Proportionality In Constitutional Law Why Everywhere But

As recognized, adventure as capably as experience more or less lesson, amusement, as skillfully as understanding can be gotten by just checking out a books Proportionality In Constitutional Law Why Everywhere But plus it is not directly done, you could give a positive response even more approaching this life, all but the world.

We meet the expense of you this proper as well as simple habit to acquire those all. We give Proportionality In Constitutional Law Why Everywhere But and numerous ebook collections from fictions to scientific research in any way. accompanied by them is this Proportionality In Constitutional Law Why Everywhere But that can be your partner.

Strategies of Justice Burke A. Hendrix 2019-05-02 Political theorists often imagine themselves as political architects, asking what an ideal set of laws or social structures might look like. Yet persistent injustices can endure for decades or even centuries despite such ideal theorizing. In circumstances of this kind, it is essential for political theorists to think carefully about the political choices available to those who directly face such injustices and seek to change them. This book focuses on the claims of Aboriginal peoples to better treatment from the United States and Canada. Though other groups face similarly persistent injustices (e.g. African Americans in the United States), the specific details of injustice matter a great deal for its analysis. The book focuses on two intertwined issues: the kinds of moral permissions that those facing persistent injustice have when they act politically, and the kinds of transformations that political action may bring about in those who undertake it. The book argues for normative permissions to speak untruth to power; to circumvent or nullify existing law; to give primary attention to protecting one's own community first; and to engage in political experimentation that reshapes future generations. When carefully used, the book argues, these permissions may help political actors to avoid co-optation and self-delusion. At the same time,

divisions of labor between those who grapple most closely with state institutions and those who keep their distance may be necessary to facilitate escape from persistent injustice over the long term. Oxford Political Theory presents the best new work in contemporary political theory. It is intended to be broad in scope, including original contributions to political philosophy, and also work in applied political theory. The series will contain works of outstanding quality with no restriction as to approach or subject matter. Series Editors: Will Kymlicka and David Miller.

Proportionality and Constitutional Culture Moshe Cohen-Eliya 2013-06-13 Although the most important constitutional doctrine worldwide, a thorough cultural and historical examination of proportionality has not taken place until now. This comparison of proportionality with its counterpart in American constitutional law - balancing - shows how culture and history can create deep differences in seemingly similar doctrines. Owing to its historical origin in Germany, proportionality carries to this day a pro-rights association, while the opposite is the case for balancing. In addition, European legal and political culture has shaped proportionality as intrinsic to the state's role in realizing shared values, while in the United States a suspicion-based legal and political culture has shaped balancing in more pragmatic and instrumental terms. Although many argue that the USA should converge on proportionality, the book shows that a complex web of cultural associations make it an unlikely prospect.

Balancing Constitutional Rights Jacco Bomhoff 2013-12-19 A comparative and historical account of the origins and meanings of the discourse of judicial 'balancing' in constitutional rights law.

American Constitutional Law Donald P. Kommers 2004 Discusses the history of the ongoing conflict between Israel and Palestine, the involvement of the United States in the peace process, and the changing face of terrorism in the twenty-first century.

Proportionality Vicki C. Jackson 2017-09-21 This book presents important new scholarship by leading figures in constitutional law on new challenges for proportionality doctrine.

Revisiting Proportionality in International and European Law Ulf Linderfalk 2021-05-12 In this edited volume, scholars from a wide range of areas of international law consider whose interests are at stake in the application of the principle of proportionality. In so doing, the volume casts new light this important principle.

Handbook of Legal Reasoning and Argumentation Giorgio Bongiovanni 2018-07-02 This handbook addresses legal reasoning and argumentation from a logical, philosophical and legal perspective. The main forms of legal

reasoning and argumentation are covered in an exhaustive and critical fashion, and are analysed in connection with more general types (and problems) of reasoning. Accordingly, the subject matter of the handbook divides in three parts. The first one introduces and discusses the basic concepts of practical reasoning. The second one discusses the general structures and procedures of reasoning and argumentation that are relevant to legal discourse. The third one looks at their instantiations and developments of these aspects of argumentation as they are put to work in the law, in different areas and applications of legal reasoning.
The Concept of Proportionality in Public Law CHUNG Wai Man, Franco 2020-06-30 Proportionality is a German, and thus continental European, concept in public law that is applied by both the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The principle specifies that measures adopted by executive authorities should not exceed the limits of what is appropriate and necessary in order to achieve legitimate objectives in the interest of the public. Using a functional comparative approach, this book evaluates the extent to which proportionality has been integrated into the English and Hong Kong judicial systems by comparing case law in these courts with that of the CJEU and the ECtHR. The text also reviews the development of proportionality and presents a topical understanding of why its adoption and application have encountered difficulties, particularly regarding socio-economic rights, in some jurisdictions, such as the United Kingdom and Hong Kong. Written by a scholar with experience from both within the Hong Kong judicial system and from international research, this book is the first all-encompassing reference for legal practitioners worldwide.
Judicial Power Christine Landfried 2019-02-07 Explores the relationship between the legitimacy, the efficacy, and the decision-making of national and transnational constitutional courts.
A Critique of Proportionality and Balancing Francisco J. Urbina 2017-01-26 The principle of proportionality, which has become the standard test for adjudicating human and constitutional rights disputes in jurisdictions worldwide has had few critics. Proportionality is generally taken for granted or enthusiastically promoted or accepted with minor qualifications. A Critique of Proportionality and Balancing presents a frontal challenge to this orthodoxy. It provides a comprehensive critique of the proportionality principle, and particularly of its most characteristic component, balancing. Divided into three parts, the book presents arguments against the proportionality test, critiques the view of rights entailed by it, and proposes

an alternative understanding of fundamental rights and their limits.
The Pluralist Character of the European Economic Constitution Clemens Kaupa 2016-08-25 This monograph intervenes in the long-standing and controversial debate on the socio-economic orientation of the European Union. Arguing that the European economic constitution is pluralist in the sense that it does not favour any specific socio-economic paradigm, it shows that European law allows the pursuit of very different regulatory projects by the European and the national legislators. This pluralist character of the European economic constitution stands in an uncomfortable relationship with the policies currently pursued by the European Union, which are often neoliberal in their orientation. The book takes an interdisciplinary approach: it analyses the Treaty on the Functioning of the European Union as interpreted and developed in the case law of the Court of Justice, its history, and its regulatory purpose in the light of conflicting socio-economic paradigms. By challenging the orthodoxy, the book makes a bold proposition that will likely resonate in both European economic law scholarship and European law in general. With the ongoing economic crisis triggering a significant interest in economic questions among legal scholars it is particularly timely and topical.
Constitutional Law in Theory and Practice David M. Beatty 1995-12-15 David Beatty draws on more than twenty years' teaching experience to produce a comprehensive introduction to the basic rules in constitutional law, accessible to law and non-law students alike. He reviews the leading cases handed down by the Supreme Court of Canada and the Privy Council concerning the original BNA Act of 1867 and the Canadian Charter of Rights enacted in 1982. As well, Beatty reviews many of the most important decisions made by other courts around the world and analyses the function judges and courts perform in liberal democratic societies when they enforce written constitutions including bills of rights. The initial chapter introduces the reader to the subject of constitutional law – what it is all about, what its function is, and how it interacts with the constitutional text. The book goes on to examine Canadian federalism law and the Supreme Court of Canada's experience in the first decade in the life of the Charter of Rights. Beatty also examines significant human rights cases decided by the major courts around the world, in order to illustrate how the same principles and methods of reasoning are used to resolve disputes about the validity of laws no matter what the issue is or where it arises. The book concludes by showing how a theory of constitutional law which emphasizes the social duties which politicians must respect rather than

individual rights should be responsive to the concerns of those who are more sceptical about the virtues of law and the courts as well as those who fear the cultural imperialism of western legal concepts. Beatty proposes a radically new way to think about the idea of 'rights,' one which emphasizes the social duties that are inherent in every conception of rights. The book argues that by reorienting our thinking about what rights and the rule of law are all about, it is easier to see that rather than being in conflict or tension with each other, democratic decision making and judicial review are supportive of a common set of values and ideals.

Unelected Power Paul Tucker 2019-09-10 How central banks and independent regulators can support rather than challenge constitutional democracy Unelected Power lays out the principles needed to ensure that central bankers and other independent regulators act as stewards of the common good. Blending economics, political theory, and public law, this critically important book explores the necessary conditions for delegated but politically insulated power to be legitimate in the eyes of constitutional democracy and the rule of law. It explains why the solution must fit with how real-world government is structured, and why technocrats and their political overseers need incentives to make the system work as intended. Now with a new preface by Paul Tucker, Unelected Power explains how the regulatory state need not be a fourth branch of government free to steer by its own lights, and how central bankers can emulate the best of judicial self-restraint.

Hybrid Constitutionalism Eric C. Ip 2019-04-25 This is the first book that focuses on the entrenched, fundamental divergence between the Hong Kong Court of Final Appeal and Macau's Tribunal de Última Instância over their constitutional jurisprudence, with the former repeatedly invalidating unconstitutional legislation with finality and the latter having never challenged the constitutionality of legislation at all. This divergence is all the more remarkable when considered in the light of the fact that the two Regions, commonly subject to oversight by China's authoritarian Party-state, possess constitutional frameworks that are nearly identical; feature similar hybrid regimes; and share a lot in history, ethnicity, culture, and language. Informed by political science and economics, this book breaks new ground by locating the cause of this anomaly, studied within the universe of authoritarian constitutionalism, not in the common law-civil law differences between these two former European dependencies, but the disparate levels of political transaction costs therein.

Dimensions of Dignity Jacob Weinrib 2016-09-15 In an age of constitutional revolutions and reforms, theory and practice are moving in

opposite directions. As a matter of constitutional practice, human dignity has emerged in jurisdictions around the world as the organizing idea of a groundbreaking paradigm. By reconfiguring constitutional norms, institutional structures and legal doctrines, this paradigm transforms human dignity from a mere moral claim into a legal norm that persons have standing to vindicate. As a matter of constitutional theory, however, human dignity remains an enigmatic idea. Some explicate its meaning in abstraction from constitutional practice, while others confine themselves to less exalted ideas. The result is a chasm that separates constitutional practice from a theory capable of justifying its innovations and guiding its operation. By expounding the connection between human dignity and the constitutional practices that justify themselves in its light, Jacob Weinrib brings the theory and practice of constitutional law back together.
The Oxford Handbook of Comparative Administrative Law Peter Cane 2021-01-17 In this Handbook, distinguished experts in the field of administrative law discuss a wide range of issues from a comparative perspective. The book covers the historical beginnings of comparative administrative law scholarship, and discusses important methodological issues and basic concepts such as administrative power and accountability.
Citizenship in the European Union Anne Wesemann 2020-10-30 The book proposes a new approach to constitutional analysis of the EU and its legal framework, arguing that the existence of constitutional rights norms within EU law enables this particular legal order to respond effectively to societal and political challenges within the rigidity of constitutionalism. Providing new perspectives on constitutionalism in the EU, this book considers the way the Court of Justice of the European Union (CJEU) discusses and applies the EU citizenship Treaty norms by analysing the courts approach to decision making, which resembles the balancing and weighing of conflicting principles.
Harvard Law Review Harvard Law Review 2012-12-07 The Harvard Law Review is offered in a digital edition for ereaders, featuring active Contents, linked notes, and proper ebook formatting. The contents of Issue 2, December 2012, include: ARTICLES • Historical Gloss and the Separation of Powers by Curtis A. Bradley and Trevor W. Morrison • Aggregate Litigation Goes Public: Representative Suits by State Attorneys General by Margaret H. Lemos BOOK REVIEW • Fixing Washington by Richard L. Hasen NOTE • Ending Student Loan Exceptionalism: The Case for Risk-Based Pricing and Dischargeability In addition, several case commentaries by students explore recent cases on Equal Protection as to gay marriage, application of Miranda to Somali pirates, OSHA statutes of

limitation, Fourth Amendment applications to DNA searches, environmental law and greenhouse gas rules, and willful blindness as "knowledge" in digital copyright law. Finally, the issue includes a student study of a recent regulation regarding health care reform.
Proportionality and Judicial Activism Niels Petersen 2017-03-02 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.
The Dual Penal State Markus D. Dubber 2018-08-23 In The Dual Penal State, Markus Dubber addresses the rampant use of penal power in Western liberal democracies. The interference with the autonomy of the very persons upon whose autonomy the legitimacy of state power is supposed to rest is systemically normalized, rather than continuously scrutinized. The fundamental challenge of the penal paradox-the prima facie illegitimacy of modern punishment-remains unaddressed and unresolved. Focusing on the United States and Germany, and drawing on his influential account of the patriarchal origins of police power, Dubber exposes the persistence of a two-sided criminal justice regime: the dual penal state. The dual penal state combines principled punishment of equals under the rule of law, on one side, with punitive discipline of others under the rule of police, on the other. Slavery has long played a central role in drawing the line between the two sides of the dual penal state. In Europe, the slave appears in the classic and still foundational accounts of liberal punishment (from Beccaria to Kant) as the paradigmatic other beyond the protection of law, not a legal subject but a mere object of the master's or the state's discretionary discipline. In America, the patriarchal power to police portrays the continuum from the antebellum slaveholder's whipping of his slaves in private and the racial terror perpetrated by slave patrols in public, to the apartheid regime of Jim Crow and the treatment of prisoners as "slaves of the state," and eventually to the late 20th century's systemic racial violence of the “war on crime" and the widespread killing of

Black suspects by an increasingly militarized and armed police force that triggered the global Black Lives Matter movement.
Constitutional Engagement in a Transnational Era Vicki Jackson 2013-05-30 Constitutional Engagement in a Transnational Era explores how transnational phenomena affect our understanding of the role of constitutions and of courts in deciding constitutional cases. In it, Vicki Jackson looks at constitutional court decisions from around the world, and identifying postures of resistance, convergence or engagement with international and foreign law.
The Redress of Law Emilios Christodoulidis 2021-03-31 From a legal-philosophical point of view, The Redress of Law presents a critical analysis of a number of related doctrinal fields: constitutional, labour and EU Law. Focusing on the organisation and protection of work, this book asks what it means to protect work as an essential aspect of human (individual and collective) flourishing. This is an ambitious and highly sophisticated intervention in contemporary academic and political debates around a set of critically important questions connected to processes of globalisation and market integration. The author redefines the nature of legal and political thought in an age in which market rationality has exceeded its classic domain and has come to pervade the organization of social and political life. This restatement of critical legal theory is intended to defend the concept of constitutionalism and suggest new ways to deploy the law strategically.
Infocrime Eli Lederman 2016-03-25 It has often been said that information is power. This is more true in the information age than ever. The book profiles the tools used by criminal law to protect confidential information. It deals with the essence of information, the varieties of confidential information, and the basic models for its protection within the context of the Internet and social networks. Eli Lederman examines the key prohibitions against collecting protected information, and against using, disclosing, and disseminating it without authorization. The investigation cuts across a broad subject matter to discuss and analyze key topics such as trespassing and peeping, the human body as a source of information, computer trespassing, tracking and collecting personal information in the public space, surveillance, privileged communications, espionage and state secrets, trade secrets, personal information held by others, and profiling and sexting. Infocrime will appeal to graduate and undergraduate scholars and academics in the legal arena, in law schools and schools of communication, and to practicing lawyers with an interest in legal theory and a concern for the protection of the personal realm in a world of

increasingly invasive technologies.
Good Governance Henk Addink 2019-04-18 This book explores the creation, development, and impact of the concept of 'good governance'. It argues that, alongside the ideas of the rule of law and democracy, good governance acts as a third conceptual cornerstone of the modern state. Good governance can be viewed as a multilevel concept influenced by regional and international legal developments while being grounded in national administrative law. The book presents six principles of good governance: properness, transparency, participation, effectiveness, accountability, and human rights. The development of each of these principles on the national level is explored in a wide range of European contexts, and in Australia, Canada, and South Africa. As well as offering a fully up-to-date and comprehensive overview of administrative law in different jurisdictions, the book compares the implementation of the principles of good governance, taking into account international and European administrative law developments.
The Fundamental Principles of EEA Law Carl Baudenbacher 2017-10-24 This book features eleven contributions on the fundamental principles of EEA law: legislative and judicial homogeneity, reciprocity, prosperity, priority, authority, loyalty, proportionality, equality, liability and sovereignty. Written by EFTA Court and national judges, high EFTA officials, private practitioners and scholars, it raises awareness of EEA law and provides insights for EEA and EU law practitioners and researchers. It focuses on the principles at the core of EEA law, some of which are common to EU and EEA law, while others have a specific place in EEA law and some ensure consistency between the EEA Agreement and the Treaty on the Functioning of the European Union. It is the only book to focus on the fundamental principles of EEA law.
The Judge and the Proportionate Use of Discretion Sofia Ranchordás 2015-06-12 This book examines different legal systems and analyses how the judge in each of them performs a meaningful review of the proportional use of discretionary powers by public bodies. Although the proportionality test is not equally deep-rooted in the literature and case-law of France, Germany, the Netherlands and the United Kingdom, this principle has assumed an increasing importance partly due to the influence of the European Court of Justice and European Court of Human Rights. In the United States, different standards of judicial review are applied to review ‘arbitrary and capricious’ agency discretion. However, do US judges achieve a similar result to the proportionality or reasonableness test? Drawing together a selection of key experts in the field, this book analyses

the principle of proportionality in the judicial review of administrative decisions from different perspectives. The principle is first examined in the context of recent developments in the literature and case-law, including the inevitable EU influence, then light shall be shed on the meaning of this principle in the specific case-law of the European Court of Justice and European Court of Human Rights. Finally, the authors go on to explore the ways in which US judges consciously 'sanction' the 'disproportionate' and/or unreasonable' use of agency discretion. In the legal systems where the proportionality test plays a very limited role, Ranchordás and de Waard also try to clarify why this is the case and look at what alternative solutions have been found. This book will be of great interest to scholars of public and administrative law, and EU law.

Research Handbook on the Politics of EU Law Paul J. Cardwell 2020-07-31 Offering a wealth of thought-provoking insights, this topical Research Handbook analyses the interplay between the law and politics of the EU and examines the role of law and legal actors in European integration.

China-European Union Investment Relationships Julien Chaisse Based on original research, and bringing together expert contributors, this book provides a critical analysis of the current law and policy between the EU and China, both internally and internationally. Covering key topics on the subject, this book draws together diverse perspectives into a single collection, and is an invaluable tool for both scholars and practitioners of trade and investment law, as well as human rights and environmental law and policy.

Proportionality in Investor-State Arbitration Gebhard Bücheler 2015-06-11 While international investment law is one of the most dynamic and thriving fields of international law, it is increasingly criticized for failing to strike a fair balance between private property rights and the public interest. Proportionality is a tool to resolve conflicts between competing rights and interests. This book assesses its current role, its potential, and its limits in investor-State arbitration. Proportionality is often lauded for reconciling colliding interests. This book identifies three factors arbitrators should consider before engaging in a proportionality analysis: the rule of law, the risk of judicial law-making, and the availability of a value system that guides the proportionality analysis. Apart from making suggestions when arbitrators should apply proportionality and when not to, the book outlines what States can do to recalibrate the balance between private property rights and the public interest if they wish to do so without dismantling the current system of investor-State arbitration. Proportionality in Investor-State Arbitration considers whether and to what extent the notion of

general principles of law within the meaning of Article 38(1)(c) of the ICJ Statute and the concept of systemic integration enshrined in Article 31(3)(c) of the Vienna Convention on the Law of Treaties provides a valid legal foundation for applying proportionality in investor-State arbitration.
The Court of Justice of the European Union Kate Shaw 2018-03-22 In the Court of Justice of the European Union, Subsidiarity and Proportionality Kate Shaw sets out how a subsidiarity and proportionality review applied to competences could be anchored by the Court of Justice in areas of shared competence.
Constitutional Sunsets and Experimental Legislation Sofia Ranchordás 2014-12-31 This innovative book explores the nature and function of 'sunset clauses' and experimental legislation, or temporary legislation that expires after a determined period of time, allowing legislators to test out new rules and regulations within a set time frame and on a small-scale basis.
Proportionality, Reasonableness and Standards of Review in International Investment Law and Arbitration Valentina Vadi 2018-04-27 International investment law is one of the most dynamic fields of international law, and yet it has been criticised for failing to strike a fair balance between private and public interests. In this valuable contribution to the current debate, Valentina Vadi examines the merits and pitfalls of arbitral tribunals' use of the concepts of proportionality and reasonableness to review the compatibility of a state's regulatory actions with its obligations under international investment law.
Proportionality and Constitutional Culture Moshe Cohen-Eliya 2013-06-13 A comparison of proportionality, the dominant doctrine in constitutional law worldwide, with the American doctrine of balancing.
ICILS 2020 Ridwan Arifin 2021-01-11 This book reflects and intimate discusses various topics and issues concerning to legal studies and its development in Indonesia and Global perspective. This book is dedicated to all legal practitioners and scholars around the world that have been presented their best works and ideas in the 3rd ICILS International Conference, 2020, held by Faculty of Law Universitas Negeri Semarang, Indonesia in July 2020 by Online Conference System. The 66 full papers presented were carefully reviewed and selected from 105 submission. The paper reflects the conference sessions as follow: Law and Technology, Private and Commercial Law, Law and Politics, Public Law, Comparative Law, and other related issues on legal development, including Law Tech and Human Behavior. The 3rd ICILS International Conference 2020 also co-hosted by Jayabaya University, Jakarta and University of

Muhammadiyah Malang.
Law's Ideal Dimension Robert Alexy 2021-04-29 This collection provides a comprehensive account of Robert Alexy's legal theory. It is divided into three parts: the nature of law; constitutional rights, human rights, and proportionality; and the relation between argumentation, correctness, and law.
The Negotiable Constitution Grégoire C. N. Webber 2009-11-26 In matters of rights, constitutions tend to avoid settling controversies. With few exceptions, rights are formulated in open-ended language, seeking consensus on an abstraction without purporting to resolve the many moral-political questions implicated by rights. The resulting view has been that rights extend everywhere but are everywhere infringed by legislation seeking to resolve the very moral-political questions the constitution seeks to avoid. The Negotiable Constitution challenges this view. Arguing that underspecified rights call for greater specification, Grégoire C. N. Webber draws on limitation clauses common to most bills of rights to develop a new understanding of the relationship between rights and legislation. The legislature is situated as a key constitutional actor tasked with completing the specification of constitutional rights. In turn, because the constitutional project is incomplete with regards to rights, it is open to being re-negotiated by legislation struggling with the very moral-political questions left underdetermined at the constitutional level.
Virtual Freedoms, Terrorism and the Law Giovanna De Minico 2021-02-15 This book examines the risks to freedom of expression, particularly in relation to the internet, as a result of regulation introduced in response to terrorist threats. The work explores the challenges of maintaining security in the fight against traditional terrorism while protecting fundamental freedoms, particularly online freedom of expression. The topics discussed include the clash between freedom of speech and national security; the multijurisdictional nature of the internet and the implications for national sovereignty and transnational legal structures; how to determine legitimate and illegitimate association online; and the implications for privacy and data protection. The book presents a theoretical analysis combined with empirical research to demonstrate the difficulty of combatting internet use by terror organizations or individuals and the range of remedies that might be drawn from national and international law. The work will be essential reading for students, researchers and policy makers in the areas of Constitutional law; Criminal Law, European and International law, Information and Technology law and Security Studies.
The Constitutional Structure of Europe’s Area of ‘Freedom, Security and Justice’ and the Right to Justification

Ester Herlin-Karnell 2019-04-18 This book explores the implications of freedom as a non-domination-oriented view for understanding EU security regulation and its constitutional implications. At a time when the European borders are under pressure and with the refugee and migration crisis, which escalated in 2015, the idea of exploring a constitutional theory for the 'Area of Freedom, Security and Justice' (AFSJ) might seem to be a utopian project. This appears especially true in the light of the increased threat of terrorism in Europe (and on a global scale) and where the expanding EU security agenda is often advanced through the administrative law path, in contrast to the constitutional trajectory. Add to this the prolonged financial crisis, which continues to cast a long shadow on the future development of EU integration, and which suggests that Europe needs to 're-invent itself' beyond the sphere of economics. Therefore, it is precisely because of the current uncertainties regarding the progress of the EU and the constitutional law project that a constitutional take on the AFSJ is of particular importance. The book investigates the meaning of non-domination and the idea of justice and justification in the area of EU security regulation. In doing so, it focuses on the development of an AFSJ, what it means, and why it represents a fascinating example of contemporary constitutional law with interacting layers of security regulation, human rights law and transnational legal theory at its core. Borrowing Justification for Proportionality João Andrade Neto 2018-11-11 The proportionality test, as proposed in Robert Alexy’s principles theory, is becoming commonplace in comparative constitutional studies. And yet, the question “are courts justified in borrowing proportionality?” has not been expressly put in many countries where judicial borrowings are a reality. This book sheds light on this question and examines the circumstances under which courts are authorized to borrow from alien legal sources to rule on constitutional cases. Taking the Supreme Federal Court of Brazil – and its enthusiastic recourse to proportionality when interpreting the Federal Constitution – as a case study, the book investigates the normative reasons that could justify the court’s attitude and offers a comprehensive overview of its case law on controversial constitutional matters like abortion, same-sex union, racial quotas, and the right to public healthcare. Providing a valuable resource for those interested in comparative constitutional law and legal theory, or curious about Brazilian constitutional law, this book questions the alleged universality of the proportionality test, challenges the premises of Alexy’s principles theory, and discloses more than 68 Brazilian Supreme Court decisions delivered from 2003 to 2018 that would otherwise have remained unknown to an

English-speaking audience.
Gender Justice and Proportionality in India Juliette Gregory Duara 2017-10-06 For a judiciary in a democracy, dispensing justice is not only about doing justice, but also about showing that justice is being done; it is about giving reasons and creating a "culture of justification". The question becomes how to nurture such a culture. A number of liberal democratic jurisdictions have answered this question in part with the adoption of the multi-step method of evaluating the constitutionality of legislative infringements on fundamental rights widely known as Proportionality Analysis. Under Proportionality Analysis courts must engage in a structured process of reasoning. This book deals with Gender Justice and Proportionality Analysis in India. The author argues that the Supreme Court of India should consider adopting Proportionality Analysis for the adjudication of the fundamental right to sex equality in Indian courts. The book includes an analysis of Canadian and South African Proportionality Analysis and makes some suggestions on how an Indian Proportionality Analysis could be generated using this comparative investigation. Additionally, the book proposes ways of applying the effects of socio-political context on doctrine, as well as doctrine's interpretive impact on adjudicated outcomes for gender, thus making a contribution to feminist jurisprudence. Finally, the author analyses Indian gender equality jurisprudence, demonstrating the inadequacies of the current doctrinal framework for achieving the goal of substantive gender equality and suggesting ways in which an Indian Proportionality Analysis might be fashioned to address these inadequacies. A novel examination of the gender situation in India in comparative perspective, this book will be of interest to academics in the field of Gender Studies, Asian and Comparative Law and South Asian studies.