

Book Talk: Does proportionality analysis promote judicial activism?



Professor Niels Petersen

University of Münster

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**Room 723, Small Moot Court, Cheng Yu Tung Tower
The University of Hong Kong**

Proportionality analysis enjoys increasing popularity among constitutional courts as a tool of fundamental rights review. However, critics claim that proportionality analysis affords too much discretion to judges and is thus an instrument for judicial activism.

In his recent monograph, *Proportionality and Judicial Activism: Fundamental Rights Adjudication in Canada, Germany, and South Africa* (Cambridge University Press, 2017), Niels Petersen tests this argument empirically. The book presents the results of an empirical analysis of the fundamental rights jurisprudence of three apex courts – the Canadian Supreme Court, the German Federal Constitutional Court and the South African Constitutional Court. It argues that the core of the normative critique is correct: proportionality analysis indeed gives judges a large degree of discretion. However, this does not automatically lead to judicial activism. Instead, the empirical analysis shows that courts exercise considerable self-restraint when applying the proportionality test.

Niels Petersen is Professor of Public Law, International Law, and EU Law at the University of Münster since February 2015. This fall, he is a Visiting Professor at the University of Auckland. He holds a PhD in law from Goethe University in Frankfurt and an M.A. in Quantitative Methods in the Social Sciences from Columbia University. From 2004 to 2006, he was a Research Fellow at the Max Planck Institute for Research on Collective Goods in Heidelberg. As a postdoc, he worked as a Senior Research Fellow at the Max Planck Institute for Research on Collective Goods in Bonn from 2007-2015. Furthermore, Niels was a Visiting Doctoral Researcher (2006/07) and a Hauser Research Scholar (2012/13) at the New York University School of Law. His research focuses on comparative constitutional law, human rights law, the sources of public international law as well as the economic analysis of law. He is also the author of *Proportionality and Judicial Activism: Fundamental Rights Adjudication in Canada, Germany, and South Africa* (Cambridge University Press, 2017).

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