

Panel Discussion and Book Launch: Proportionality in Constitutional Adjudication

Wednesday, 18th September 2019, 16:00 – 17:40
Academic Conference Room, 11/F., Cheng Yu Tung Tower
Centennial Campus, The University of Hong Kong

The Normative Necessity of Proportionality

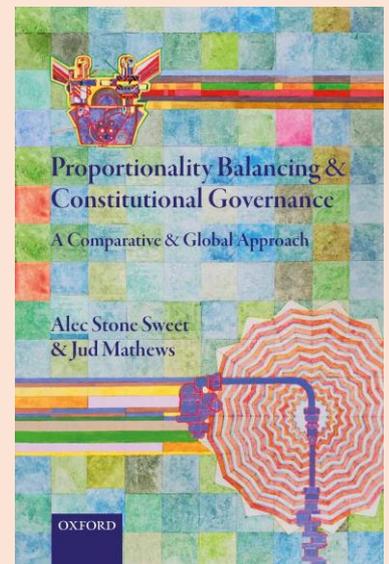
- *Justice Carlos Bernal Pulido (Constitutional Court of Colombia)*

Proportionality is one of the most successful legal transplants. However, there is disagreement on whether there is any justification for the migration of proportionality across jurisdictions. Existing literature justifies this migration as a matter of conceptual necessity. The claim is that there is a necessary conceptual connection between constitutional rights and proportionality such that proportionality must be used whenever and wherever constitutional rights adjudication exists. In contrast, this paper offers a normative justification for the migration of proportionality to any jurisdiction. A variety of reasons can justify a migration of proportionality to a new context. However, there is a common denominator between the different migrations, namely, that proportionality is normatively necessary for the adjudication of constitutional rights.

Proportionality Balancing & Constitutional Governance

- *Professor Alec Stone Sweet (NUS)*

This book focuses on the law and politics of rights protection in democracies, and in human rights regimes in Europe, the Americas, and Africa. After introducing the basic features of modern constitutions, with their emphasis on rights and judicial review, the authors present a theory of proportionality that explains why constitutional judges embraced it. Proportionality analysis is a highly intrusive mode of judicial supervision: it permits state officials to limit rights, but only when necessary to achieve a sufficiently important public interest. Since the 1950s, virtually every powerful domestic and international court has adopted proportionality analysis as the central method for protecting rights. The result has been a massive – and truly global – transformation of law and politics. While there is variance in the intensity of proportionality-based dialogues, such interactions are today at the very heart of governance in the modern constitutional state and beyond.



Discussants: Professor Po Jen Yap and Cora Chan (HKU)

Chair: Professor David Law (HKU)

