

Handout A: War and the Constitution

Directions: Read the following excerpts from the Constitution and then discuss the questions that follow.

Excerpts from Article I, Section 8:

The Congress shall have the power...

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To make all laws which shall be necessary and proper for carrying into execution the foregoing

powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Excerpts from Article I, Section 9:

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Excerpts from Article II, Section 2:

The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur...

Excerpts from Article III, Section 2:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

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Critical Thinking Questions

1. What would be a good title for Article I, Section 8? Article I, Section 9?
2. In your judgment, which branch of government has greater war powers, the legislative or the executive? Use the Constitution to support your answer.
3. Does the president's authority as commander in chief apply anywhere other than in military situations?
4. Read the First, Fourth, Fifth, and Sixth Amendments. Does the president's authority as commander in chief empower him to act in ways that may violate individuals' rights, such as those protected by the Bill of Rights? If so, under what circumstances?
5. What does "declare war" mean? Does war have to exist before it can be declared? Or must a declaration come before a war can exist?
6. Does the Necessary and Proper Clause increase Congress's war powers? If so, how?
7. What is the role of the commander in chief?
8. What role might the judicial branch play during wartime?