

# Desperately Seeking Certainty

## The Misguided Quest for Constitutional Foundations



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# Desperately Seeking Certainty The Misguided Quest For Constitutional Foundations

**JS Bruner**



### **Desperately Seeking Certainty The Misguided Quest For Constitutional Foundations:**

*Desperately Seeking Certainty* Daniel A. Farber, Suzanna Sherry, 2024-05-31 Irreverent provocative and engaging *Desperately Seeking Certainty* attacks the current legal vogue for grand unified theories of constitutional interpretation On both the Right and the Left prominent legal scholars are attempting to build all of constitutional law from a single foundational idea Dan Farber and Suzanna Sherry find that in the end no single all encompassing theory can successfully guide judges or provide definitive or even sensible answers to every constitutional question Their book brilliantly reveals how problematic foundationalism is and shows how the pragmatic multifaceted common law methods already used by the Court provide a far better means of reaching sound decisions and controlling judicial discretion than do any of the grand theories

**Originalism, Federalism, and the American Constitutional Enterprise** Edward A. Purcell, 2007-12-28 In this lively historical examination of American federalism a leading scholar in the field refutes the widely accepted notion that the founding fathers carefully crafted a constitutional balance of power between the states and the federal government Edward A Purcell Jr bases his argument on close analysis of the Constitution s original structure and the ways that structure both induced and accommodated changes over the centuries There was no clear agreement among the founding fathers regarding the true nature of American federalism Purcell contends nor was there a consensus on correct lines dividing state and national authority Furthermore even had there been some true original understanding the elastic and dynamic nature of the constitutional structure would have made it impossible for subsequent generations to maintain any original or permanent balance The author traces the evolution of federalism through the centuries focusing particularly on shifting interpretations founded on political interests He concludes with insights into current issues of federal power and a discussion of the grounds on which legitimate decisions about federal and state power should rest

**Supreme Court Confirmation Hearings and Constitutional Change** Paul M. Collins, Lori A. Ringhand, 2013-06-24 This book demonstrates that the hearings to confirm Supreme Court nominees are in fact a democratic forum for the discussion and ratification of constitutional change

**Constitutional Ethos** Alexander Tsesis, 2017-02-27 Judges courts and scholars in the United States agree that the Constitution is the supreme law of the land but there is much disagreement about its meaning So what seems to be incontestable truth is riddled with disagreements about every day questions of decision making on matter such as whether people are entitled to government created programs what rights are fundamental the criteria for voting the three branches of governments several responsibilities and even who should have the final say in defining the Constitution s meaning *Constitutional Ethos* is a groundbreaking investigation into the fundamental principles of constitutional principle meaning and interpretation It explores the core purposes of American representative democracy in light of historical sources recent precedents and contemporary debates Alexander Tsesis argues that a central norm of U S law can be derived from the Declaration of Independence and Preamble This book develops a theory of constitutional law structured on the public duty to

protect individual rights for the general welfare The maxim of constitutional governance synthesizes the protection of individual and public rights The ideal is neither solely theoretical nor customary but tied to a firm foundation that the people then build upon by lobbying elected officials and petitioning appointed judges Representative government has an interlinked obligation to the individual and the general welfare This paradigm for responsible governance sets the baseline against which citizens can hold policy makers accountable to the structural and normative commitments of the Constitution A pluralistic system must respect human dignity and govern for the betterment of the body politic Those mandates set the terms for exercising legitimate power at the federal state and local levels to protect individual rights to achieve the common good of civil society Tesis demonstrates that ethos is binding on the conduct of all three branches of government and their officeholders His argument challenges the more common U S perspective among academics and judges who typically discount the existence of any objective constitutional value regarding the document as a construct of social norms To the contrary Tesis shows that the people established the terms of the nation s founding documents to protect universal unalienable rights The structure of government provides the mechanisms of those in a pluralistic state to set reasonable limitations for the betterment of society as a whole Understanding the Constitution s special place in American legal culture is essential for resolving a host of contemporary issues including those involving marital gender and voting equalities The state is a means of optimizing the well being of individuals Human productivity can best flourish in a society of equals where talents can be brought to bear in the betterment of self and other members of the community The Constitution does not create rights but protects those universal ideals of representative democracy first set out in the Declaration of Independence It further grants authority to political institutions for the enforcement of policies and concrete laws for the betterment of society or some relevant segment of it Many scholars with leanings in legal realism and process theory believe the authority of government is a social construct created by popular majorities Tesis convincingly demonstrates to the contrary that even those laws enacted by popular majorities are not authoritative unless they accord with a central maxim of constitutionalism which is the protection of individual rights for the common good

**Lawfare and Judicial Legitimacy** Kate

Dent, 2023-07-28 Lawfare is a complex and evolving concept with many permutations It is a term that is used to describe both a judicialisation of politics where the Constitutional Court is called upon to uphold constitutional responsibilities compensating for institutional failures in the broader democratic space and instances where there is abuse of the legal process to escape accountability When the court is dragged into politics it forces an examination of the legitimate scope of judicial review This book explains how judicialisation of politics leads to the politicisation of adjudication and further weaponisation of the law Exploring the judicial political dynamics of South Africa from 2009 onwards the work traces the consequences of the judicialisation of politics for institutional resilience and broader constitutional stability Through an in depth study of judicial legitimacy the book seeks to provide an overarching theoretical justification for the dangers that

inhere in lawfare It analyses the potential costs of both judicial statesmanship and strategies of deference and avoidance when trying to navigate the Court safely through the era of lawfare South Africa offers an interesting crucible within which to observe an unfolding global trend Strengthened by its comparative focus the implications of lawfare presented in this book transcend the South African context and are applicable to other jurisdictions in the world The book will be of interest to researchers academics and practitioners working in the areas of Constitutional Law and Politics      **Constitutional**

**Statecraft in Asian Courts** Yvonne Tew, 2021-07-23 Constitutional Statecraft in Asian Courts explores how courts engage in constitutional state building in aspiring yet deeply fragile democracies in Asia Yvonne Tew offers an in depth look at contemporary Malaysia and Singapore explaining how courts protect and construct constitutionalism even as they confront dominant political parties and negotiate democratic transitions This richly illustrative account offers at once an engaging analysis of Southeast Asia's constitutional context as well as a broader narrative that should resonate in many countries across Asia that are also grappling with similar challenges of colonial legacies histories of authoritarian rule and societies polarized by race religion and identity The book explores the judicial strategies used for statecraft in Asian courts including an analysis of the specific mechanisms that courts can use to entrench constitutional basic structures and to protect rights in a manner that is purposive and proportionate Tew's account shows how courts in Asia's emerging democracies can chart a path forward to help safeguard a nation's constitutional core and to build an enduring constitutional framework

Purposive Interpretation in Law Aharon Barak, 2007-09-16 This book presents a comprehensive theory of legal interpretation which allows all legal texts to be approached in a similar manner while remaining sensitive to their important differences      Michigan Law Review ,2004      Constitutional Analysis in a Nutshell Thomas E. Baker, Jerre Stockton Williams, 2003 This authoritative text provides a framework for understanding individual liberty and governmental power and the institutional role played by the U S Supreme Court Coverage includes judicial review commerce clause and state powers federalism separation of powers congressional and executive powers and individual civil rights and civil liberties Includes diagrams that aid understanding of the fundamentals of our system of government      Massachusetts Law Review ,2002

Constitutional Commentary ,2004      **A Symposium on the Legacy of the Rehnquist Court** ,2006      Texas Journal on Civil Liberties & Civil Rights ,2014      The University of Memphis Law Review ,2006      **Symposium** ,2008      George Mason Law Review ,2006      **Forthcoming Books** Rose Arny, 2002-04      **The Bill of Rights in Modern America** David J. Bodenhamer, James W. Ely (Jr.), 2008 Captures the noisy and potentially defining national debate about the nature and extent of our individual rights This work features twelve legal scholars who discuss the history and the debates on these and other important rights issues      **First Amendment Law Review** ,2003      Florida Law Review ,2014-07

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