



## The Modes of Constitutional Analysis: Structuralism (Part 7)

January 13, 2022

This Legal Sidebar Post is the seventh in a nine-part series that discusses certain “methods” or “modes” of analysis that the Supreme Court has employed to determine the meaning of a provision within the Constitution. (For additional background on this topic and citations to relevant sources, please see CRS Report R45129, *Modes of Constitutional Interpretation*.)

One of the most common modes of constitutional interpretation is based on the Constitution’s structure. Drawing inferences from the Constitution’s design gives rise to some of the most important relationships the Constitution establishes—the relationships among the three branches of the federal government (commonly called *separation of powers* or *checks and balances*); the relationship between the federal and state governments (known as *federalism*); and the relationship between the government and the people. Two basic approaches seek to make sense of these relationships.

The first, known as *formalism*, posits that the Constitution sets forth all the ways in which federal power may be shared, allocated, or distributed. This approach focuses on the structural divisions in the Constitution with the idea that close adherence to these rules is required to achieve the preservation of liberty. An example of the use of this form of structuralism as a mode of interpretation is found in *Immigration and Naturalization Service v. Chadha*. In that case, the Court held that one house of Congress could not by resolution unilaterally curtail the executive branch’s statutory authority to allow a deportable alien to remain in the United States. The Court examined the Constitution’s structure and noted that, under the Bicameralism and Presentment Clauses in Article I, Sections 1 and 7, laws with subject matter that is “legislative in character or effect” require passage by a majority in both houses and presentment to the President for his signature or veto. The Court wrote: “It emerges clearly that the prescription for legislative action in [Article I, Sections 1 and 7 of the Constitution] represents the Framers’ decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered, procedure.” Viewing the exercise of the one-house veto in *Chadha* to be of a legislative nature, the Court concluded that the structural relationships the Constitution established between the legislative and executive branches forbid the “one-House legislative veto.” As demonstrated in *Chadha*, a formalist approach to separation-of-powers questions rejects not only looking to post-ratification historical practices as a guide for determining constitutional meaning, but also eschews balancing tests that weigh the degree of interference with one branch’s powers.

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# Constitutional Analysis

**Peter Auber**



## **Constitutional Analysis:**

**Constitutional Analysis in a Nutshell** Thomas Baker, 2025-01-08 This authoritative text provides a framework for understanding individual liberty and governmental power and the institutional role played by the Supreme Court of the United States The comprehensive coverage in this new and improved edition includes all the major topics judicial review commerce clause and state powers federalism separation of powers congressional and executive powers and individual civil rights and civil liberties It includes diagrams that aid understanding of the fundamentals of our system of government A chapter samples all the academic literature on the subject in condensed form An appendix summarizes the case law found in all the casebooks in a straightforward manner to provide an overview and to aid in review for the final examination Extremely accessible and comprehensive this is a paperback course in American Constitutional Law your own personal tutor

**Constitutional Analysis in a Nutshell** Jerre Stockton Williams, 1979 A succinct exposition of the law to which a student or lawyer can turn for reliable guidance Back cover **An Economic Analysis of the Constitutional Restrictions Upon Municipal Indebtedness in Illinois** Ward Leslie Bishop, 1928 *An Economic Analysis of the Constitutional Restrictions Upon Public Indebtedness in the United States* Horace Secrist, 1914 **State Constitutional Law**, 1988 **The Constitution As Political Structure** Martin H. Redish, 1995-01-05 Over the last forty years modern constitutional scholarship has concentrated on an analysis of rights while principles of constitutional law concerning the structure of government have been largely downplayed The irony of this interpretive emphasis is that the body of the Constitution contains relatively little dealing directly with rights Rather it is primarily a blueprint for the establishment of a complex form of federal democratic structure This work emphasizes the central role served by the structural portions of the Constitution Redish argues that these structural values were designed to provide the framework in which our rights based system may flourish and that judicial abandonment of these structural values threatens the very foundations of American political theory

**A History and Analysis of the constitution of the United States, with a full account of the Confederations which preceded it ... Second edition** Nathaniel C. TOWLE, 1873 *The Context of Constitution* Dimitri Ginev, 2006-07-20 This study brings together ideas developed over many years in various lectures in an endeavour to clarify the concept of hermeneutic fore structure of scientific research The starting point of my investigations was the outline of an interpretative approach to the constitution of science's cognitive content In the late 1970s I was preoccupied with a question that nowadays should be formulated as follows Is it possible to claim a validity of the hermeneutic view of the situatedness in a tradition also for the natural sciences I was convinced that the negative answer implies a self defeating position It states that in order to champion the cultural universality of hermeneutics one has to profess the non hermeneutic nature of the natural sciences Paradoxically enough this a wer presupposes a sharp dividing line between dialogical experience and monological research in culture in order to stress the universality of hermeneutics Long before the period of perestroika in my corner I learned from

Joseph Kockelmans Patrick Heelan and Theodore Kisiel how the universalization of hermeneutics can include the natural sciences without ignoring their cognitive specificity Somewhat later in the aftermath of the discussions over the finalization of science I began to confront the view that it would be a kind of trivializing the struggle for a philosophical hermeneutics if the theory observation nexus is treated as a specific hermeneutic circle No doubt the view is correct I was however dissatisfied with the way of arguing for it

The System of the Constitution Adrian Vermeule,2011-12-30 Adrian Vermeule analyses constitutionalism through the lens of systems theory originally developed in biology computer science political science and other disciplines

*Empirical Legal Analysis* Yun-chien Chang,2013-12-17 This innovative volume explores empirical legal issues around the world While legal studies have traditionally been worked on and of letters and with a normative bent in recent years quantitative methods have gained traction by offering a brand new perspective of understanding law That is legal scholars have started to crunch numbers not letters to tease out the effects of law on the regulated industries citizens or judges in reality In this edited book authors from leading institutions in the U S Europe and Asia investigate legal issues in South Africa Argentina the U S Israel Taiwan and other countries Using original data in a variety of statistical tools from the most basic chi square analysis to sophisticated two stage least square regression models contributors to this book look into the judicial behaviours in Taiwan and Israel the determinants of constitutional judicial systems in 100 countries and the effect of appellate court decisions on media competition In addition this book breaks new ground in informing important policy debates Specifically how long should we incarcerate criminals Should the medical malpractice liability system be reformed Do police reduce crime Why is South Africa s democratic transition viable With solid data as evidence this volume sheds new light on these issues from a road more and more frequently taken what is known as empirical legal studies analysis This book should be useful to students practitioners and professors of law economics and public policy in many countries who seek to understand their legal system from a different and arguably more scientific perspective

The Constitution of the United States of America Mark Tushnet,2015-08-27 This is the second edition of Professor Tushnet s short critical introduction to the history and current meaning of the United States Constitution It is organised around two themes first the US Constitution is old short and difficult to amend Second the Constitution creates a structure of political opportunities that allows political actors including political parties to pursue the preferred policy goals even to the point of altering the very structure of politics Deploying these themes to examine the structure of the national government federalism judicial review and individual rights the book provides basic information about and deeper insights into the way the US constitutional system has developed and what it means today

**A Student's Guide to Basic Constitutional Analysis** Russell Galloway,Rose Elizabeth Bird,1996

**Supplement to An Analysis of the Constitution of the East-India Company** Peter Auber,1828

**Law Teachers' Manual of the Analysis of Cases and the Use of Law Books** Raleigh Augustus Daly,1914

**The Constitution of the United States of America** United States,2004 Updated

edition Year 2014 The Constitution of the United States of America Analysis and Interpretation 2014 Supplement Analysis of Cases Decided by the Supreme Court to July 1 2014 is available here <https://bookstore.gpo.gov/products/sku/052-071-01574-4> Senate Document 108-17 2004 revision Published at the direction of the U S Senate for the first time in 1913 it is popularly known as the Constitution Annotated or CONAN This publication has been published as a bound edition every 10 years with updates addressing new constitutional law cases issued every two years The analysis is provided by the Congressional Research Service CRS in the Library of Congress The print version is used primarily by federal lawmakers libraries and law firms Other related products Constitution Jefferson s Manual and Rules of the House of Representatives of the United States One Hundred Fourteenth Congress can be found here <https://bookstore.gpo.gov/products/sku/052-071-01572-8> Civics and Citizenship Toolkit can be found here <https://bookstore.gpo.gov/products/sku/027-002-00575-9> The Citizen s Almanac Fundamental Documents Symbols and Anthems of the United States can be found here <https://bookstore.gpo.gov/products/sku/027-002-00606-2> How Our Laws Are Made 2007 can be found here <https://bookstore.gpo.gov/products/sku/052-071-01465-9> Our Flag can be found here <https://bookstore.gpo.gov/products/sku/052-071-01446-2>

### **Constitutionalising Secession**

David Haljan, 2014-11-01 Constitutionalising Secession critically analyses conceptions of constitutional order implicit in the leading models of secession and takes as a leading case study the judicial and legislative response to secession in Canada

*Political Science* Rohan Bhattacharya, 2025-02-20 Political Science Modern Approaches offers a comprehensive and accessible exploration of political science We provide a thorough examination of key concepts theories and issues shaping contemporary politics on a global scale With a focus on relevance and applicability we delve into various aspects of political science ranging from governance and democracy to international relations and social justice Through engaging narratives case studies and real world examples readers gain insights into the workings of political systems the dynamics of power and the challenges facing societies in the 21st century Our interdisciplinary approach draws from diverse fields such as sociology economics and history offering a holistic understanding of political phenomena By integrating these perspectives we highlight the interconnectedness of social economic and cultural factors in shaping political outcomes This lens enables readers to grasp the complexities of contemporary political issues from globalization and environmental sustainability to technological advancements and social movements We place a strong emphasis on critical thinking and analytical skills empowering readers to evaluate political phenomena with a discerning eye Thought provoking questions debates and exercises encourage readers to engage critically with political theories ideologies and policies fostering a deeper understanding of political processes Addressing pressing issues such as globalization inequality and technological change we examine how political theories and concepts play out in practice By connecting theory to practice we demonstrate the relevance of political science in everyday life and the broader global context Our global perspective recognizes the diversity of political systems cultures and experiences across different regions and countries By exploring the rich tapestry of political

practices and institutions worldwide we ensure readers gain a nuanced understanding of politics that transcends national boundaries     *Constitutional History of the United States from Their Declaration of Independence to the Close of Their Civil War* George Ticknor Curtis,1897     Spectrum Analysis in Its Application to Terrestrial Substances, and the Physical Constitution of the Heavenly Bodies ... Translated from the Second Enlarged and Revised German Edition by J. and C. Lassell. Edited, with Notes by W. Huggins. With ... Plates and Ängström's and Kirchhoff's Maps Thomas Joseph Heinrich SCHELLEN,1872     Pennsylvania Records and Briefs: Supreme Court of Pennsylvania ,2004-08-09 In the Matter of CONDEMNATION BY URBAN REDEVELOPMENT AUTHORITY OF PITTSBURGH OF CERTAIN LAND IN THE 22ND WARD OF THE CITY OF PITTSBURGH ALLEGHENY COUNTY PENNYSLVANIA REDEVELOPMENY AREA NO 51 FEDERAL NORTH OF BEING PROPERTY OF NEW GARDEN REALTY CORPORATION A PENNSYLVANIA CORPORATION EXECUTORS SUCCESSORS ASSIGNS OR ANY OTHER PERSONS FOUND TO HAVE ANY INTEREST IN THE PROPERTY

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