

tice, in which all but the Fourteenth Amendment were certified by an executive officer, was noted as supporting a decision against a congressional role.⁵²

What would be the result of adopting one view over the other?

First, finding that resolution of the question is committed to Congress merely locates the situs of the power and says nothing about what the resolution should be. That Congress in the past has refused to accept rescissions is but the starting point, because, unlike courts, Congress operates under no principle of *stare decisis* so that the decisions of one Congress on a subject do not bind future Congresses. If Congress were to be faced with a decision about the validity of rescission, to what standards should it look?

That a question of constitutional interpretation may be “political” in the sense of being committed to one or to both of the “political” branches is not, of course, a judgment that in its resolution the political branch may decide without recourse to principle. Resolution of political questions is not subject to judicial review, so the decisionmaker need not be troubled with the prospect of being overruled. But both legislators and executive are bound by oath to observe the Constitution,⁵³ and consequently the search for an answer must begin with the original document.

It may be, however, that the Constitution does not speak to the issue. Generally, in the exercise of judicial review, courts view the actions of the legislative and executive branches in terms not of the wisdom or desirability or propriety of their actions but in terms of the comportment of those actions with the constitutional grants of power and constraints upon those powers; if an action is within a granted power and violates no restriction, the courts will not interfere. How the legislature or the executive decides to deal with a question within the confines of the powers each constitutionally have is beyond judicial control.

Therefore, if the Constitution commits decision on an issue to, say, Congress, and imposes no standards to govern or control the reaching of that decision, Congress may be free to make a determination solely as a policy matter, restrained only by its sense of propriety or wisdom or desirability. The reason that these issues are not justiciable is not only that they are committed to a branch for decision without intervention by the courts but also that the Constitution does not contain an answer. This interpretation, in the con-

⁵² *Id.* at 121–126.

⁵³ Article VI, para. 3. “In the performance of assigned constitutional duties each branch of the government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others.” *United States v. Nixon*, 418 U.S. 683, 703 (1974).