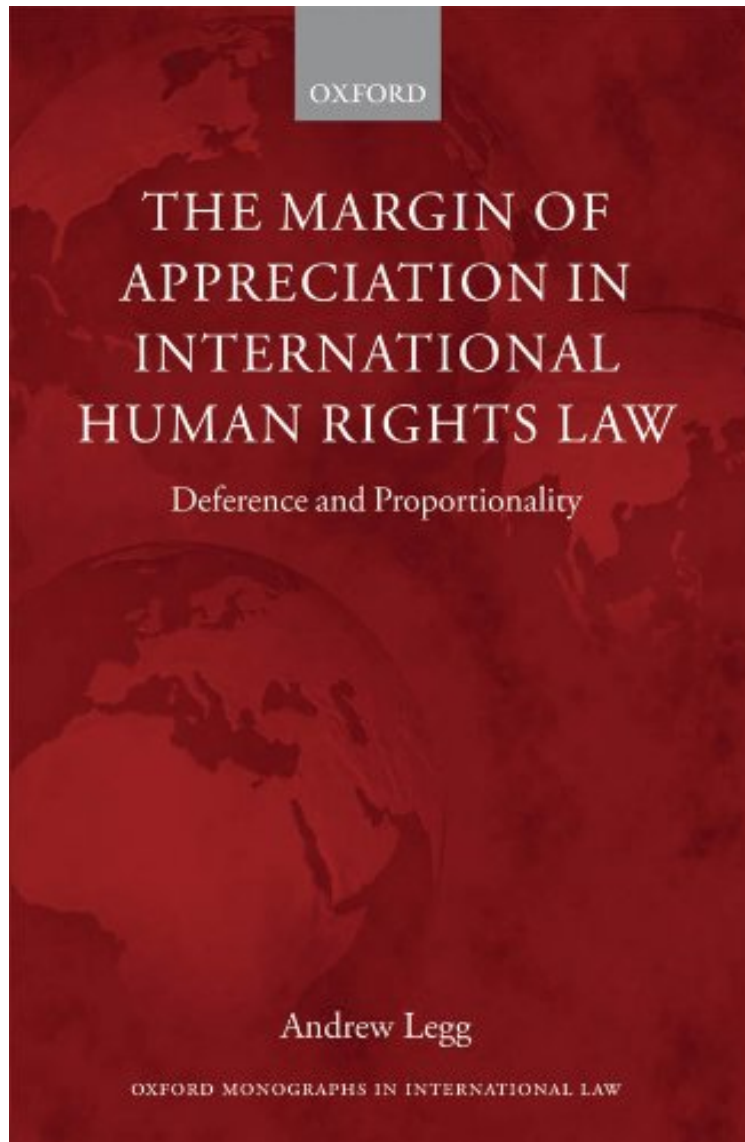


[PDF] The Margin of Appreciation in International Human Rights Law: Deference and Proportionality
(Oxford Monographs in International Law)

The Margin of Appreciation in International Human Rights Law: Deference and Proportionality (Oxford Monographs in International Law)

Von Andrew Legg

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Margin of appreciation...
Von Phillip Taylor MBE
MARGIN OF APPRECIATION A KEY, YET CONTROVERSIAL, DOCTRINE FOR INTERNATIONAL LAW
An appreciation by Phillip Taylor MBE and Elizabeth Taylor of Richmond Green Chambers
This book is part of the Oxford Monographs in International Law series published by the Oxford University Press. It is a recent work on the doctrine of margin of appreciation adding a distinguished title to the growing OUP series. Margin of appreciation is noted as one of the most potent and interesting legal concepts to have emerged in international law in recent decades. So, in accordance with the aims of the series, this is an important and original piece of legal research into the nature and ramifications of this judicial doctrine, which allows individual member states to have some latitude in their interpretation of their own human rights treaty obligations, notably the European Convention on Human Rights. The author, Andrew Legg, provides an absorbing in-depth analysis and defence of the doctrine in international human rights law. Admitting that the margin of appreciation is a controversial doctrine and not the easiest to grasp, he points out that it is a doctrine of judicial deference and a common and appropriate feature of adjudication which lies at the heart of many of the most important international human rights cases. Ouch! There's some more controversy here. We are not inordinately fond of such terms as judicial deference, but this is a personal view only, of course. However, if we interpret this correctly, it begs a number of questions, including one of whether judges can make decisions comparable to dissenting judgments, and centering on the ability of an individual state to opt out of, or ignore all, or part of, for example, the Universal Declaration of Human Rights on a particular matter. We have the same thing for the EU as many Prime ministers know (sometimes to their cost!) Legg cites the example of prisoners in UK jails being allowed the vote, certainly a repugnant concept to many in the UK and one on which the majority would probably prefer a dissenting judgment stance. Does the margin of appreciation doctrine therefore allow the withholding of voting rights to prisoners in contravention, actually, of the decision of the European Court of Human Rights? This book certainly moves the debate forward on this and any number of related issues. Particularly interesting for lawyers is Part III of the book in its exploration of how margin of appreciation specifically functions in the judicial decision-making process. Practitioners as well as academics involved in international law will appreciate and no doubt profit from this erudite and closely argued examination of the complexities of margin of appreciation. It's an important book and will be a welcome addition to the ongoing debate on what is becoming an increasingly significant doctrine as governments continue to grapple with the future of human rights laws. The publication date is cited as at April 2012.

Kurzbeschreibung
The margin of appreciation is a judicial doctrine whereby international courts allow states to have a measure of diversity in their interpretation of human rights treaty obligations. The doctrine is at the heart of some of the most important international human rights decisions. Does it undermine the universality of human rights? How should judges decide whether to give this margin of appreciation to states? How can lawyers make best use of arguments for or against the margin of appreciation? This book answers these questions, and broadens the discussion on the margin of appreciation by including material beyond the ECHR system. It provides a comprehensive justification of the doctrine, and ALLFSCA14I the key cases affecting the doctrine in practice. Part One provides a systematic defence of the margin of appreciation doctrine in international human rights law. Drawing on the philosophy of practical reasoning the book argues that the margin of appreciation is a doctrine of judicial deference and is a common and appropriate feature of adjudication. The book argues that the margin of appreciation doctrine prevents courts from imposing unhelpful uniformity, whilst allowing decisions to be consistent with the universality of human rights. Part Two considers the key case law of the European Court of Human Rights, the Inter-American Court of Human Rights, and the UN Human Rights Committee, documenting the margin of appreciation in practice. The analysis uniquely takes a broad look at the factors affecting the margin of appreciation. Part Three explores how the margin of appreciation operates in the judicial decision-making process, reconceptualising the proportionality assessment and explaining how the nature of the right and the type of case affect the courts' reasoning. *Pressestimmen*
Legg's book is a welcome addition to the margin of appreciation debate, shedding light on this doctrine through the prism of notions of deference and practical reasoning. * Marjan Ajevski, *Nordic Journal of Human Rights* * Practitioners as well as academics involved in international law will appreciate and no doubt profit from this erudite and closely argued examination of the complexities of margin of appreciation. * Phillip Taylor MBE and Elizabeth Taylor of Richmond Green Chambers * Written with great clarity and cogently argued, Legg's book succinctly takes stock of the existing arguments for and against deference in judicial review beyond the state and provides ample empirical material from the three tribunals case-law to substantiate his claims. It will be an indispensable work for all students and scholars dealing with issues of deference and its operationalisation in international judicial practice, and can only be warmly

recommended. * Andreas von Staden, Human Rights Law *Kurzbeschreibung

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