

Session 5: Congressional-Executive Balance of Power in War Powers

I. Constitutional Provisions

- A. Congress
 - Article I, § 8: “The Congress shall have Power . . .
 - “To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water,” clause 11
 - “To raise and support Armies, but no Appropriation of Money for that Use shall be for a longer Term than two Years,” clause 12
 - “To provide and maintain a Navy,” clause 13
 - “To make Rules for the Government and Regulation of the land and naval Forces,” clause 14
 - “To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations,” clause 10
 - General Welfare Clause: “The Congress shall have Power . . . to pay the Debts and provide for the common Defence and general Welfare of the United States . . . ,” clause 1.
 - Necessary & Proper Clause: “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.” clause 18
 - Militia-Related Authorities, clauses 15 & 16
- B. Executive:
 - Vesting Clause, Art. II, § 1: “The executive Power shall be vested in a President of the United States of America. . . .”

- “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” Art. II, § 2, cl. 1.
- Appointments power to the extent it relates to military offices

II. Topics for Discussion

- **A. Executive Authority**

- Vesting Clause—British history, prerogative powers?, pre-constitutional history in America
- Implied/inherent power?
 - Respond to attack/repel invasion
 - Executive Branch opinions—framework for evaluating presidential power
- *Youngstown* Framework, Supreme Court precedent

- **B. Congressional Authority to Regulate the Military**

- **C. Use of Appropriations to Limit Executive Power**

- Reduction in funding
- Tailored limits on funding—constitutional parameters?

- **D. Ukraine/Current Affairs**

- **E. War Powers Act & Congressional Authority**

- Declaration of War—significance?
- Constitutional & statutory issues
- Instances of Declaration of War—formality constitutionally required?

- **F. Authorization for use of Military Force (2001)**

- **G. Judicial Review?**