

The Three-Branch Constitution, the Four-Branch Government,
and the Legislative Veto —
A Critical Review of *INS v. Chadha*

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Abstract

The title expresses the major concern of this paper.

The first chapter introduces the background. Section one traces the origin of the legislative veto in terms of both history, i.e., the evolution of the modern administrative state, and theory, i.e., the American doctrine of separation of powers. Section two defines "legislative veto." Sections three and four describe the history of the debate on the constitutionality of the legislative veto among scholars and the federal courts before *Chadha*.

Chapter two analyzes *Chadha* from the aspects of its facts, preliminary issues, and the Court's reasoning. The chief concern is to show that *Chadha's* formalistic reasoning can not provide a satisfactory solution to the Debate, but only leads into a trap of circular reasoning.

Chapter three attempts to establish a broader and more substantial basis for reevaluating *Chadha*. Section one investigates the effects/functions of the legislative veto in fact. Section two examines the efficiency of Congress' alternatives to legislative veto.

Chapter four tries to explore a new solution to the Debate. The author claims that the legislative veto is derived from the disparity between the three-branch constitution and the four-branch government, and therefore the solution should be sought in the harmonization of this disparity. In reaching a delicate balance, the author tries to combine Professor Elliott's initial classification of public law/private law legislative veto, together with Professor Strauss' checks-and-balances perspective analysis, and the political philosophy of republicanism for

shaping criteria of categorizing the legislative veto. Finally the author believes that the Necessary and Proper clause provides the courts with the best anchor to carry out the categorizing engineering.

The paper concludes that the Supreme Court is lucky to have been right in its resolution of *Chadha*, but seriously flawed in its reasoning. For this reason, *Chadha* might experience the same destiny as did *Schechter* of fifty years ago.