



# Public Law and Human Rights Forum

香港城市大學  
City University of Hong Kong

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## Public Law and Human Rights Book Review Seminar Series (III)

### The Concept of Proportionality in Public Law

Christine Wu  
19 May 2022

On 17 May 2022, the Public Law and Human Rights Forum (CPLR) and Asia Pacific Law Review (APLR) hosted the third seminar in the Public Law and Human Rights Book Review Series to discuss the book “The Concept of Proportionality in Public Law”, published by City University of Hong Kong Press in 2020: <https://www.cityu.edu.hk/upress/the-concept-of-proportionality-in-public-law>



From left to right: Dr Wai Man Franco CHUNG, Dr Pui Yin LO, Dr Daniel PASCOE

The webinar was moderated by **Dr Daniel PASCOE** (Associate Professor, School of Law, City University of Hong Kong; CPLR Core Member). He welcomed all participants and introduced the book’s author, **Dr Wai Man Franco CHUNG** (PCLL Student, University of Hong Kong; PhD Graduate, City University of Hong Kong; Public Law Researcher) and the reviewer **Dr Pui Yin LO** (Professor, Barrister-at-law (England & Wales and Hong Kong); Centre for Chinese Law, Faculty of Law, The University of Hong Kong).

**Dr Chung** provided an overview of his book which examined the proportionality principle from various aspects: the extent to which the concept has been integrated into English and HK law, the difficulties the English and HK Courts have encountered, the possibility of the concept being fully adopted as a free-standing ground of judicial review, and how its implementation has affected cases concerning socio-economic rights as enshrined in ICESCR.



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**Dr Chung** argued that the ongoing attempt to integrate proportionality analysis within EU Law and international human rights law by the CJEU & ECHR offer the English and HK Courts opportunities to re-assess their own approaches. The rationale of proportionality analysis is that if individual rights are to be taken seriously, the state may only impose restrictions that are justified by a legitimate purpose and that are strictly necessary. **Dr Chung** emphasised that the court plays an important role in requiring the executive branch to exercise its power fairly, reasonably and consistently. His book explores how the proportionality principle can offer a more structured and intensive approach in scrutinising administrative decisions, aiming to increase the awareness of administrative decision makers of legally binding obligations to work within the scope of their powers.

**Dr Lo** explained that the relevant constitutional arrangements may also contribute to safeguarding proportionality analysis, for example through the separation of powers, which allows the court to examine the validity of actions by the other branches of government. He then argued that the concept of proportionality in EU law and international human rights law might need to be interpreted differently to fit different jurisdictions' local circumstances and their existing practices. **Dr Chung** responded by stating that, if a jurisdiction has decided to enter into an international treaty, it is bound by the unified human rights standards found within that treaty and voluntarily acceded to. Local circumstances do not operate as an excuse to not follow the jurisprudence of the CJEU or ECHR. **Dr Pascoe** spoke about one key dilemma that Hong Kong judges face: they might not be able to protect the interests of the PRC while at the same time safeguarding human rights. **Dr Lo** responded in saying that HK judges swear a public oath to uphold the Basic Law, pledge allegiance to the HKSAR and to apply the relevant laws, which include the PRC national laws listed in Basic Law Annex III. Though the National Security Law and the pre-existing laws are not necessarily contradictory, judges have to decide on a case by case basis what the best practice is.