

Cambridge University Press

978-1-107-06407-2 - Proportionality and the Rule of Law: Rights, Justification, Reasoning

Edited by Grant Huscroft, Bradley W. Miller and GréGoire Webber

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PROPORTIONALITY AND THE RULE OF LAW

Rights, Justification, Reasoning

To speak of human rights in the twenty-first century is to speak of proportionality. Proportionality has been received into the constitutional doctrine of courts in continental Europe, the United Kingdom, Canada, New Zealand, Israel, South Africa, and the United States, as well as the jurisprudence of treaty-based legal systems such as the European Convention on Human Rights.

Proportionality provides a common analytical framework for resolving the great moral and political questions confronting political communities. But behind the singular appeal to proportionality lurks a range of different understandings. This volume brings together many of the world's leading constitutional theorists – proponents and critics of proportionality – to debate the merits of proportionality, the nature of rights, the practice of judicial review, and moral and legal reasoning. Their essays provide important new perspectives on this leading doctrine in human rights law.

Grant Huscroft is Professor in the Faculty of Law at Western University in London, Canada, where he is a founding member of the Public Law and Legal Philosophy Research Group. His research focuses on constitutional rights and judicial review and has been published in Canada, the United States, the United Kingdom, New Zealand, and Australia. He is a coauthor of the treatise *The New Zealand Bill of Rights* (2003) and has edited and coedited seven collections of essays.

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Contents

Contributors	page vii
Preface	ix
1. Introduction	1
<i>Grant Huscroft, Bradley W. Miller, and Grégoire Webber</i>	
PART I CONCEPTIONS OF PROPORTIONALITY	
2. The Lost Meaning of Proportionality	21
<i>Martin Luterán</i>	
3. Proportionality Is Dead: Long Live Proportionality!	43
<i>Alison L. Young</i>	
4. Human Dignity and Proportionality: Deontic Pluralism in Balancing	67
<i>Mattias Kumm and Alec D. Walen</i>	
5. Between Reason and Strategy: Some Reflections on the Normativity of Proportionality	90
<i>George Pavlakos</i>	
PART II PROPORTIONALITY AND RIGHTS	
6. On the Loss of Rights	123
<i>Grégoire Webber</i>	
7. Proportionality and Rights Inflation	155
<i>Kai Möller</i>	
8. Proportionality and the Question of Weight	173
<i>Frederick Schauer</i>	
9. Proportionality and the Relevance of Interpretation	186
<i>Grant Huscroft</i>	

vi	<i>Contents</i>
PART III PROPORTIONALITY AND JUSTIFICATION	
10.	Democracy, Legality, and Proportionality 205 <i>T.R.S. Allan</i>
11.	Proportionality and Deference in a Culture of Justification 234 <i>David Dyzenhaus</i>
12.	Proportionality and Democratic Constitutionalism 259 <i>Stephen Gardbaum</i>
13.	The Rationalism of Proportionality’s Culture of Justification 284 <i>Mark Antaki</i>
PART IV PROPORTIONALITY AND REASONING	
14.	Proportionality and Incommensurability 311 <i>Timothy Endicott</i>
15.	Legislating Proportionately 343 <i>Richard Ekins</i>
16.	Proportionality’s Blind Spot: “Neutrality” and Political Philosophy 370 <i>Bradley W. Miller</i>
17.	Mapping the American Debate over Balancing 397 <i>Iddo Porat</i>
Index	417

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viii

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Preface

This volume originates from a colloquium on proportionality hosted by the Public Law and Legal Philosophy Research Group at the Faculty of Law at the University of Western Ontario. The colloquium's participants were drawn from legal jurisdictions throughout the common law and civil law worlds, reflecting proportionality's international reach. Following the colloquium, the papers were revised for publication and additional papers were commissioned to fill in some topical and jurisdictional gaps. The resulting collection provides a comprehensive analysis and critique of proportionality from the perspectives of philosophy, constitutional theory, and law.

We are grateful to the University of Western Ontario, which provided the financial support required to stage the colloquium, and to all of the contributors. It is a privilege to work and learn together with scholars of such distinction.

Bradley W. Miller was the Ann and Herbert W. Vaughan Visiting Fellow in the James Madison Program in American Ideals and Institutions at Princeton University during the 2012–2013 academic year. He acknowledges the outstanding support provided by the Madison Program and its Fellows.

We want to thank Western Law JD students Jeff Claydon, Brandon Duewel, and Danilo Popadic (JD 2013) and Tori Crawford (JD 2014) for the research and editorial assistance that helped us complete the volume.

This is the third collection of essays on constitutional law and legal theory that the Public Law and Legal Philosophy group has published with Cambridge University Press, the first two being *Expounding the Constitution: Essays in Constitutional Theory* (2008) and *The Challenge of Originalism: Theories of Interpretation* (2011). We thank Adrian Pereira and his editorial team for their work on this volume, and our publisher John Berger, who has been an enthusiastic supporter of all three books.

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