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The courts use the proportionality test to assess the Convention-compatibility of the full range of government action, from administrative decisions to primary legislation. In applying the test, the courts are often conscious of the need to pay some deference to the expertise and competence of other branches of government.

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In applying the test, the courts are often conscious of the need to pay some deference to the expertise and competence of other branches of government. This rigorous analysis of the relationship between proportionality and deference under the Human Rights Act sets out a model of proportionality, drawn from existing case law, which integrates deference within the multi-stage proportionality test.

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proportionality is closely related to the self-restraining judicial principle that when the courts engage in judicial review they should pay some deference to the judgment of the original decision-maker. To date, there has yet to be a sophisticated analysis of proportionality and deference 1

~~A Structural, Institutionally Sensitive Model of ...~~
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Aug 29, 2020 proportionality and deference under the uk human rights act an institutionally sensitive approach Posted By Leo TolstoyLtd TEXT ID 997b0cf4 Online PDF Ebook Epub Library the multi stage proportionality test the model is institutionally sensitive and can be applied to proportionality based judicial review of all forms of government activity the model

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applying proportionality, deference to the decision-maker is the proper course in many cases. 17 THE CHALLENGE TO BRITISH COURTS Despite this overlap and despite the perhaps subtle influence of proportionality in traditional judicial review, it has never been a concept applied directly in British administrative law.

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The model is structural in that it takes account of the operation of deference within the process of proportionality. The model is institutionally sensitive in that it takes account of the differences between the institutions which the courts can review under the HRA.

Revision of thesis (Doctoral)- London School of Economics, 2010.

Proportionality is used by the UK Courts when reviewing the Convention-compatibility of the activities of the other branches of government. There are two related problems with the current analysis of proportionality. First, there has been a heavy emphasis on the division of constitutional space between the judiciary and the other branches of government. This focus on spatial conceptions of institutional responsibility has distracted attention from the structure of the relationship between proportionality and deference. The second problem is that there has been insufficient attention paid to the manner in which the test is affected by the distinctions between the different governmental institutions which can be judicially reviewed under the HRA. The individual stages of proportionality are based on certain premises about the institution being reviewed. This needs to be explicit if a sophisticated understanding of proportionality is to be developed. I plan to overcome these two problems by setting out a structural, institutionally sensitive model of proportionality and deference. The model is structural in that it takes account of the operation of deference within the process of proportionality. The model is institutionally sensitive in that it takes account of the differences between the institutions which the courts can review under the HRA. The model is based on the work of Alexy, but adapted for the UK context and developed to make it institutionally sensitive. I trace the operation of this structural model through three institution-specific case studies in order to establish its relevance in the UK. The case studies concern administrative decision-making in immigration cases, rule-making in criminal justice cases and judgments concerning both administrative decisions and legislation in housing cases. This diverse range of subject matter provides the basis for proving the applicability of the structural, institutionally sensitive model, which overcomes the two related problems with the existing analysis.

The margin of appreciation is a judicial doctrine whereby international courts allow states to have a measure of diversity in their interpretation of human rights treaty obligations. The doctrine is at the heart of some of the most important international human rights decisions. Does it undermine the universality of human rights? How should judges decide whether to give this margin of appreciation to states? How can lawyers make best use of arguments for or against the margin of appreciation? This book answers these questions, and broadens the discussion on the margin of appreciation by including material beyond the ECHR system. It provides a comprehensive justification of the doctrine, and ALLFSCA14I the key cases affecting the doctrine in practice. Part One provides a systematic defence of the margin of appreciation doctrine in international human rights law. Drawing on the philosophy of practical reasoning the book argues that the margin of appreciation is a doctrine of judicial deference and is a common and appropriate feature of adjudication. The book argues that the margin of appreciation doctrine prevents courts from imposing unhelpful uniformity, whilst allowing decisions to be consistent with the universality of human rights. Part Two considers the key case law of the European Court of Human Rights, the Inter-American Court of Human Rights, and the UN Human Rights Committee, documenting the margin of appreciation in practice. The analysis uniquely takes a broad look at the factors affecting the margin of appreciation. Part Three explores how the margin of appreciation operates in the judicial decision-making process, reconceptualising the proportionality assessment and explaining how the nature of the right and the type of case affect the courts' reasoning.

In this study, Caroline Henckels examines how investment tribunals have balanced the competing interests of host states and foreign investors in determining state liability in disputes concerning the exercise of public power. Analyzing the concepts of proportionality and deference in investment tribunals' decision-making in comparative perspective, the book proposes a new methodology for investment tribunals to adopt in regulatory disputes, which combines proportionality analysis with an institutionally sensitive approach to the standard of review. Henckels argues that adopting a modified form of proportionality analysis would provide a means for tribunals to decide cases in a more consistent and coherent manner leading to greater certainty for both states and investors, and that affording due deference to host states in the determination of liability would address the concern that the decisions of investment tribunals unjustifiably impact on the regulatory autonomy of states.

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.

This is the first book that focusses on how proportionality analysis – a legal transplant from the West – is applied by courts around Asia, and it explores how a country's commitment to democracy and the rule of law is fundamental to the success of the doctrine's judicial enforcement. This book will appeal to lawyers, political scientists, and students of law and political science who seek to understand how proportionality analysis is blossoming and, in some cases, flourishing in Asia.

The courts use the proportionality test to assess the Convention-compatibility of the full range of government action, from administrative decisions to primary legislation. In applying the test, the courts are often conscious of the need to pay some deference to the expertise and competence of other branches of government. This rigorous analysis of the relationship between proportionality and deference under the Human Rights Act sets out a model of proportionality, drawn from existing case law, which integrates deference within the multi-stage proportionality test. The model is 'institutionally sensitive' and can be applied to proportionality-based judicial review of all forms of government activity. The model is shown in operation in three fields that span the full range of government activity: immigration (administrative action), criminal justice (legislation) and housing (multi-level decisions).

A comparative and empirical analysis of proportionality in the case law of six constitutional and supreme courts.

This thesis presents a phenomenology of deference in proportionality. There is a relatively broad consensus that proportionality balancing as a method for resolving conflicts of fundamental rights in cases of judicial review needs to be coupled with some kind of doctrine of deference. Although there is a significant literature on many aspects of this question, thus far one of the more basic ones, namely what deference looks like in cases of proportionality, has received less attention. In order to analyze this question, this thesis analyses the case law of four courts – the German Federal Constitutional Court, the Supreme Court of Canada, the Constitutional Court of South Africa and the European Court of Human Rights – with regard to three sets of rights – freedom of expression, the right to privacy and freedom of religion. From this analysis a number of points emerge: In the first place it shows that deference in balancing takes place through adapting the normative and empirical arguments required by that exercise to the institutional limitations attendant to courts. Further, we find a variety of similarities and differences in how deference operates between different rights and different courts. Here we can observe that proportionality is often constructed in a similar fashion among the same right between the different courts. This means that, the way in which courts balance is, often, very similar in Canada, South Africa, Germany and the ECtHR. We can further observe, that there are differences in the practice of balancing between the different rights. The normative and empirical questions that occupy courts with regard to different rights pose different institutional challenges and require courts to balance differently. Behind these two general observations there are more subtle and nuanced differences and similarities about each of the courts and rights that all contribute to a richer understanding of what deference looks like in proportionality cases.

Caroline Henckels examines how investment tribunals should balance competing state and investor interests in determining state liability in regulatory disputes.