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Nota di contenuto	Cover -- Chapter 1: Justifying Concrete Norms in Regional Human Rights Law: The Uses of European Consensus in the Court's Processes of Justification -- I. Human Rights Adjudication: High Stakes and Little Guidance -- II. Introducing European Consensus -- III. Key Characteristics of European Consensus -- IV. European Consensus and Critical International Legal Theory -- 1. Different Perspectives on Consensus: Structuralist Methodology -- 2. Human Rights between Apology and Utopia -- 3. Morality-focussed and Ethos-focussed Perspectives -- 4. Strategic Considerations and Consensus as Legitimacy-Enhancement -- 5. The Indeterminacy of Processes of Justification -- V. Outline of the Following Chapters -- Chapter 2: Morality-focussed Perspectives: European Consensus as an Infringement on Prepolitical Rights -- I. Introduction -- II. Morality-focussed Criticism of European Consensus -- 1. Minority Rights and the Tyranny of the Majority -- 2. Regional Human Rights Law and Distrust of States -- 3. The Is-Ought Distinction and Strict Normativity -- III. Ambivalent Morality-focussed Perspectives on the Spur Effect -- IV. Interim Reflections: Tackling Prejudice -- Chapter 3: Ethos-focussed

Perspectives: From National Ethos to a Pan-European Ethos -- I. Introduction -- II. Against the Morality-focussed Perspective: Differing Epistemologies -- III. National Ethos: From Traditions to Democratic Procedures -- IV. Ethos-focussed Perspectives at the Transnational Level -- 1. Lack of Regional Democracy and Human Rights as a Cooperative Venture -- 2. The Democratic Credentials of European Consensus -- 3. From National Ethos to a Pan-European Ethos -- 4. Implications of Harmonisation: Human Rights and European Integration -- V. Interim Reflections: Vestiges of Homogeneity.

Chapter 4: Interaction between Morality-focussed and Ethos-focussed Perspectives: Triangular Tensions and Instrumental Allegiances -- I. Introduction -- II. An Attempt at Reconciliation: The Condorcet Jury Theorem -- 1. European Consensus as Collective Wisdom -- 2. The Spur Effect and the Similarity Condition -- 3. The Rein Effect and Bias Across States -- III. Triangular Tensions and Instrumental Allegiances -- 1. Persistent Tensions Due to Differing Epistemologies and Idealisations -- 2. From Tensions to Oscillation: The Example of Core Rights -- 3. Instrumental Allegiances -- IV. Interim Reflections: Against Naturalisation -- Chapter 5: Establishing Consensus (I): Numerical Issues -- I. Introduction -- II. Consensus as Reasonable Agreement: But What Is Reasonable? -- III. Factually Oriented Approaches to European Consensus -- 1. The Conventional Account: Asymmetry in Favour of the Rein Effect -- 2. The Ethos-focussed Perspective versus Consensus-Agnostic Middle Ground -- 3. The Ethos-focussed Perspective versus the Epistemic Approach -- IV. Morality-focussed Elements: Trends and Directionality -- V. Interim Reflections: Statistical and Ideal Majorities -- Chapter 6: Establishing Consensus (II): International Law as European Consensus -- I. Introduction -- II. European Consensus and Systemic Integration -- III. Ethos-focussed and Morality-focussed Perspectives on International Law -- IV. Different Kinds of Regional and International Law -- 1. Taxonomies of International Law References -- 2. Law of the European Union -- 3. Council of Europe Materials -- 4. Global International Law -- 5. Soft Law -- 6. Non-Representative Documents -- V. Consensus based on International Law versus Consensus based on Domestic Law -- VI. Interim Reflections: International Law as Grounded Yet Aspirational.

Chapter 7: Establishing Consensus (III): Different Levels of Generality -- I. Introduction -- II. Levels of Generality in the Court's Use of European Consensus -- III. The Implications of Shifting Levels of Generality -- 1. Different Constellations within Triangular Tensions -- 2. Shifting Levels of Generality as a Search for Reflective Equilibrium -- IV. Interim Reflections: Beyond the Goldilocks Level of Generality -- Chapter 8: Consensus in Context: Autonomous Concepts, the Margin of Appreciation, and Tensions within the Court's Doctrines -- I. Introduction -- II. Autonomous Concepts -- III. The Margin of Appreciation and Convention Standards -- 1. Two Concepts of the Margin of Appreciation - and of Consensus? -- 2. Contextualising the Rein Effect -- 3. Contextualising the Spur Effect -- IV. Interim Reflections: Instable Oscillations and Doctrinal Connotations -- Chapter 9: The Strategic Approach: Consensus as Legitimacy-Enhancement -- I. Introduction -- II. European Consensus as Legitimacy-Enhancement -- 1. Investing Sociological Legitimacy with Normativity -- 2. The Background Assumption: Overcoming a "Legitimacy Crisis" -- 3. The States Parties as Agents of Legitimacy -- 4. European Consensus as the Basis of Incremental Development -- 5. The Court as the Object of Legitimacy: Strategic Implications -- III. The Practical Limitations of Consensus as Legitimacy-Enhancement -- IV. Interim Reflections: Abstract Strategizing -- Chapter 10: Of Conflation and Normalisation:

European Consensus between Strategy and Principle -- I. Introduction -- II. Non-Ideal Theory: The Dilemma of Strategic Concessions -- III. European Consensus as a Conflation of Strategy and Principle -- 1. Different Perspectives on Consensus within Non-Ideal Theory -- 2. Consensus and an Impression of Objectivity -- 3. The Normalisation of a Strategic Approach to Consensus. IV. Interim Reflections: Rethinking the Role of the Court -- Chapter 11: Engaging with Indeterminacy: Imagining Different Uses for Vertically Comparative Legal Reasoning -- I. Pulling Together the Threads: Beyond Consensus as Compromise -- II. Indeterminacy and the Motivation for Critique -- III. The Role of Human Rights Courts -- IV. Justifying Concrete Norms in Regional Human Rights Law, Revisited -- 1. The Indeterminacy Thesis in the Judicial Context -- 2. European Consensus and the Perpetuation of Current Power Structures -- 3. A More Openly Political Court? -- 4. Vertically Comparative Law as a Reflective Disruption of Equilibrium -- V. Outlook: Future Articulations of Human Rights -- Table of Cases -- Bibliography.

Sommario/riassunto

This study offers a critical account of the reasoning employed by the European Court of Human Rights, particularly its references to European consensus. Based on an in-depth analysis of the Court's case-law against the backdrop of human rights theory, it will be of interest to both practitioners and theorists.

While European consensus is often understood as providing an objective benchmark within the Court's reasoning, this study argues to the contrary that it forms part of the very structures of argument that render human rights law indeterminate. It suggests that foregrounding consensus and the Court's legitimacy serves to entrench the status quo and puts forward novel ways of approaching human rights to enable social transformation.

Dieses Werk analysiert die Argumentationsstrukturen des Europäischen Gerichtshofs für Menschenrechte, insbesondere dessen Verweise auf einen Europäischen Konsensus. Es verbindet kritische Menschenrechtstheorie mit einer eingehenden Analyse der Rechtsprechung des Gerichtshofs.

Während der Europäische Konsensus oft als objektives Element innerhalb der Argumentation des Gerichtshofs angesehen wird, legt diese Studie dar, dass er Teil der argumentativer Strukturen bildet, die zur Unbestimmtheit von Menschenrechten führen. Konsensus und die Legitimität des Gerichtshofs zu betonen, dient der Verankerung des Status Quo. Der Autor schlägt alternative Ansätze vor, um Menschenrechte als Instrument sozialer Transformation denken zu können.
