

PROPORTIONALITY AND JUDICIAL ACTIVISM

The principle of proportionality is currently one of the most discussed topics in the field of comparative constitutional law. Many critics claim that courts use the proportionality test as an instrument of judicial self-empowerment. *Proportionality and Judicial Activism* tests this hypothesis empirically; it systematically and comparatively analyses the fundamental rights jurisprudence of the Canadian Supreme Court, the German Federal Constitutional Court and the South African Constitutional Court. The book shows that the proportionality test does give judges a considerable amount of discretion. However, this analytical openness does not necessarily lead to judicial activism. Instead, judges are faced with significant institutional constraints, as a result of which, all three examined courts refrain from using proportionality for purposes of judicial activism.

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PROPORTIONALITY AND JUDICIAL ACTIVISM

Fundamental Rights Adjudication in
Canada, Germany and South Africa

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For Salwa

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Although the main thesis of this book is presented for the first time in English, some of the ideas expressed in this book have previously been developed in individual articles. The main argument of Chapter 2 was based on my article 'How to Compare the Length of Lines to the Weight of Stones – Balancing and the Resolution of Value Conflicts in Constitutional Law', 14 *German Law Journal* 1387–1408 (2013). The conceptual framework developed in Chapter 3 and the findings related to the German Constitutional Court in Chapter 4 have previously been published in my article, 'Balancing and Judicial Self-Empowerment: A Case Study on the Rise of Balancing in the Jurisprudence of the German Federal Constitutional Court', 4 *Global Constitutionalism* 49–80 (2015). Finally, some of the results regarding the South African Constitutional Court in Chapters 4 and 5 can already be found in 'Proportionality and the Incommensurability Challenge in the Jurisprudence of the South African Constitutional Court', 30 *South African Journal on Human Rights* 405–429 (2014).

This book is dedicated to my wife Salwa, the most precious gift that life could have made me.