## Contents

Pi	face	V
T	ble of Cases	xi
T	bles of Legislation	XIII
1	NTRODUCTION	1
	<ul> <li>Defining Parliamentary Sovereignty: Dicey's Conception</li> <li>The Compatibility of the Human Rights Act 1998 with Dicey's Theory of Parliamentary Sovereignty</li> </ul>	3
	A. Section 19: the Manner and Form Challenge	5
	B. Section 10: the Henry VIII Challenge	6
	C. A Constitutional Statute?	9
	D. Dialogue and Duality	10
	E. Evaluation	12
	(i) Sovereignty, Interpretation and Implied Repeal	12
	(ii) Defining Legally Valid Legislation	14
	II. Sovereignty Explored	15
	A. Continuing Parliamentary Legislative Supremacy	15
	B. Perspectives of Parliamentary Sovereignty	17
	V. In Defence of the Human Rights Act 1998	22
	<ul><li>A. Could the United Kingdom Constitution provide for a Stronger Protection of Rights without Breaching Sovereignty?</li><li>B. Should Convention Rights be Entrenched?</li></ul>	22
	V. In Defence of Dicey	28
2	NTERPRETATION AND IMPLIED REPEAL	31
	. Continuing Parliamentary Legislative Supremacy and the Doctrine	e
	of Implied Repeal: the Orthodox Account	32
	I. The Narrow Scope of Implied Repeal	35
	A. General Presumption against Implied Repeal	36
	B. Generalia Specialibus Non Derogant	39
	C. Constitutional Statutes	40
	D. Conflict between two Statutes on the same Subject?	45
	E. Specific Repeal	49

## viii Contents

	III. How to give Human Rights an 'Entrenchment Effect'	54
	<ul><li>A. Construe and Give Effect</li><li>B. Dominant and Subordinate Statutory Provisions and the Principle of Legality</li></ul>	54
	C. Misfired Statutes	60
	IV. Conclusion	61
3	REDEFINITION AND THE RULE OF RECOGNITION	65
	I. Continuing and Self-embracing Parliamentary Legislative	66
	Supremacy II. Manner and Form and Redefinition	68
	<ul> <li>A. Why can Manner and Form provisions be Entrenched?</li> <li>B. Redefinition and Continuing Theories of Parliamentary Legislative Supremacy</li> </ul>	71
	III. Methods of Entrenchment	7.5
	A. Modification of Rules of Action	77
	B. Modification of the Rule of Recognition	82
	(i) Modification of the Supreme Criterion (ii) Core and Penumbra	85
	<ul><li>(iii) Rule of Recognition and Parliamentary Legislative Supremacy</li><li>(iv) Practical Problems</li></ul>	87 90
	IV. Conclusion	93
4	DEMOCRACY AND RIGHTS	95
	I. Dicey and Democracy	96
	A. Factual Accuracy B. Self-Correcting Unitary Democracy?	98 101
	II. Constitutional Rights III. Democratic Dialogue IV. Conclusion	103 112 114
5	DEMOCRATIC DIALOGUE AND THE HUMAN RIGHTS ACT 19	
_	I. Models of Dialogue	116
	A. Defining Democratic Dialogue	117
	II. Justification of Democratic Dialogue	118
	A. Practical Problems	119
	B. Finding the Right Balance	12.1

	C. Justifying the Assumptions underlying Democratic Dialogue:	
	Jeremy Waldron	122
	D. Consensus, Dissensus and Prolife: an Example	123
	E. Distinguishing between Consensus and Dissensus: Core and	101
	Penumbral Applications of a Human Right	124
	F. Distinguishing between Consensus and Dissensus: Ronald	125
	Dworkin's Easy and Hard Cases	125
III.	Justifications of the Human Rights Act 1998	127
	A. Justifications of Democratic Dialogue	128
	B. Applying Justifications of Democratic Dialogue to the Human	
	Rights Act	128
	C. The Human Rights Act, 'Definitive Conclusions' and Theories	
	of Rights	130
IV.	Dialogue and Institutional Competences	132
	A. Protection of Minority Rights	132
	B. Protection of Long-standing Principles	135
	C. Protection of Specific Individual Rights	137
	D. Interstitial Changes	138
V.	Towards a Theory of Adjudication	139
	A. Institutional Competences and the Remedial Consequences B. Identifying Cases where it is Reasonable to Disagree about	139
	Rights Issues	140
	C. Institutional Features and Remedies	141
	D. Democratic Dialogue and Principles of Interpretation	141
	E. Conclusion	142
VI.	Conclusion	143
, _,		
A 7	THEORY OF ADJUDICATION	145
I.	The Current Legal Test	146
	A. Analysis: Compatibility of the Current Law with a Democratic	
	Dialogue Model of Adjudication	147
	B. An Example: Bellinger v Bellinger	148
	C. Conclusion	152
II.	A New Theory of Adjudication	152
	A. Interpretation	153
	B. Deference and Adjudication	154
	C. An Emerging Legal Test	156
III.	Conclusion	158
-		the second secon

## x Contents

7	CC	ONCLUSION	161
	I.	A Modest Defence of Continuing Parliamentary Legislative Supremacy	162
		A. Sovereignty v Supremacy	162
		B. From Paradox to Justification	165
		C. A Constitutional Defence of Continuing Parliamentary	
		Legislative Supremacy	166
		D. The Example of R (Jackson) v Attorney-General	170
	II.	Conclusion	174
In	dex	c	177