

War and the Constitution

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

ARTICLE I, SECTION 8 (EXCERPTS)

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.

ARTICLE II, SECTION 2 (EXCERPTS)

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.

ARTICLE III, SECTION 2 (EXCERPTS)

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.

QUESTIONS FOR DISCUSSION

1. What does “declare war” mean? Does war have to exist before it can be declared? Or must a declaration come before war can exist?
2. Does the “Necessary and Proper Clause” increase Congress’s war powers? If so, how?
3. What is the role of Commander in Chief?
4. What role might the judicial branch play during wartime?