



THE PRESIDENT'S AUTHORITY OVER FOREIGN AFFAIRS

AN ESSAY IN CONSTITUTIONAL INTERPRETATION

H. Jefferson Powell



The President's Authority Over Foreign Affairs An Essay In Constitutional Interpretation

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The President's Authority Over Foreign Affairs An Essay In Constitutional Interpretation:

The President's Authority Over Foreign Affairs Jefferson Powell, 2002 Debate over who has the authority to make foreign policy for the United States has been a constant feature of our political and constitutional history In the modern era the debate has come to be both shrill and stale the proponents of presidential autonomy and the advocates of congressional supremacy start from mutually incompatible premises and come to predictable and antagonistic conclusions The President's Authority Over Foreign Affairs argues that the best interpretation of our Constitution's distribution of foreign affairs authority resolves this irresolvable stand off Powell presents a traditional legal argument giving careful weight to original understandings early practice and considerations of institutional structure and concludes that the Constitution vests the president with the clear authority to formulate and implement foreign policy At the same time the Constitution vests Congress with powers that enable it to exercise a near absolute veto not on the president's foreign policy choices but on his or her ability to carry those choices out The resulting system of interlocking constitutional powers is faithful to the Constitution's text and to the purposes that are embodied in it In making this argument a variety of hotly contested issues are addressed and Powell shows how constitutional interpretation enables us to reach satisfactory answers

Constitutional Law of the EU's Common Foreign and Security Policy Graham Butler, 2019-10-03 The Common Foreign and Security Policy CFSP of the European Union is a highly exceptional component of the EU legal order This constitutionalised foreign policy regime with legal diplomatic and political DNA woven throughout its fabric is a distinct subsystem of law on the outermost sphere of European supranationalism When contrasted against other Union policies it is immediately clear that EU foreign policy has a special decision making mechanism making it highly exceptional In the now depillarised framework of the EU treaties issues of institutional division arise from the legacy of the former pillar system This is due to the reality that of prime concern in EU external relations is the question of who decides By engaging a number of legal themes that cut across foreign affairs exceptionalism executive prerogatives parliamentary accountability judicial review and the constitutionalisation of European integration the book lays bare how EU foreign affairs have become highly legalised leading to ever greater coherence in how Europe exerts itself on the global stage In this first monograph dedicated exclusively to the law of the EU's Common Foreign and Security Policy in modern times the author argues that the legal framework for EU foreign affairs must adapt in a changing world so as to ensure the EU treaties can cater for a more assertive Europe in the wider world Cited in Opinion of Advocate General Evgeni Tanchev Case C 730 18 P SC v Eulex Kosovo ECLI EU C 2020 176 Court of Justice of the European Union First Chamber 5 March 2020 Opinion of Advocate General Gerard Hogan Case C 134 19 P Bank Refah Kargaran v Council of the European Union ECLI EU C 2020 396 Court of Justice of the European Union Grand Chamber 28 May 2020 Opinion of Advocate General Evgeni Tanchev Case C 283 20 CO ME GC and 42 Others v MJ Head of Mission European Commission European External Action Service EEAS Council of the

European Union Eulex Kosovo ECLI EU C 2021 781 Court of Justice of the European Union Fifth Chamber 30 September 2021 and Opinion of Advocate General Tamara Capeta in Joined Cases C 29 22 P and C 44 22 P KS KD v Council of the European Union European Commission and European External Action Service EEAS and European Commission v KS KD Council of the European Union and European External Action Service EEAS ECLI EU C 2023 901 Court of Justice of the European Union Grand Chamber 23 November 2023 **The War Power in an Age of Terrorism** Michael A.

Genovese,David Gray Adler,2016-12-22 This book features a lively debate between two prominent scholars Michael A Genovese and David Gray Adler on the critical issue of whether the Constitution written in the 18th Century remains adequate to the national security challenges of our time The question of the scope of the president s constitutional authority if any to initiate war on behalf of the American people long the subject of heated debate in the corridors of power and the groves of academe has become an issue of surpassing importance for a nation confronted by existential threats in an Age of Terrorism This question should be thoroughly reviewed and debated by members of Congress and considered by all Americans before they are asked to go to war If the constitutional allocation of powers on matters of war and peace is outdated what changes should be made Is there a need to increase presidential power What role should Congress play in the war on terror **The Oxford Handbook of the U.S. Constitution** Mark Tushnet,Mark A. Graber,Sanford

Levinson,2015-07-31 The Oxford Handbook of the U S Constitution offers a comprehensive overview and introduction to the U S Constitution from the perspectives of history political science law rights and constitutional themes while focusing on its development structures rights and role in the U S political system and culture This Handbook enables readers within and beyond the U S to develop a critical comprehension of the literature on the Constitution along with accessible and up to date analysis The historical essays included in this Handbook cover the Constitution from 1620 right through the Reagan Revolution to the present Essays on political science detail how contemporary citizens in the United States rely extensively on political parties interest groups and bureaucrats to operate a constitution designed to prevent the rise of parties interest group politics and an entrenched bureaucracy The essays on law explore how contemporary citizens appear to expect and accept the exertions of power by a Supreme Court whose members are increasingly disconnected from the world of practical politics Essays on rights discuss how contemporary citizens living in a diverse multi racial society seek guidance on the meaning of liberty and equality from a Constitution designed for a society in which all politically relevant persons shared the same race gender religion and ethnicity Lastly the essays on themes explain how in a globalized world people living in the United States can continue to be governed by a constitution originally meant for a society geographically separated from the rest of the civilized world Whether a return to the pristine constitutional institutions of the founding or a translation of these constitutional norms in the present is possible remains the central challenge of U S constitutionalism today **The**

Heritage Guide to the Constitution David F. Forte,Matthew Spalding,2014-09-16 A landmark work of more than one

hundred scholars The Heritage Guide to the Constitution is a unique line by line analysis explaining every clause of America s founding charter and its contemporary meaning In this fully revised second edition leading scholars in law history and public policy offer more than two hundred updated and incisive essays on every clause of the Constitution From the stirring words of the Preamble to the Twenty seventh Amendment you will gain new insights into the ideas that made America important debates that continue from our Founding and the Constitution s true meaning for our nation Yale Law Journal: Volume 123, Number 6 - April 2014 Yale Law Journal,2014-04-16 The April 2014 issue of The Yale Law Journal features new articles and essays on law and legal theory by internationally recognized scholars An extensive Feature explores the idea of Federalism as the New Nationalism with contributions by Jessica Bulman Pozen From Sovereignty and Process to Administration and Politics The Afterlife of American Federalism Heather Gerken An Overview The Loyal Opposition Abbe Gluck Our National Federalism Alison LaCroix The Shadow Powers of Article I and Cristina Rodriguez Negotiating Conflict Through Federalism Institutional and Popular Perspectives The issue serves in effect as a new and detailed book on new concepts and practices of U S federalism In addition the issue includes these contributions from scholars and students Article The Power to Threaten War by Matthew C Waxman Essay Five to Four Why Do Bare Majorities Rule on Courts by Jeremy Waldron Note Dignity as a Value in Agency Cost Benefit Analysis by Rachel Bayefsky Note Early Release in International Criminal Law by Jonathan Choi Note Ex Ante Review of Leveraged Buyouts by Laura Femino Comment Innocent Abroad Morrison Vilar and the Extraterritorial Application of the Exchange Act by Daniel Herz Roiphe Quality ebook edition features linked notes active Contents active URLs in notes proper Bluebook formatting and full presentation of original tables and images This April 2014 issue is Volume 123 Number 6 *The Law of the Executive Branch* Dr. Louis Fisher,2014-01-03 The scope of presidential authority has been a constant focus of constitutional dispute since the Framing The bases for presidential appointment and removal the responsibility of the Executive to choose between the will of Congress and the President the extent of unitary powers over the military even the ability of the President to keep secret the identity of those consulted in policy making decisions have all been the subject of intense controversy The scope of that power and the manner of its exercise affect not only the actions of the President and the White House staff but also all staff employed by the executive agencies There is a clear need to examine the law of the entire executive branch The Law of the Executive Branch Presidential Power places the law of the executive branch firmly in the context of constitutional language framers intent and more than two centuries of practice In this book Louis Fisher strives to separate legitimate from illegitimate sources of power through analysis that is informed by litigation as well as shaped by presidential initiatives statutory policy judicial interpretations and public and international pressures Each provision of the US Constitution is analyzed to reveal its contemporary meaning in concert with the application of presidential power Controversial issues covered in the book include unilateral presidential wars the state secrets privilege extraordinary rendition claims of inherent presidential powers that

may not be checked by other branches and executive privilege **The Law of U.S. Foreign Relations** Sean D. Murphy, Edward T. Swaine, 2023 The Law of U S Foreign Relations is a comprehensive and incisive discussion of the rules that govern the conduct of U S relations with foreign countries and international organizations and the rules governing how international law applies within the U S legal system Among other topics this volume examines the constitutional and historical foundations of congressional executive and judicial authority in foreign affairs This includes the constitutional tensions prevalent in legislative efforts to control executive diplomacy as well as the ebb and flow of judicial engagement in transnational disputes with the judiciary often serving as umpire but at times invoking doctrines of abstention The process of U S adherence to treaties and other international agreements is closely scrutinized as the authors examine how such law as well as customary international law and the law making acts of international organizations can become a source of U S law Individual chapters focus on the special challenges posed by the exercise of war powers by the federal government including during recent incidents of international armed conflict the complex role of the several states in foreign affairs and the imperative to protect individual rights in the transnational sphere Among the contemporary issues discussed are the immunity of foreign heads of State treatment of detainees at Guant namo movement of the U S Embassy in Israel to Jerusalem state level foreign compacts to address climate change bans affecting refugees and asylum seekers and recent interpretations of key statutes such as the Alien Tort Statute the Torture Victim Protection Act and the Foreign Sovereign Immunities Act **Understanding American Power** Bryan Mabee, 2013-10-01 This broad ranging assessment of US power in the twenty first century covers not just the nature and mechanics of foreign policy but the broad array of economic military political social and ideological forces that shape America s global position and role all set in a clear historical context *The Oxford Companion to the Supreme Court of the United States* ,

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