Bibliography

- Adams, EM, 'Canada's "Newer Constitutional Law" and the Idea of Constitutional Rights' (2006) 51 McGill Law Journal 435
- Agarwal, R, and Lalani, F, 'Noting the Obvious: A Reflection on the Supreme Court of Canada's Application of Judicial Notice under Sections 7 and 15 of the Charter' (2016) 35 National Journal of Constitutional Law 131
- Alarie, BRD, and Green, AJ, 'Interventions at the Supreme Court of Canada: Accuracy, Affiliation, and Acceptance' (2010) 48 Osgoode Hall Law Journal 381
- Aleinikoff, TA, 'Constitutional Law in the Age of Balancing' (1987) 96 Yale Law Journal 943
- Alexy, R, A Theory of Constitutional Rights, reprinted edn (J Rivers trans, Oxford, Oxford University Press, 2010)
- Alexy, R, and Dreier, R, 'Statutory Interpretation in the Federal Republic of Germany' in N MacCormick and RS Summers (eds), Interpreting Statutes: A Comparative Study (Aldershot, Dartmouth, 1991) 73–121
- Allan, TRS, 'Human Rights and Judicial Review: A Critique of "Due Deference" (2006) 65 Cambridge Law Journal 671
- Allars, M, 'Proportionality, Tradition and Constitutional Framework: Borrowing Foreign Legal Notions in Australian Public Law' in G Doeker-Mach and KA Ziegert (eds), Law and Legal Culture in Comparative Perspective (Stuttgart, Franz Steiner Verlag, 2004) 286–312
- Anderson, T, Schum, DA, and Twining, WL, Analysis of Evidence, 2nd edn (Cambridge, Cambridge University Press, 2005)
- Appleby, G, 'Proportionality and Federalism: Can Australia Learn from the European Community, the US and Canada?' (2007) 26 University of Tasmania Law Review 1
- —. 'Functionalism in Constitutional Interpretation: Factual and Participatory Challenges: Comment on Dixon' (2015) 43 Federal Law Review 493
- Appleby, G, and Carter, A, 'Parliaments, Proportionality and Facts' (2021) Sydney Law Review (forthcoming)
- Aronson, M, Groves, M, and Weeks, G, Judicial Review of Administrative Action and Government Liability, 6th edn (Sydney, Thomson Reuters, 2017)
- Baade, HW, 'Social Science Evidence and the Federal Constitutional Court of West Germany' (1961) 23 Journal of Politics 421
- Bar-Siman-Tov, I, 'Semiprocedural Judicial Review' (2012) 6 Legisprudence 271
- Barak, A, Proportionality: Constitutional Rights and Their Limitations (Cambridge, Cambridge University Press, 2012)
- Beatty, DM, The Ultimate Rule of Law (Oxford, Oxford University Press, 2004)
- Bell, AS, 'Section 92, Factual Discrimination and the High Court' (1991) 20 Federal Law Review 240
- Benda, E, 'The Position and Function of the Bundesverfassungsgericht (Federal Constitutional Court) in a Reunited Germany' in E McWhinney, J Zaslove and W Wolf (eds), Federalism-in-the-Making: Contemporary Canadian and German Constitutionalism, National and Transnational (Dordrecht, Kluwer Academic Publishers, 1992) 29–39
- Benjamin, SM, 'Stepping into the Same River Twice: Rapidly Changing Facts and the Appellate Process' (1999) 78 Texas Law Review 269
- Bilchitz, D, 'Necessity and Proportionality: Towards a Balanced Approach?' in L Lazarus, C McCrudden and N Bowles (eds), Reasoning Rights: Comparative Judicial Engagement (Oxford, Hart Publishing, 2014) 41–62

- Birks, P, 'Equity in the Modern Law: An Exercise in Taxonomy' (1996) 26 University of Western Australia Law Review 1
- Bjørge, E, Domestic Application of the ECHR: Courts as Faithful Trustees (Oxford, Oxford University Press, 2015)
- Black, M, 'The Tasmanian Dam Case: An Advocate's Memoir' (2015) 24 Griffith Law Review 22 Blackshield, T, 'Realism' in T Blackshield, M Coper and G Williams (eds), The Oxford Companion to the High Court of Australia (Melbourne, Oxford University Press, 2001) 582–85
- Bloodworth, M, 'A Fact is a Fact is a Fact: Stare Decisis and the Distinction Between Adjudicative and Social Facts in Bedford and Carter' (2014) 32 National Journal of Constitutional Law 193
- Bomhoff, J, 'Genealogies of Balancing as Discourse' (2010) 4 Law & Ethics of Human Rights 107
- Borgmann, CE, 'Rethinking Judicial Deference to Legislative Fact-Finding' (2009) 84 Indiana Law Journal 1
- —. 'Appellate Review of Social Facts in Constitutional Rights Cases' (2013) 101 California Law Review 1185
- Borowski, M, 'The Beginnings of Germany's Federal Constitutional Court' (2003) 16 Ratio Juris 155 Botha, H, 'Democracy and Rights: Constitutional Interpretation in a Postrealist World' (2000) 63 Journal of Contemporary Roman-Dutch Law 561
- —. 'Metaphoric Reasoning and Transformative Constitutionalism (part 1)' [2002] Tydskrif vir die Suid-Afrikaanse Reg 612
- Boughey, J, 'The Reasonableness of Proportionality in the Australian Administrative Law Context' (2015) 43 Federal Law Review 59
- —. 'Brett Cattle: New Limits on Delegated Law-Making Powers' (2020) 31 Public Law Review 347 Brady, ADP, Proportionality and Deference under the UK Human Rights Act: An Institutionally Sensitive Approach (Cambridge, Cambridge University Press, 2012)
- Brazil, P, 'The Ascertainment of Facts in Australian Constitutional Cases' (1970) 4 Federal Law Review 65
- Bredt, CD, 'The Right to Equality and Oakes: Time for Change' (2009) 27 National Journal of Constitutional Law 59
- Bredt, CD, and Dodek, AM, 'The Increasing Irrelevance of Section 1 of the Charter' (2001) 14
 Supreme Court Law Review 175
- Bredt, CD, and Pessione, HK, 'The Death of Oakes: Time for a Rights-Specific Approach' (2013) 62
 Supreme Court Law Review 486
- Brodie, I, Friends of the Court: The Privileging of Interest Group Litigants in Canada (Albany, State University of New York Press, 2002)
- Bröhmer, J, 'Legislative and Executive Branch versus the Federal Constitutional Court and the Judiciary Conflict or Cooperation' in J Bröhmer (ed), The German Constitution Turns 60: Basic Law and Common Constitution German and Australian Perspectives (Peter Lang, 2011) 145–65
- Bröhmer, J, Hill, C, and Spitzkatz, M (eds), 60 Years German Basic Law: The German Constitution and its Court, 2nd edn (Kuala Lumpur, Malaysian Current Law Journal Sdn Bhd, 2012)
- Broun, KS (ed), McCormick on Evidence, 6th edn (St Paul, Thomson West, 2006) vol 2
- Brown, J, 'The Doctrine of Proportionality: A Comparative Analysis of the Proportionality Principle Applied to Free Speech Cases in Canada, South Africa and the European Convention on Human Right and Freedoms' (Master of Laws thesis, Central European University, 2012)
- Budlender, G, 'Amicus Curiae' in S Woolman, T Roux and M Bishop (eds), Constitutional Law of South Africa, 2nd edn (Cape Town, Juta) vol 1, 1–17
- Burmester, H, 'The Presumption of Constitutionality' (1982) 13 Federal Law Review 277
- Burns, K, 'It's Just Not Cricket: The High Court, Sport and Legislative Facts' (2002) 10 Torts Law Journal 234
- —. 'The Way the World is: Social Facts in High Court Negligence Cases' (2004) 12 Torts Law Journal 216
- —. 'The High Court and Social Facts: A Negligence Case Study' in M Bryan (ed), *Private Law in Theory and Practice* (London, Routledge-Cavendish, 2007) 85–115

- —. 'Judicial Use and Construction of Social Facts in Negligence Cases in the Australian High Court' (PhD thesis, Griffith University, 2011)
- —. 'The Australian High Court and Social Facts: A Content Analysis Study' (2012) 40 Federal Law Review 317
- —. 'It's Not Just Policy: The Role of Social Facts in Judicial Reasoning in Negligence Cases' (2013) 21 Torts Law Journal 73
- Caleo, C, 'Section 90 and Excise Duties: A Crisis of Interpretation' (1987) 16 Melbourne University Law Review 296
- Callaghan, GD, 'Intervenors at the Supreme Court of Canada' (2020) 44 Dalhousie Law Journal 33 Campbell, E, 'Fact Finding in Constitutional Cases' in Constitutional Commission, Final Report of the Constitutional Commission (Canberra, Australian Government Publishing Service, 1988) vol 2, 1099–114
- Cane, P, Controlling Administrative Power: An Historical Comparison (Cambridge, Cambridge University Press, 2016)
- Cappalli, RB, 'Bringing Internet Information to Court: Of Legislative Facts' (2002) 75 Temple Law Review 99
- Cappelletti, M, and Cohen, W, Comparative Constitutional Law: Cases and Materials (Indianapolis, Bobbs-Merrill, 1979)
- Carter, A, 'The Definition and Discovery of Facts in Native Title: The Historian's Contribution' (2008) 36 Federal Law Review 301
- —. 'Political Donations, Political Communication and the Place of Proportionality Analysis: Case Note on McCloy v New South Wales' (2015) 26 Public Law Review 245
- ---. 'Proportionality in Australian Constitutional Law: Towards Transnationalism' (2016) 76 Heidelberg Journal of International Law 951
- ---. 'Moving Beyond the Common Law Objection to Structured Proportionality' (2021) 49 Federal Law Review 73
- Carter, PB, 'Judicial Notice: Related and Unrelated Matters' in E Campbell and L Waller (eds), Well and Truly Tried: Essays on Evidence in Honour of Sir Richard Eggleston (Sydney, Law Book Co, 1982) 88–99
- Cass, DZ, 'Through the Looking Glass: The High Court and the Right to Speech' (1993) 4 Public Law Review 229
- Challenor, B, 'The Balancing Act: A Case for Structured Proportionality under the Second Limb of the Lange Test' (2015) 40 University of Western Australia Law Review 267
- Chan, C, 'Deference, Expertise and Information-Gathering Powers' (2013) 33 Legal Studies 598
- —. 'Proportionality and Invariable Baseline Intensity of Review' (2013) 33 Legal Studies 1
- —. 'The Burden of Proof under the Human Rights Act' (2014) 19 Judicial Review 46
- Charney, RE, 'Evidence in Charter Cases: Expert Evidence and Proving Purpose' (2004) 16 National Journal of Constitutional Law 1
- Charney, RE, and Green, SZ, 'Prophets of Doom, Seers of Fortune: 20 Years of Expert Evidence under the Oakes Test' (2006) 34 Supreme Court Law Review 479
- Chesterman, M, 'Criminal Trial Juries in Australia: From Penal Colonies to a Federal Democracy' (1999) 62 Law and Contemporary Problems 69
- Chordia, S, Proportionality in Australian Constitutional Law (Sydney, Federation Press, 2020)
- Choudhry, S, 'So What is the Real Legacy of Oakes? Two Decades of Proportionality Analysis under the Canadian Charter's Section 1' (2006) 34 Supreme Court Law Review 501
- Cockrell, A, 'Rainbow Jurisprudence' (1996) 12 South African Journal on Human Rights 1
- Cohen-Eliya, M, and Porat, I, 'American Balancing and German Proportionality: The Historical Origins' (2010) 8 International Journal of Constitutional Law 263
- ----. Proportionality and Constitutional Culture (Cambridge, Cambridge University Press, 2013)
- Cohn, M, 'Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom' (2010) 58 American Journal of Comparative Law 583

- Coper, M, Freedom of Interstate Trade under the Australian Constitution (Sydney, Butterworths, 1983)
- —. 'Section 92 of the Australian Constitution since Cole v Whitfield' in HP Lee and G Winterton (eds), Australian Constitutional Perspectives (Sydney, Law Book Co, 1992) 129–47
- Corder, H, Judges at Work: The Role and Attitudes of the South African Appellate Judiciary, 1910-50 (Cape Town, Juta, 1984)
- Coyle, I, and Halon, R, 'Humpty Dumpty and Risk Assessment: A Reply to Slobogin' in Patrick Keyzer (ed), *Preventive Detention: Asking the Fundamental Questions* (Cambridge, Intersentia, 2013) 193–222
- Craig, P, 'Proportionality, Rationality and Review' [2010] New Zealand Law Review 265
- ---. 'The Nature of Reasonableness Review' (2013) 66 Current Legal Problems 131
- —. 'Proportionality and Judicial Review: A UK Historical Perspective' in S Vogenauer and S Weatherill (eds), General Principles of Law: European and Comparative Perspectives (Oxford, Hart Publishing, 2017) 145–66
- Currie, I, 'Judicious Avoidance' (1999) 15 South African Journal on Human Rights 138
- Currie, I, and de Waal, J, The Bill of Rights Handbook, 6th edn (Cape Town, Juta, 2013)
- Da Silva, M, 'Trial Level References: In Defence of a New Presumption' (2012) 2(2) Western Journal of Legal Studies 1
- Damaška, MR, Evidence Law Adrift (New Haven, Yale University Press, 1997)
- Danneman, G, 'Comparative Law: Study of Similarities or Differences?' in M Reimann and R Zimmermann (eds), *The Oxford Handbook of Comparative Law*, 2nd edn (Oxford, Oxford University Press, 2019) 390–422
- Davies, ACL, and Williams, JR, 'Proportionality in English Law' in S Ranchordás and B de Waard (eds), The Judge and the Proportionate Use of Discretion: A Comparative Study (Abingdon, Routledge, 2016) 73–108
- Davis, KC, 'An Approach to Problems of Evidence in the Administrative Process' (1942) 55 Harvard Law Review 364
- -. 'Official Notice' (1949) 62 Harvard Law Review 537
- -. 'Judicial Notice' (1955) 55 Columbia Law Review 945
- ---. Administrative Law Treatise (St Paul, West Publishing Co, 1958) vol 2
- -. 'Judicial Notice' [1969] Law and the Social Order 513
- ---. Administrative Law Treatise, 2nd edn (San Diego, KC Davis Publishing Co, 1979) vol 2
- ---. 'Facts in Lawmaking' (1980) 80 Columbia Law Review 931
- Dawson, D, and Nicholls, M, 'Sir Owen Dixon and Judicial Method' (1986) 15 Melbourne University Law Review 543
- De Vos, P, and Freedman, W, (eds), South African Constitutional Law in Context (Cape Town, Oxford University Press, 2014)
- De Waal, J, 'Constitutional Law' in GC van der Merwe and JE du Plessis (eds), Introduction to the Law of South Africa (Kluwer Law International, 2004) 55–106
- Dedek, H, and Schermaier, MJ, 'German Law' in JM Smits (ed), Elgar Encyclopedia of Comparative Law, 2nd edn (Cheltenham, Edward Elgar, 2012) 349–370
- Dennis, IH, The Law of Evidence, 5th edn (London, Sweet & Maxwell, 2013)
- Deturbide, M, and Hughes, EJ, 'Canada' in JM Smits (ed), Elgar Encyclopedia of Comparative Law, 2nd edn (Cheltenham, Edward Elgar, 2012) 132–36
- Dharmanda, J, 'Using Parliamentary Material in Interpretation: Insights from Parliamentary Process' (2018) 41 University of New South Wales Law Journal 4
- Dixon, O, 'Address upon Taking the Oath of Office in Sydney as Chief Justice of the High Court of Australia on 21st April, 1952' in S Crennan and W Gummow (eds) *Jesting Pilate: And Other Papers and Addresses* (Sydney, Federation Press, 2019) 287–91
- Dixon, R, 'The Functional Constitution: Re-reading the 2014 High Court Constitutional Term' (2015) 43 Federal Law Review 455
- —. 'Proportionality & Comparative Constitutional Law versus Studies' (2018) 12 Law & Ethics of Human Rights 203

- Douglas, H, 'Social Framework Evidence: Its Interpretation and Application in Victoria and Beyond' in K Fitz-Gibbon and A Freiberg (eds), Homicide Law Reform in Victoria: Retrospect and Prospects (Sydney, Federation Press, 2015) 94–109
- Doyle, JJ, 'Judicial Law Making Is Honesty the Best Policy?' (1995) 17 Adelaide Law Review 161
- Du Plessis, L, 'Religious Freedom and Equality as Celebration of Difference: A Significant Development in Recent South African Constitutional Case-Law' (2009) 12 Potchefstroom Electronic Law Journal 10
- Du Plessis, L, and Corder, H, Understanding South Africa's Transitional Bill of Rights (Cape Town, Juta, 1994)
- Dugard, J, Human Rights and the South African Legal Order (Princeton, Princeton University Press, 1978)
- —. 'Judging the Judges: Towards an Appropriate Role for the Judiciary in South Africa's Transformation' (2007) 20 Leiden Journal of International Law 965
- Duxbury, N, The Nature and Authority of Precedent (Cambridge, Cambridge University Press, 2008)
- Dwyer, DM, The Judicial Assessment of Expert Evidence (Cambridge, Cambridge University Press, 2008)
- Edgar, A, 'Judicial Review of Delegated Legislation: Why Favour Substantive Review over Procedural Review?' in J Bell, M Elliott, JNE Varuhas and P Murray (eds), Public Law Adjudication in Common Law Systems: Process and Substance (Oxford, Hart Publishing, 2016) 189-211
- Elliott, M, 'Proportionality and Deference: The Importance of a Structured Approach' in C Forsyth et al (eds), Effective Judicial Review: A Cornerstone of Good Governance (Oxford, Oxford University Press, 2010) 264–86
- Emiliou, N, The Principle of Proportionality in European Law: A Comparative Study (London, Kluwer Law International, 1996)
- Endicott, T, 'Questions of Law' (1998) 114 Law Quarterly Review 292
- —. 'Proportionality and Incommensurability' in G Huscroft, BW Miller and G Webber (eds), Proportionality and the Rule of Law: Rights, Justification, Reasoning (Cambridge, Cambridge University Press, 2014) 311–42
- Faigman, DL, Constitutional Fictions: A Unified Theory of Constitutional Facts (New York, Oxford University Press, 2008)
- Feldman, D, 'Comparison, Realism and Theory in Public Law' in J Bell, M Elliott, JNE Varuhas and P Murray (eds), Public Law Adjudication in Common Law Systems: Process and Substance (Oxford, Hart Publishing, 2016) 367–79
- Fitzgerald, BF, 'Proportionality and Australian Constitutionalism' (1993) 12 University of Tasmania Law Review 263
- Freckelton, IR, Expert Evidence: Law, Practice, Procedure and Advocacy, 6th edn (Sydney, Thomson Reuters, 2019)
- Free, S, 'Commentary on Chapter 6' in J Griffiths and J Stellios (eds), Current Issues in Australian Constitutional Law: Tributes to Professor Leslie Zines (Sydney, Federation Press, 2020) 202-08
- Gageler, S, 'Foundations of Australian Federalism and the Role of Judicial Review' (1987) 17 Federal Law Review 162
- ---. 'Fact and Law' (2009) 11 Newcastle Law Review 1
- —. 'Deference' (2015) 22 Australian Journal of Administrative Law 151
- —. 'Whitmore and the Americans: Some American Influences on the Development of Australian Administrative Law' (2015) 38 University of New South Wales Law Journal 1316
- —. 'Alternative Facts in the Courts' (2019) 93 Australian Law Journal 585
- Galligan, B, and Morton, FL, 'Australian Exceptionalism: Rights Protection without a Bill of Rights' in T Campbell, J Goldsworthy and A Stone (eds), Protecting Rights without a Bill of Rights: Institutional Performance and Reform in Australia (Aldershot, Ashgate, 2006) 17–39
- Gardbaum, S, 'Positive and Horizontal Rights: Proportionality's Next Frontier or a Bridge Too Far?' in VC Jackson and M Tushnet (eds), Proportionality: New Frontiers, New Challenges (Cambridge, Cambridge University Press, 2017) 221–47

- Goldsworthy, J, 'Australia: Devotion to Legalism' in J Goldsworthy (ed), Interpreting Constitutions: A Comparative Study (Oxford, Oxford University Press, 2007) 106–60
- Götz, V, 'Legislative and Executive Power under the Constitutional Requirements Entailed in the Principle of the Rule of Law' in C Starck (ed), New Challenges to the German Basic Law: the German Contributions to the Third World Congress of the International Association of Constitutional Law (Baden-Baden, Nomos Verlagsgesellschaft, 1991) 141–66
- Grando, MT, Evidence, Proof, and Fact-Finding in WTO Dispute Settlement (Oxford, Oxford University Press, 2009)
- Grechenig, KR, and Gelter, M, 'The Transatlantic Divergence in Legal Thought: American Law and Economics vs German Doctrinalism' (2008) 31 Hastings International and Comparative Law Review 295
- Greer, S, "Balancing" and the European Court of Human Rights: A Contribution to the Habermas-Alexy Debate' (2004) 63 Cambridge Law Journal 412
- Grimm, D, 'Proportionality in Canadian and German Constitutional Jurisprudence' (2007) 57

 University of Toronto Law Journal 383
- —. 'Values in German Constitutional Law' in D Davis, A Richter and C Saunders (eds), An Inquiry into the Existence of Global Values: Through the Lens of Comparative Constitutional Law (Oxford, Hart Publishing, 2015) 199–214
- Groves, M, Boughey, J, and Meagher, D, 'Rights, Rhetoric and Reality: An Overview of Rights Protection in Australia' in M Groves, J Boughey and D Meagher (eds), *The Legal Protection of Rights in Australia* (Oxford, Hart Publishing, 2019) 1–16
- Haack, S, Evidence and Inquiry: A Pragmatist Reconstruction of Epistemology, 2nd expanded edn (New York, Prometheus Books, 2009)
- —. Evidence Matters: Science, Proof, and Truth in the Law (Cambridge, Cambridge University Press, 2014)
- Habermas, J, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy (W Rehg trans, Cambridge, Polity Press, 1996)
- Hailbronner, M, 'Rethinking the Rise of the German Constitutional Court: From Anti-Nazism to Value Formalism' (2014) 12 International Journal of Constitutional Law 626
- Hamer, D, 'The Civil Standard of Proof Uncertainty: Probability, Belief and Justice' (1994) 16

 Sydney Law Review 506
- Hanks, P, Gordon, F, and Hill, G, Constitutional Law in Australia, 3rd edn (Sydney, LexisNexis Butterworths, 2012)
- ----. Constitutional Law in Australia, 4th edn (Sydney, LexisNexis Butterworths, 2017)
- Hayne, KM, 'Deference: An Australian Perspective' [2011] Public Law 75
- Henckels, C, Proportionality and Deference in Investor-State Arbitration: Balancing Investment Protection and Regulatory Autonomy (Cambridge, Cambridge University Press, 2015)
- Heydon, JD, 'Developing the Common Law' in JT Gleeson and RCA Higgins (eds), Constituting Law: Legal Arguments and Social Values (Sydney, Federation Press, 2011) 93–136
- ---. Cross on Evidence, 12th Australian edn (Sydney, LexisNexis Butterworths, 2020)
- Hickman, T, 'Proportionality: Comparative Law Lessons' (2007) 12 Judicial Review 31
- Ho, HL, A Philosophy of Evidence Law (Oxford, Oxford University Press, 2008)
- Hogg, PW, 'Section 1 Revisited' (1991) 1 National Journal of Constitutional Law 1
- —. 'Canada: From Privy Council to Supreme Court' in J Goldsworthy (ed), Interpreting Constitutions: A Comparative Study (Oxford, Oxford University Press, 2007) 55–105
- ---. Constitutional Law of Canada, 5th edn (Toronto, Thomson Carswell, 2007) vol 2
- ---. Constitutional Law of Canada, 2014 student edn (Toronto, Carswell, 2014)
- Holmes, JD, 'Evidence in Constitutional Cases' (1949) 23 Australian Law Journal 235
- Horowitz, DL, The Courts and Social Policy (Washington DC, Brookings Institution, 1977)
- Hughes, J, and MacDonnell, V, 'Social Science Evidence in Constitutional Rights Cases in Germany and Canada: Some Comparative Observations' (2013) 32 National Journal of Constitutional Law 23
- Hughes, J, MacDonnell, V, and Pearlston, K, 'Equality & Incrementalism: The Role of Common Law Reasoning in Constitutional Rights Cases' (2013) 44 Ottawa Law Review 467

- Hunt, M, 'Sovereignty's Blight: Why Contemporary Public Law Needs the Concept of "Due Deference" in N Bamforth and P Leyland (eds), *Public Law in a Multi-layered Constitution* (Oxford, Hart Publishing, 2003) 337–70
- —. 'Enhancing Parliaments' Role in the Protection and Realisation of Human Rights' in M Hunt, HJ Hooper and P Yowell (eds), Parliaments and Human Rights: Redressing the Democratic Deficit (Oxford, Hart Publishing, 2015) 469–83
- Huscroft, G, Miller, BW, and Webber, G, 'Introduction' in G Huscroft, BW Miller and G Webber (eds), Proportionality and the Rule of Law: Rights, Justification, Reasoning (Cambridge University Press, 2014) 1–17
- Jackson, BS, Law, Fact and Narrative Coherence (Liverpool, Deborah Charles, 1988)
- Jackson, JD, and Summers, SJ, The Internationalisation of Criminal Evidence: Beyond the Common Law and Civil Law Traditions (Cambridge, Cambridge University Press, 2012)
- Jackson, VC, 'Being Proportional about Proportionality: The Ultimate Rule of Law' (2004) 21 Constitutional Commentary 843
- —. 'Methodological Challenges in Comparative Constitutional Law' (2009) 28 Penn State International Law Review 319
- —. 'Comparative Constitutional Law: Methodologies' in M Rosenfeld and A Sajó (eds), The Oxford Handbook of Comparative Constitutional Law (Oxford, Oxford University Press, 2012) 54–74
- ---. 'Constitutional Law in an Age of Proportionality' (2015) 124 Yale Law Journal 3094
- Jamal, M, 'Legislative Facts in Charter Litigation: Where are We Now?' (2005) 17 National Journal of Constitutional Law 1
- James, GF, 'Relevancy, Probability and the Law' (1941) 29 California Law Review 689
- Jasiak, A, Constitutional Constraints on Ad Hoc Legislation: A Comparative Study of the United States, Germany and the Netherlands (Cambridge, Intersentia, 2011)
- Jolowicz, JA, 'Fact-Based Classification' in JA Jolowicz (ed), The Division and Classification of the Law (London, Butterworths, 1970) 1–9
- —. 'Adversarial and Inquisitorial Models of Civil Procedure' (2003) 52 International and Comparative Law Quarterly 281
- Jones, FWD, 'High Court Procedure under the Judiciary Act' (1994) 68 Australian Law Journal 442
- Josev, T, The Campaign Against the Courts: A History of the Judicial Activism Debate (Sydney, Federation Press, 2017)
- Kavanagh, A, Constitutional Review under the UK Human Rights Act (Cambridge, Cambridge University Press, 2009)
- ---. 'Proportionality and Parliamentary Debates: Exploring Some Forbidden Territory' (2014) 34

 Oxford Journal of Legal Studies 443
- Keeton, RE, 'Legislative Facts and Similar Things: Deciding Disputed Premise Facts' (1988) 73

 Minnesota Law Review 1
- Kelsen, H, 'Who Ought to Be the Guardian of the Constitution? Kelsen's Reply to Schmitt' (1931) in L Vinx (ed), The Guardian of the Constitution: Hans Kelsen and Carl Schmitt on the Limits of Constitutional Law (Cambridge, Cambridge University Press, 2015) 174–221
- Kenny, D, 'Proportionality, the Burden of Proof, and Some Signs of Reconsideration' (2014) 52 Irish Jurist 141
- —. 'Proportionality and the Inevitability of the Local: A Comparative Localist Analysis of Canada and Ireland' (2018) 66 American Journal of Comparative Law 537
- Kenny, S, 'Constitutional Fact Ascertainment' (1990) 1 Public Law Review 134
- -. 'Interveners and Amici Curiae in the High Court' (1998) 20 Adelaide Law Review 159
- Keyzer, P, 'Attorneys-General, Solicitors-General and "the Public Interest" in Australian Constitutional Cases: A Case for Citizen Input into the Development of Constitutional Policy' in G Appleby, P Keyzer and J Williams (eds), Public Sentinels: A Comparative Study of Australian Solicitors-General (Abingdon, Routledge, 2016) 105–16

- Kiefel, S, 'English, European and Australian Law: Convergence or Divergence?' (2005) 79 Australian Law Journal 220
- —. 'Section 92: Markets, Protectionism and Proportionality Australian and European Perspectives' (2010) 36 Monash University Law Review 1
- ---. 'Proportionality: A Rule of Reason' (2012) 23 Public Law Review 85
- —. 'Standards of Review in Constitutional Review of Legislation' in C Saunders and A Stone (eds), The Oxford Handbook of the Australian Constitution (Oxford, Oxford University Press, 2018) 488–509
- King, JA, 'Institutional Approaches to Judicial Restraint' (2008) 28 Oxford Journal of Legal Studies 409
- Kirby, M, 'Judicial Activism? A Riposte to the Counter-Reformation' (2004) 24 Australian Bar Journal 219
- Kirk, J, 'Constitutional Guarantees, Characterisation and the Concept of Proportionality' (1997) 21

 Melbourne University Law Review 1
- —. 'Section 92 in its Second Century' in J Griffiths and J Stellios (eds), Current Issues in Australian Constitutional Law: Tributes to Professor Leslie Zines (Sydney, Federation Press, 2020) 253–82
- Klare, KE, 'Legal Culture and Transformative Constitutionalism' (1998) 14 South African Journal on Human Rights 146
- Klatt, M, and Schmidt, J, 'Epistemic Discretion in Constitutional Law' (2012) 10 International Journal of Constitutional Law 69
- Klein, E, 'The Importance and Challenges of Values-Based Legal Orders' (2015) 10 Intercultural Human Rights Law Review 1
- Klug, H, 'South Africa: From Constitutional Promise to Social Transformation' in J Goldsworthy (ed), Interpreting Constitutions: A Comparative Study (Oxford, Oxford University Press, 2007) 266–320
- Koch, C, 'The Sky is Falling if Judges Decide Religious Controversies! Or is it? The German Experience of Religious Freedom under a Bill of Rights' in P Babie and N Rochow (eds), Freedom of Religion under Bills of Rights (Adelaide, University of Adelaide Press, 2013) 190–215
- Kokott, J, The Burden of Proof in Comparative and International Human Rights Law: Civil and Common Law Approaches with Special Reference to the American and German Legal Systems (The Hague, Kluwer Law International, 1998)
- Kommers, DP, and Miller, RA, The Constitutional Jurisprudence of the Federal Republic of Germany, 3rd edn (Durham, NC, Duke University Press, 2012)
- Kumm, M, 'Political Liberalism and the Structure of Rights: On the Place and Limits of the Proportionality Requirement' in G Pavlakos (ed), Law, Rights and Discourse: The Legal Philosophy of Robert Alexy (Oxford, Hart Publishing, 2007) 131–66
- —. 'On the Past and Future of European Constitutional Scholarship' (2009) 7 International Journal of Constitutional Law 401
- Lane, PH, 'Facts in Constitutional Law' (1963) 37 Australian Law Journal 108
- —. The Australian Federal System, 2nd edn (Sydney, Law Book Co, 1979)
- Larsen, AO, 'Confronting Supreme Court Fact Finding' (2012) 98 Virginia Law Review 1255
- —. 'Constitutional Law in an Age of Alternative Facts' (2018) 93 New York University Law Review 175
- Law Reform Commission, Evidence, Interim Report No 26 (1985) vol 1
- ---. Evidence, Report No 38 (1987)
- Leckey, R, Bills of Rights in the Common Law (Cambridge, Cambridge University Press, 2015)
- Ledford, KF, 'Formalizing the Rule of Law in Prussia: The Supreme Administrative Law Court, 1876–1914' (2004) 37 Central European History 203
- Lee, HP, 'Proportionality in Australian Constitutional Adjudication' in G Lindell (ed), Future Directions in Australian Constitutional Law (Sydney, Federation Press, 1994) 126-49
- Leeming, M, 'Fact Finding' in T Blackshield, M Coper and G Williams (eds), The Oxford Companion to the High Court of Australia (Melbourne, Oxford University Press, 2001) 268–69

- —. 'The Federal and State Courts on Constitutional Law: The 2013 Term' [2014] New South Wales Judicial Scholarship 5
- Legg, A, The Margin of Appreciation in International Human Rights Law: Deference and Proportionality (Oxford, Oxford University Press, 2012)
- Lennan, J, 'How to Find Facts in Constitutional Cases' (2011) 30 Civil Justice Quarterly 304
- Lepsius, O, 'Constitutional Review of Tax Laws and the Unconstitutionality of the German Inheritance Tax' (2015) 16 German Law Journal 1191
- Letsas, G, A Theory of Interpretation of the European Convention on Human Rights (Oxford, Oxford University Press, 2007)
- Ligertwood, A, and Edmond, G, Australian Evidence: A Principled Approach to the Common Law and Uniform Acts, 6th edn (Sydney, LexisNexis Butterworths, 2017)
- Lovric, D, Deference to the Legislature in WTO Challenges to Legislation (Alphen aan den Rijn, Kluwer Law International, 2010)
- Lübbe-Wolff, G, 'The Principle of Proportionality in the Case-Law of the German Federal Constitutional Court' (2014) 34 Human Rights Law Journal 12
- Main, TO, 'The Procedural Foundation of Substantive Law' (2010) 87 Washington University Law Review 801
- Malbon, J, 'Judicial Values' in I Freckelton and H Selby (eds), Appealing to the Future: Michael Kirby and His Legacy (Sydney, Lawbook Co, 2009) 579–606
- Margolis, E, 'Beyond Brandeis: Exploring the Uses of Non-legal Materials in Appellate Briefs' (2000) 34 University of San Francisco Law Review 197
- Marsch, N, and Tünsmeyer, V, 'The Principle of Proportionality in German Administrative Law' in S Ranchordás and B de Waard (eds), *The Judge and the Proportionate Use of Discretion: A Comparative Study* (Abingdon, Routledge, 2016) 13–42
- Martin, M, and Horne, A, 'Proportionality: Principles and Pitfalls Some Lessons from Germany' [2008] Judicial Review 169
- Mason, A, 'Interveners and Amici Curiae in the High Court: A Comment' (1998) 20 Adelaide Law Review 173
- —. 'The Use of Proportionality in Australian Constitutional Law' (2016) 27 Public Law Review 109
- Mason, K, 'Ethics and the Environment' (2011) 10 The Judicial Review 187
- Mathen, C, 'Rational Connections: Oakes, Section 1 and the Charter's Legal Rights' (2012) 43
 Ottawa Law Review 491
- McClellan, P, and Doyle, A, 'Legislative Facts and Section 144 A Contemporary Problem?' (2016) 12 The Judicial Review 421
- McCrudden, C, 'Judicial Comparativism and Human Rights' in E Örücü and D Nelken (eds), Comparative Law: A Handbook (Oxford, Hart Publishing, 2007) 371–97
- McDonald, S, 'Involuntary Detention and the Separation of Judicial Power' (2007) 35 Federal Law Review 1
- Meagher, D, 'The Brennan Conception of the Implied Freedom: Theory, Proportionality and Deference' (2011) 30 University of Queensland Law Journal 119
- Mendes, EP, 'Section 1 of the Charter after 30 Years: The Soul or the Dagger at its Heart?' in E Mendes and S Beaulac (eds), The Canadian Charter of Rights and Freedoms, 5th edn (Markham, LexisNexis, 2013) 293–336
- Meßerschmidt, K, 'The Race to Rationality Review and the Score of the German Federal Constitutional Court' (2012) 6 Legisprudence 347
- ---. 'The Good Shepherd of Karlsruhe: The "Hartz IV" Decision on Unemployment Benefits and Social Allowances A Good Example of Regulatory Review by the German Federal Constitutional Court?' in P Popelier, A Mazmanyan and W Vandenbruwaene (eds), The Role of Constitutional Courts in Multilevel Governance (Cambridge, Intersentia, 2013) 235–47

- Michaels, R, 'The Functional Method of Comparative Law' in M Reimann and R Zimmermann (eds), The Oxford Handbook of Comparative Law, 2nd edn (Oxford, Oxford University Press, 2019) 345–89
- Miller, RA, 'Germany's German Constitution' (2017) 57 Virginia Journal of International Law 95 Miller, RA, and Kommers, DP, 'Das Bundesverfassungsgericht: Procedure, Practice and Policy of the German Federal Constitutional Court' (2009) 3 Journal of Comparative Law 194
- Möller K 'Balancing and the Structure of Constitutional Rights' (2007) 5 International Journal of
- Möller, K, 'Balancing and the Structure of Constitutional Rights' (2007) 5 International Journal of Constitutional Law 453
- ---. The Global Model of Constitutional Rights (Oxford University Press, 2012)
- —. 'Proportionality: Challenging the Critics' (2012) 10 International Journal of Constitutional Law 709
- —. 'Dworkin's Theory of Rights in the Age of Proportionality' (2018) 12 Law & Ethics of Human Rights 281
- Möllers, C, 'Scope and Legitimacy of Judicial Review in German Constitutional Law the Court versus the Political Process' in H Pünder and C Waldhoff (eds), *Debates in German Public Law* (Oxford, Hart Publishing, 2014) 3–25
- Möllers, C, and Birkenkotter, H, 'Towards a New Conceptualism in Comparative Constitutional Law, or Reviving the German Tradition of the Lehrbuch' (2014) 12 International Journal of Constitutional Law 603
- Monahan, J, and Walker, L, 'Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law' (1986) 134 University of Pennsylvania Law Review 477
- ---. An Introduction to Social Science in Law (New York, Foundation Press, 2006)
- ---. 'Twenty-Five Years of Social Science in Law' (2011) 35 Law and Human Behavior 72
- Monahan, J, Walker, L, and Mitchell, G, 'Contextual Evidence of Gender Discrimination: The Ascendance of "Social Frameworks" (2008) 94 Virginia Law Review 1715
- Morgan, EM, 'Judicial Notice' (1944) 57 Harvard Law Review 269
- Morton, FL, and Brodie, I, 'The Use of Extrinsic Evidence in Charter Litigation Before the Supreme Court of Canada' (1993) 3 National Journal of Constitutional Law 1
- Moulds, S, Committees of Influence: Parliamentary Rights Scrutiny and Counter-Terrorism Lawmaking in Australia (Singapore, Springer, 2020)
- Mounsey, R, 'Social Science Evidence as Proof of Legislative Fact in Constitutional Litigation: A Proposed Framework for a Reliability Analysis' (2014) 32 National Journal of Constitutional Law 127
- Mullane, GR, 'Evidence of Social Science Research: Law, Practice, and Options in the Family Court of Australia' 72 Australian Law Journal 434
- Murray, PL, and Stürner, R, German Civil Justice (Durham, Carolina Academic Press, 2004)
- Newton, MA, and May, L, Proportionality in International Law (New York, Oxford University Press, 2014)
- Nicolson, D, 'Truth, Reason and Justice: Epistemology and Politics in Evidence Disclosure' (1994) 57 Modern Law Review 726
- Nolte, G, 'General Principles of German and European Administrative Law A Comparison in Historical Perspective' (1994) 57 Modern Law Review 191
- Odgers, S, Uniform Evidence Law, 15th edn (Sydney, Thomson Reuters, 2020)
- Oreb, N, 'Betting across Borders Betfair Pty Limited v Western Australia' (2009) 31 Sydney Law Review 607
- Palmer, VV, 'Mixed Jurisdictions' in JM Smits (ed), Elgar Encyclopedia of Comparative Law, 2nd edn (Cheltenham, Edward Elgar, 2012) 590–99
- Pardo, MS, 'The Field of Evidence and the Field of Knowledge' (2005) 24 Law and Philosophy 321—. 'The Gettier Problem and Legal Proof' (2010) 16 Legal Theory 37
- Pearce, D, Statutory Interpretation in Australia, 9th edn (Sydney, LexisNexis Butterworths, 2019)
- Pearce, D, and Argument, S, Delegated Legislation in Australia, 5th edn (Sydney, LexisNexis Butterworths, 2017)

- Pepall, JT, 'What's the Evidence? The Use the Supreme Court of Canada Makes of Evidence in Charter Cases' in AA Peacock (ed), Rethinking the Constitution: Perspectives on Canadian Constitutional Reform, Interpretation, and Theory (Toronto, Oxford University Press, 1996) 161–76
- Perry, SR, 'Second-Order Reasons, Uncertainty and Legal Theory' (1988) 62 Southern California Law Review 913
- Perryman, B, 'Adducing Social Science Evidence in Constitutional Cases' (2018) 44 Queens's Law Journal 121
- Petersen, N, 'Avoiding the Common-Wisdom Fallacy: The Role of Social Sciences in Constitutional Adjudication' (2013) 11 International Journal of Constitutional Law 294
- —. 'How to Compare the Length of Lines to the Weight of Stones: Balancing and the Resolution of Value Conflicts in Constitutional Law' (2013) 14 German Law Journal 1387
- —. 'Proportionality and the Incommensurability Challenge in the Jurisprudence of the South African Constitutional Court' (2014) 30 South African Journal on Human Rights 405
- —. 'Balancing and Judicial Self-Empowerment: A Case Study on the Rise of Balancing in the Jurisprudence of the Federal Constitutional Court' (2015) 4 Global Constitutionalism 49
- —. Proportionality and Judicial Activism: Fundamental Rights Adjudication in Canada, Germany and South Africa (Cambridge, Cambridge University Press, 2017)
- —. 'Alexy and the "German" Model of Proportionality: Why the Theory of Constitutional Rights Does Not Provide a Representative Reconstruction of the Proportionality Test' (2020) 21 German Law Journal 163
- Pirker, B, Proportionality Analysis and Models of Judicial Review: A Theoretical and Comparative Study (Groningen, Europa Law Publishing, 2013)
- Poole, T, 'The Reformation of English Administrative Law' (2009) 68 Cambridge Law Journal 142—. 'Proportionality in Perspective' [2010] New Zealand Law Review 369
- Popelier, P, 'Preliminary Comments on the Role of Courts as Regulatory Watchdogs' (2012) 6

 Legisprudence 257
- —. 'The Court as Regulatory Watchdog: The Procedural Approach in the Case Law of the European Court of Human Rights' in P Popelier, A Mazmanyan and W Vandenbruwaene (eds), The Role of Constitutional Courts in Multilevel Governance (Cambridge, Intersentia, 2013) 249–67
- Raz, J, Practical Reason and Norms (first published by Hutchinson 1975, Oxford, Oxford University Press, 1999 edn)
- Réaume, D, Limitations on Constitutional Rights: The Logic of Proportionality, University of Oxford Legal Research Paper Series, Paper No 26/2009 (2009)
- Reimann, M, 'Nineteenth Century German Legal Science' (1989) 31 Boston College Law Review 837 Rivers, J, 'Proportionality and Variable Intensity of Review' (2006) 65 Cambridge Law Journal 174
- —. 'Proportionality, Discretion and the Second Law of Balancing' in G Pavlakos (ed), Law, Rights and Discourse: The Legal Philosophy of Robert Alexy (Oxford, Hart Publishing, 2007) 167–88
- —. 'The Presumption of Proportionality' (2014) 77 Modern Law Review 409
- Roberts, A, 'Probative Value, Reliability, and Rationality' in A Roberts and J Gans (eds), Critical Perspectives on the Uniform Evidence Law (Sydney, Federation Press, 2017) 63–79
- Roberts, H, 'A Mirror to the Man Reflecting on Justice William Deane: A Private Man in Public Office' (2011) 32 Adelaide Law Review 17
- Rose, D, 'Cole v Whitfield: "Absolutely Free" Trade?' in HP Lee and G Winterton (eds), Australian Constitutional Landmarks (Cambridge, Cambridge University Press, 2003) 335–54
- Rosenberg, GN, and Williams, JM, 'Do Not Go Gently Into That Good Right: The First Amendment in the High Court of Australia' (1997) Supreme Court Law Review 439
- Roux, T, 'Transformative Constitutionalism and the Best Interpretation of the South African Constitution: Distinction without a Difference' (2009) 20 Stellenbosch Law Review 258
- —. The Politics of Principle: The First South African Constitutional Court, 1995–2005 (Cambridge, Cambridge University Press, 2013)
- Saks, MJ, 'Judicial Attention to the Way the World Works' (1990) 75 Iowa Law Review 1011

- Saunders, C, 'Interpreting the Constitution' (2004) 15 Public Law Review 289
- —. 'The Use and Misuse of Comparative Constitutional Law' (2006) 13 Indiana Journal of Global Legal Studies 37
- —. 'Australia: Interpretation and Review' in AR Brewer-Carías (ed), Constitutional Courts as Positive Legislators: A Comparative Law Study (Cambridge, Cambridge University Press, 2011) 213–50
- ---. The Constitution of Australia: A Contextual Analysis (Oxford, Hart Publishing, 2011)
- Saunders, C, and Donaldson, M, 'Values in Australian Constitutionalism' in D Davis, A Richter and C Saunders (eds), An Inquiry into the Existence of Global Values: Through the Lens of Comparative Constitutional Law (Oxford, Hart Publishing, 2015) 15–66
- Sawer, G, Australian Federalism in the Courts (Melbourne, Melbourne University Press, 1967)
- Schauer, F, 'Balancing, Subsumption, and the Constraining Role of Legal Text' (2010) 4 Law & Ethics of Human Rights 35
- Schwikkard, PJ, and van der Merwe, SE, Principles of Evidence, 4th edn (Cape Town, Juta, 2016)
- Selway, B, 'The Rise and Rise of the Reasonable Proportionality Test in Public Law' (1996) 7 Public Law Review 212
- —. 'The Use of History and Other Facts in the Reasoning of the High Court of Australia' (2001) 20 University of Tasmania Law Review 129
- Serpell, AJ, The Reception and Use of Social Policy Information in the High Court of Australia (Sydney, Lawbook Co, 2006)
- Sharpe, RJ, and Roach, K, *The Charter of Rights and Freedoms*, 5th edn (Toronto, Irwin Law, 2013) Simpson, A, 'Grounding the High Court's Modern Section 92 Jurisprudence: The Case for Improper Purpose as the Touchstone' (2005) 33 Federal Law Review 445
- —. 'Section 92 as a Transplant Recipient?' in J Griffiths and J Stellios (eds), Current Issues in Australian Constitutional Law: Tributes to Professor Leslie Zines (Sydney, Federation Press, 2020) 283–94
- Slovenko, R, 'The Superfluous Rule of Evidence on Judicial Notice' (1998) 2 International Journal of Evidence and Proof 51
- Somek, A, 'The Indelible Science of Law' (2009) 7 International Journal of Constitutional Law 424 Stellios, J, Zines's The High Court and the Constitution, 6th edn (Sydney, Federation Press, 2015)
- —. 'The Masking of Judicial Power Values: Historical Analogies and Double Function Provisions' (2017) 28 Public Law Review 138
- Stoljar, J, 'Invisible Cargo: The Introduction of English Law into Australia' in JT Gleeson, JA Watson and RCA Higgins (eds), *Historical Foundations of Australian Law* (Sydney, Federation Press, 2013) vol 1, 194–211
- Stone, A, 'The Limits of Constitutional Text and Structure: Standards of Review and the Freedom of Political Communication' (1999) 23 Melbourne University Law Review 668
- —. 'Australia's Constitutional Rights and the Problem of Interpretive Disagreement' (2005) 27 Sydney Law Review 29
- —. 'The Limits of Constitutional Text and Structure Revisited' (2006) 29 University of New South Wales Law Journal 842
- —. 'Constitutional Orthodoxy in the United Kingdom and Australia: The Deepening Divide' (2014) 38 Melbourne University Law Review 836
- —. 'Judicial Reasoning' in C Saunders and A Stone (eds), The Oxford Handbook of the Australian Constitution (Oxford, Oxford University Press, 2018) 472–87
- ---. 'Proportionality and its Alternatives' (2020) 48 Federal Law Review 123
- Stone, J, 'A Government of Laws and Yet of Men' (1948) 1 University of Western Australia Law Review 461
- Stone, J, and Wells, WAN, Evidence: Its History and Policies (Sydney, Butterworths, 1991)
- Stone Sweet, A, and Mathews, J, 'Proportionality Balancing and Global Constitutionalism' (2008) 47 Columbia Journal of Transnational Law 72
- ——. Proportionality Balancing & Constitutional Governance: A Comparative & Global Approach (Oxford, Oxford University Press, 2019)

- Stubbs, MT, 'From Foreign Circumstances to First Instance Considerations: Extrinsic Material and the Law of Statutory Interpretation' (2006) 34 Federal Law Review 103
- —. 'A Brief History of the Judicial Review of Legislation under the Australian Constitution' (2012) 40 Federal Law Review 227
- Sullivan, ET, and Frase, RS, Proportionality Principles in American Law: Controlling Excessive Government Actions (Oxford, Oxford University Press, 2009)
- Taylor, G, 'Teachers' Religious Headscarves in German Constitutional Law' (2017) 6 Oxford Journal of Law and Religion 93
- Towfigh, EV, 'Empirical Arguments in Public Law Doctrine: Should Empirical Legal Studies Make a "Doctrinal Turn"?' (2014) 12 International Journal of Constitutional Law 670
- Trakman, LE, Cole-Hamilton, W, and Gatien, S, 'R v Oakes 1986–1997: Back to the Drawing Board' (1998) 36 Osgoode Hall Law Journal 83
- Tran, C, 'Facts and Evidence in Litigation under the Charter of Human Rights and Responsibilities Act 2006 (Vic) and the Human Rights Act 2004 (ACT)' (2012) 36 Melbourne University Law Review 287
- Tsakyrakis, S, 'Proportionality: An Assault on Human Rights?' (2009) 7 International Journal of Constitutional Law 468
- Tushnet, M, 'The Possibilities of Comparative Constitutional Law' (1999) 108 Yale Law Journal 1225
- Twining, W, 'Some Scepticism about Some Scepticism' (1984) 11 Journal of Law and Society 137

 —. 'The Rationalist Tradition of Evidence Scholarship', first published in E Campbell and L Waller (eds), Well and Truly Tried: Essays on Evidence in Honour of Sir Richard Eggleston
- L Waller (eds), Well and Truly Tried: Essays on Evidence in Honour of Sir Richard Eggleston (Sydney, Law Book Co, 1982), republished with some additions in W Twining, Rethinking Evidence: Exploratory Essays, 2nd edn (Cambridge, Cambridge University Press, 2006) 35–98
- —. 'Taking Facts Seriously Again' in P Roberts and M Redmayne (eds), Innovations in Evidence and Proof: Integrating Theory, Research and Teaching (Oxford, Hart Publishing, 2007) 65–86
- Twining, W, and Miers, D, How to Do Things with Rules (Cambridge, Cambridge University Press, 2010)
- Twining, W, O'Donovan, K, and Paliwala, A, 'Ernie and the Centipede: Some Theoretical Aspects of Classification for the Purposes of Law Reform' in JA Jolowicz (ed), *The Division and Classification of the Law* (London, Butterworths, 1970) 10–29
- Urbina, FJ, 'Is it Really That Easy? A Critique of Proportionality and "Balancing as Reasoning" (2014) 27 Canadian Journal of Law and Jurisprudence 167
- Van der Schyff, G, Judicial Review of Legislation: A Comparative Study of the United Kingdom, the Netherlands and South Africa (Dordrecht, Springer, 2010)
- Van Wees, N, 'Judicial Review of Legislators' Motives' (2017) 45 Federal Law Review 681
- Vanberg, G, The Politics of Constitutional Review in Germany (Cambridge, Cambridge University Press, 2005)
- Varuhas, JNE, 'Taxonomy and Public Law' in M Elliott, JNE Varuhas and SW Stark (eds), The Unity of Public Law? Doctrinal, Theoretical and Comparative Perspectives (Oxford, Hart Publishing, 2018) 39–78
- Villalta Puig, G, The High Court of Australia and Section 92 of the Australian Constitution (Sydney, Lawbook Co, 2008)
- Von Bernstorff, J, 'Proportionality without Balancing: Why Judicial Ad Hoc Balancing is Unnecessary and Potentially Detrimental to the Realisation of Individual and Collective Self-Determination' in L Lazarus, C McCrudden and N Bowles (eds), Reasoning Rights: Comparative Judicial Engagement (Oxford, Hart Publishing, 2014) 63–86
- Von Bogdandy, A, 'The Past and Promise of Doctrinal Constructivism: A Strategy for Responding to the Challenges Facing Constitutional Scholarship in Europe' (2009) 7 International Journal of Constitutional Law 364
- Von Brünneck, A, 'Constitutional Review and Legislation in Western Democracies' in C Landfried (ed), Constitutional Review and Legislation: An International Comparison (Baden-Baden, Nomos Verlagsgesellschaft, 1988) 219–60

- Waldron, J, 'The Core of the Case against Judicial Review' (2006) 115 Yale Law Journal 1346
- Walker, L, and Monahan, J, 'Social Frameworks: A New Use of Social Science in Law' (1987) 73

 Virginia Law Review 559
- Webber, G, The Negotiable Constitution: On the Limitation of Rights (Cambridge, Cambridge University Press, 2009)
- —. 'Judicial Power and Judicial Responsibility' (2017) 36 University of Queensland Law Journal 205
- —. 'Proportionality, Balancing, and the Cult of Constitutional Rights Scholarship' (2010) 23 Canadian Journal of Law and Jurisprudence 179
- Weinrib, LE, 'Canada's Charter of Rights: Paradigm Lost'? (2001) 6 Review of Constitutional Studies 119
- —. 'The Postwar Paradigm and American Exceptionalism' in S Choudhry (ed), *The Migration of Constitutional Ideas* (Cambridge, Cambridge University Press, 2007) 84–111
- Weinrib, S, 'The Emergence of the Third Step of the Oakes Test in Alberta v Hutterian Brethren of Wilson Colony' (2010) 68 University of Toronto Faculty of Law Review 77
- Weis, LK, 'On Just Terms, Revisited' (2017) 45 Federal Law Review 223
- Wells, WAN, Natural Logic, Judicial Proof and Objective Facts (Sydney, Federation Press, 1994)
- Welsh, R, 'A Path to Purposive Formalism: Interpreting Chapter III for Judicial Independence and Impartiality' (2012) 39 Monash University Law Review 66
- Wesson, M, 'Crafting a Concept of Deference for the Implied Freedom of Political Communication' (2016) 27 Public Law Review 101
- Wesson, M, and du Plessis, M, 'Fifteen Years On: Central Issues Relating to the Transformation of the South African Judiciary' (2008) 24 South African Journal on Human Rights 187
- Wheatle, S, Principled Reasoning in Human Rights Adjudication (Oxford, Hart Publishing, 2017)
- Wigmore, JH, The Science of Judicial Proof, as given by Logic, Psychology, and General Experience, and Illustrated in Judicial Trials, 3rd edn (Boston, Little, Brown, 1937)
- Willheim, E, 'Amici Curiae and Access to Constitutional Justice in the High Court of Australia' (2010) 22 Bond Law Review 126
- Williams, G, Brennan, S, and Lynch, A, Blackshield and Williams Australian Constitutional Law and Theory: Commentary and Materials, 7th edn (Sydney, Federation Press, 2018)
- Williams, LA, 'The Role of Courts in the Quantitative-Implementation of Social and Economic Rights: A Comparative Study' [2010] Constitutional Court Review 141
- Wiseman, D, 'Managing the Burden of Doubt: Social Science Evidence, the Institutional Competence of Courts and the Prospects for Anti-poverty Charter Claims' (2014) 33 National Journal of Constitutional Law 1
- Woolhandler, A, 'Rethinking the Judicial Reception of Legislative Facts' (1988) 41 Vanderbilt Law Review 111
- Woolman, S, and Botha, H, 'Limitations: Shared Constitutional Interpretation, An Appropriate Normative Framework and Hard Choices' in S Woolman and M Bishop (eds), Constitutional Conversations (Pretoria, Pretoria University Law Press, 2008) 149–86
- Yowell, P, 'Empirical Research in Rights-Based Judicial Review of Legislation' in KS Ziegler and P Huber (eds), Current Problems in the Protection of Human Rights: Perspectives from Germany and the UK (Oxford, Hart Publishing, 2013) 155–86
- —. 'Proportionality in United States Constitutional Law' in L Lazarus, C McCrudden and N Bowles (eds), Reasoning Rights: Comparative Judicial Engagement (Oxford, Hart Publishing, 2014) 87–114
- Zines, L, The High Court and the Constitution, 5th edn (Sydney, Federation Press, 2008)