I—A Review of Labour Law Goals Democracy Redistribution Human rights/dignity Social inclusion/citizenship	55 56 57 59 62

•	64
Stability/security	64
	65
Efficiency Human freedom and capabilities	68
Emancipation/social equality	
Part II—A Critical Assessment of Recent Trends	68
The shift to 'universal' goals—a possible explanation	69
The shift to universal goals—a possible of	70
The risks of 'universal' goals	70
C. C. Labour Laws: Some Examples	72
5. The Goals of Specific Labour Laws: Some Examples	73
Part I—The Purpose of Minimum Wage Legislation	74
Part I—The Purpose of William Wage 2-8 A brief historical background—and some possible purposes	77
Redistribution	82
Respect for human dignity	85
Conclusion Legislation	85
Part II—The Purpose of Collective Bargaining Legislation	86
Workplace democracy	90
Redistribution	94
Efficiency	97
Condusion	98
Part III—The Purpose of Unjust Dismissal Laws	99
Providing security	106
The impact on 'outsiders'	107
An equity-efficiency trade-off?	110
The employer's autonomy	111
Conclusion	111
Concretion	
II. MEANS	
GL 1 Fmployee and Employee	115
6. The Building Blocks of Labour Law: Employee and Employer	116
Part I—Employee vs Independent Contractor	116
Tl = rich purposive approach	118
Choosing the goals that can guide interpretation	119
Pausing to reconsider the distinction	122
The structure of the test	124
The interpolation of the shold requirements	127
The possible indicia determining employment states	133
A summary of the relevant indicia	135
Part II—Dependent Contractors	135
The proliferation of intermediate categories	137
D. Cring 'dependent contractors —III theory	139
Interpreting intermediate categories—in placetee	141
Part III—Identifying the Employer	141
Sham triangular relations	143
Compare an arrangements	146
T 1 wis maylar employment infough 1 Lins	150
Truly triangular employment through subcontractors	153
Supply chain employment	153
Conclusion	1/5
Collegeon	

	Table of Contents	xi
7.	Using Open-Ended Standards to Advance Labour Law's Goals	157
	Part I—Rules vs Standards	159
	Part II—Which Standards?	163
	Part III—Good Faith	166
	Part IV—The Managerial Prerogative	172
	The wide latitude approach	173
	The contractual approach	175
	The internalization approach	177
	Conclusion	179
	Part V—Proportionality	180
	Workplace discrimination	182
	Privacy at work	184
	Restrictive (non-competition) covenants	187
	Strikes and picketing	188
	Conclusion	191
	Part VI—Conclusions and Possible Critiques	192
8.	Purposive Interpretation of Concrete Rules: Some Examples	197
	Part I—Rights Related to Wages	197
	Tips and the minimum wage	197
	Deductions from the minimum wage	199
	Apprentices, trainees, interns, and volunteers	200
	Being 'on call' and the minimum wage	204
	Payment for pre-work or post-work activities	207
	Part II—Rights Related to Dismissals	210
	Change of employers and severance payments	210
	Procedural rules: The effective date of dismissals	214
	Part III—Freedom of Association Rights	216
	Freedom of association and derived rights	216
	Compulsory union agency fees	221
9.	Addressing the Compliance/Enforcement Crisis	224
·	Part I—The Enforcement Crisis	224
	Part II—Improving Compliance	229
	Creating incentives for compliance	230
	Using 'lead company' liability to improve compliance among contractors	234
	Promoting unionization (or alternative worker representation)	238
	Part III—Improving Enforcement	241
	Responsive enforcement	243
	Withholding privileges	245
	Independent monitoring	247
	Conclusion	250
10.	Conclusion	251
Bih	liography	257
	inder	