

# Contents

<i>List of Tables</i>	ix
<i>List of Cases</i>	xi
<i>List of Formulae</i>	xiii
<i>List of Variables</i>	xv
<b>Introduction</b>	<b>1</b>
<b>1. The Structure of the Proportionality Test</b>	<b>7</b>
I. The four proportionality rules	8
II. The weight formula	10
<b>2. Rights, Interests, and Trumps</b>	<b>15</b>
I. Interest model	16
II. Strong trump model	17
III. Medium trump model	22
IV. Weak trump model	23
V. Results	44
<b>3. The Method of Balancing</b>	<b>45</b>
I. Definitional generosity	45
II. Rule of law	49
III. The impact of morals on balancing	51
IV. Balancing as calculation	57
V. Incommensurability	58
VI. Inviolable core content	66
VII. Correctness and adequateness	68
VIII. Overemphasis of balancing	70
IX. Results	72
<b>4. Discretion and Deference</b>	<b>75</b>
I. Structural discretion	79
II. Epistemic discretion	80
III. Results	84

<b>5. Positive Rights and Proportionality Analysis</b>	<b>85</b>
I. Introduction	85
II. Negative rights and the proportionality test	90
III. Positive rights and the proportionality test	94
IV. Positive rights and the margin of appreciation	101
V. Results	108
<b>6. Epistemic Reliabilities in Proportionality Analysis</b>	<b>109</b>
I. Introduction	109
II. Balancing and principles theory	110
III. Empirical epistemic discretion	111
IV. Normative epistemic discretion	123
V. Epistemic discretion and judicial review	135
VI. Results	147
<b>7. Case Analysis: <i>Otto-Preminger-Institut v Austria</i></b>	<b>149</b>
I. The judgment	150
II. Proportionality applied	153
III. Results	165
<b>8. Results</b>	<b>167</b>
<i>Bibliography</i>	173
<i>Index of Names</i>	181
<i>Index of Subjects</i>	182