

Proportionality and the Rule of Law

**Rights, Justification,
Reasoning**



**Edited by Grant Huscroft, Bradley W. Miller,
and Grégoire Webber**

And Proportionality Rule Law Justification Reasoning

Geneviève Cartier, Mark D Walters



And Proportionality Rule Law Justification Reasoning:

Proportionality and Facts in Constitutional Adjudication Anne Carter, 2022-01-27 This book considers the relationship between proportionality and facts in constitutional adjudication Analysing where facts arise within each of the three stages of the structured proportionality test suitability necessity and balancing it considers the nature of these facts vis vis the facts that arise in the course of ordinary litigation The book s central focus is on how proportionality has been applied by courts in practice and it draws on the comparative experience of four jurisdictions across a range of legal systems The central case study of the book is Australia where the embryonic and contested nature of proportionality means it provides an illuminating study of how facts can inform the framing of constitutional tests The rich proportionality jurisprudence from Germany Canada and South Africa is used to contextualise the approach of the High Court of Australia and to identify future directions for proportionality in Australia at a time when the doctrine is in its formative stages The book has three broad aims First it considers the role of facts within proportionality reasoning Second it offers procedural insights into fact finding in constitutional litigation Third the book s analysis of the dynamic Australian case law on proportionality means it also serves to clarify the nature and status of proportionality in Australia at a critical moment Since the 2015 decision of *McCloy v New South Wales* where four justices supported the introduction of a structured three part test of proportionality the Court has continued to disagree about the utility of such a test These developments mean that this book with its doctrinal and comparative approach is particularly timely

Constitutionalism Justified Ester Herlin-Karnell, Matthias Klatt, Héctor A. Morales Zúñiga, 2020 This volume analyzes Rainer Forst s theory of the right to justification from legal philosophical and constitutional theoretical perspectives The contributions address issues such as the philosophical foundations of justification and constitutionalism the justification of human rights the requirements of social justice and important elements of constitutional law Forst responds to the contributions in a concluding chapter

Proportionality, Equality Laws, and Religion Megan Pearson, 2017-03-16 This book considers how the law should manage conflicts between the right of religious freedom and that of non discrimination on the grounds of sexual orientation These disputes are often high profile and frequently receive a lot of media attention and public debate Starting from the basis that both these rights are valuable and worthy of protection but that such disputes are often characterised by animosity it contends that a proportionality analysis provides the best method for resolving these conflicts The work takes a comparative approach examining the law in England and Wales Canada and the USA and examines four main areas of law considering how a proportionality approach could be used in each The book will be an invaluable resource for students and researchers in the areas of Public Law Human Rights Law Law and Religion Discrimination Law and Comparative Law

Constitutionalism and the Paradox of Principles and Rules Marcelo Neves, 2021 Oxford Constitutional Theory has rapidly established itself as the primary point of reference for theoretical reflections on the growing interest in constitutions and constitutional law in domestic regional and global

contexts The majority of the works published in the series are monographs that advance new understandings of their subject But the series aims to provide a forum for further innovation in the field by also including well conceived edited collections that bring a variety of perspectives and disciplinary approaches to bear on specific themes in constitutional thought and by publishing English translations of leading monographs in constitutional theory that have originally been written in languages other than English Book jacket

Property and Practical Reason Adam J. MacLeod, 2015-04-30 Property and Practical Reason makes a moral argument for common law property institutions and norms and challenges the prevailing dichotomy between individual rights and state interests and its assumption that individual preferences and the good of communities must be in conflict One can understand competing intuitions about private property rights by considering how private property enables owners and their collaborators to exercise practical reason consistent with the requirements of reason and thereby to become practically reasonable agents of deliberation and choice who promote various aspects of the common good The plural and mediated domains of property ownership though imperfect have moral benefits for all members of the community They enable communities and institutions of private ordering to pursue plural and incommensurable good ends while specifying the boundaries of property rights consistent with basic moral requirements *The Oxford Handbook of Freedom of Speech*, 2021-01-26 Freedom of speech is central to the liberal democratic tradition It touches on every aspect of our social and political system and receives explicit and implicit protection in every modern democratic constitution It is frequently referred to in public discourse and has inspired a wealth of legal and philosophical literature The liberty to speak freely is often questioned what is the relationship between this freedom and other rights and values how far does this freedom extend and how is it applied to contemporary challenges The Oxford Handbook on Freedom of Speech seeks to answer these and other pressing questions It provides a critical analysis of the foundations rationales and ideas that underpin freedom of speech as a political idea and as a principle of positive constitutional law In doing so it examines freedom of speech in a variety of national and supranational settings from an international perspective Compiled by a team of renowned experts in the field this handbook features original essays by leading scholars and theorists exploring the history legal framework and controversies surrounding this tenet of the democratic constitution *Hanging in the Balance* Meghan Campbell, 2025-10-30 This book gives the first in depth assessment of how justification functions when women are claiming their right to equality How can courts assess whether a proposed limit to women s equality is constitutionally justified This question is rarely explicitly asked with the assumption that well established limitation frameworks such as proportionality are able to assess whether limits to women s rights are justified However delving into the theory and practice of justification reveals fracture points between the dominant approach to justification and women s rights to equality One of its distinctive characteristics is the question of whether any analytical entwining or unwinding of equality and justification enhances the protection of women s rights to equality in constitutional democracies It proposes a novel asymmetric relationship between

equality and justification that requires innovative methodological approaches that enrich the task of adjudicating limits to women's equality. This is an intriguing, articulate and compelling examination of a question with real and applied significance to all those working on human rights and equality.

Legal Validity Maris Köpcke, 2019-01-24. Critical human interests are affected on a daily basis by appeal to past decisions deemed to be legally valid. They include statutes, deportation orders, judgments, mortgage contracts, patents and wills. Through the technique of validity, lawyerly reasoning settles morally pressing matters in a way that largely bypasses moral argument. Legal philosophy has paid considerable attention to validity criteria but it has neglected to explore validity's point, whether and if so how the pervasive technique of validity can contribute to a legal system's ability to realise justice and human rights. This book shows that validity can help a political community to foster justice precisely because validity does not primarily turn on moral considerations. Validity serves to both allocate and limit a distinct kind of power, a power that is key to forging valuable forms of enterprise and commitment in pursuit of individual and collective self-direction. By entrusting the capacity to decide to those who in justice ought to bear it, validity can enable persons and institutions to rally the resources and opportunities that only large-scale behavioural convergence can afford, thereby weaving a fabric of just relationships within the systemic framework of law.

The Promise of Legality Geneviève Cartier, Mark D. Walters, 2025-05-15. This book assembles critical contributions on the work of TRS Allan, the Professor Emeritus of Jurisprudence and Public Law at the University of Cambridge, whose leading work in legal and constitutional theory spans almost 45 years. Allan has charted a distinctive path for legal, political and moral theory and practice and has become a highly significant figure in the UK and in common law parliamentary systems around the world. His ideas challenge established opinions about constitutional law within these systems as well as established views about the rule of law from more abstract or philosophical perspectives. Allan claims that law and morality find an inherent connection through the rule of law. He argues that there is a connection that flourishes in common law jurisdictions because although Parliament has sovereign legislative powers, its laws gain their full legal meaning only through an interpretive lens. This lens seeks to reconcile sovereign will with legality's basic moral ideals, especially the idea that law must be general and capable of guiding behaviour and thus respectful of the equality and dignity of its subjects. Allan's scholarship is powerful yet controversial and it has inspired 20 leading scholars from the UK, Canada, Australia and New Zealand to engage with the central themes of his work. By doing so, the contributors help to make that work accessible to a new generation of scholars and students. They also provide a timely framework for engaging in the most important challenges facing our democracies today: how our legal systems do or do not honour and respect democracy and therefore legislative sovereignty while at the same time honouring and respecting the rule of law or the Promise of Legality.

The Scope and Intensity of Substantive Review Hanna Wilberg, Mark Elliott, 2015-11-26. Inspired by the work of Professor Michael Taggart, this collection of essays from across the common law world is concerned with two separate but related themes. First, to what extent and by what

means should review on substantive grounds such as unreasonableness be expanded and intensified Jowell Elliott and Varuhas all agree with Taggart that proportionality should not sweep the rainbow but propose different schemes for organising and conceptualising substantive review Groves and Weeks and Hoexter evaluate the state of substantive review in Australia and South Africa respectively The second theme concerns the broader Canadian sense of substantive review including the illegality grounds and whether deference should extend to these grounds Cane and Aronson consider the relevance and impact of different constitutional and doctrinal settings Wilberg and Daly address questions concerning when and how deference is to operate once it is accepted as appropriate in principle Rights based review is discussed in a separate third part because it raises both of the above questions Geiringer Sales and Walters examine the choices to be made in settling the approach in this area each focusing on a different dichotomy Taggart s work is notable for treating these various aspects of substantive review as parts of a broader whole and for his search for an appropriate balance between judicial scrutiny and administrative autonomy across this entire area By bringing together essays on all these topics this volume seeks to build on that approach

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