

Delegation of Authority – Determining the Legality of Executive Action

(Youngstown Case / Justice Jackson's Three-Part Test of Constitutionality of Executive Action.)

- Action is Consistent with Legislative Authority.
 - Curtis-Wright (1936) – Arms embargo.

- Legislative Authority is Silent (If no legislative authority then actions need to be based on Presidential authority.)
 - U.S. v. Pink (1952) – Executive Agreement of settling financial claims (“Litvanov Assignment”) is within power of the president to conduct foreign diplomacy.
 - Dames & Moore (1981) – Executive Agreement with Iran suspending and settling claims in order to conclude the Iranian Hostage situation is authorized by long-standing congressional acquiescence.

- Action is Inconsistent (Contra) to Legislative Authority.
 - Youngstown (1952) – Seizure of Steel Mills. Violates labor legislation and not authorized under the “Commander-in-Chief” power.
 - Consumers Union – If had a VRA / OMA then inconsistent. But only had a *voluntary arrangement* therefore no violation.
 - Hamdi (2004) – Detention by military commission not authorized by the AUMF.
 - Hamadan (2006) – DTA does not authorize the military commission to prosecute a foreign national for criminal acts that are not in violation of international law.
 - Boumediene (2008) – 2006 Military Commission Act cannot authorize “suspension” of the writ of habeas corpus.