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**In Defence of Due Deference**

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**Alison L. Young\***

author

The doctrine of deference permeates human rights review. It plays a role in defining Convention rights, in determining the nature of the proportionality test applied when analysing non-absolute rights, as well as in deciding the urgency of its application. The role of deference has recently been subjected to both judicial and academic criticism, some of which advocates the demise of the doctrine. This article develops a contextual account of deference that is justified for epistemic reasons, rather than reasons of relative authority. This conception is able to withstand current criticism and is modest enough to play a role in a range of different justifications and understandings of judicial review under the Human Rights Act. The article then provides a more detailed account of deference, taking account of the relative institutional features of the legislature, executive and judiciary, without running the risk that the court fails to perform its constitutional function of protecting individual rights.

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