This is most notable with respect to war powers and the declaration of national emergencies, but is also true for domestic presidential concerns, as in the controversy over the power of the President to impound appropriated funds.

Perhaps coincidentally, the Supreme Court during the same period effected a strong judicial interest in the adjudication of separation-of-powers controversies. Previously, despite its use of separation-of-power language, the Court did little to involve itself in actual controversies, save perhaps the *Myers* and *Humphrey* litigations over the President's power to remove executive branch officials. But that restraint evaporated in 1976. Since then there have been several Court decisions in this area, although in *Buckley v. Valeo* and subsequent cases the Court appeared to cast the judicial perspective favorably upon presidential prerogative. In other cases statutory construction was utilized to preserve the President's discretion. Only very recently has the Court evolved an arguably consistent standard in this area, a two-pronged standard of aggrandizement and impairment, but the results still are cast in terms of executive preeminence.

The larger conflict has been political, and the Court resisted many efforts to involve it in litigation over the use of troops in Vietnam. In the context of treaty termination, the Court came close to declaring the resurgence of the political question doctrine to all such executive-congressional disputes. While a significant congressional interest in achieving a new and different balance between the political branches appeared to have survived cessation of the Vietnam conflict, such efforts largely diminished after the terrorist attacks of September 11, 2001. While Congressional assertion of such interest may well involve the judiciary to a greater extent in the future, the congressional branch is not without effective weapons of its own in this regard.

**SECTION III**

The Court's practice of overturning economic legislation under principles of substantive due process in order to protect "property" was already in sharp decline when Professor Corwin wrote his introduction in the 1950s. In a few isolated cases, however, especially regarding the obligation of contracts clause and perhaps the expansion of the regulatory takings doctrine, the Court demonstrated that some life is left in the old doctrines. On the other hand, the word "liberty" in the due process clauses of the Fifth and Fourteenth Amendment has been seized upon by the Court to harness substantive due process to the protection of certain personal and familial privacy rights, most controversially in the abortion cases.

Although the decision in *Roe v. Wade* seemed to foreshadow broad constitutional protections for personal activities, this did not occur immediately, as much due to conceptual difficulties as to ideological resistance. Early iterations of a right to "privacy" or "to be let alone" seemed to involve both the notion that certain information should be "private" and the idea that certain personal "activities" should only be lightly regulated. Then, for a time, the privacy cases appeared to be limited to certain areas of personal concern: marriage, procreation, contraception, family relationships, medical decision making and child rearing. Most recently, however, the Court has brought the outer limits of the doctrine into question again by overturning a sodomy law directed at homosexuals without attempting to show that such behavior was in fact historically condoned. This raises the question as to what limiting principles remain available in evaluating future arguments based on personal autonomy.

Whereas much of the Bill of Rights is directed toward prescribing the process of how governments may permissibly deprive one of life, liberty, or property—for example by judgment of a jury of one's peers or with evidence seized through reasonable searches—the First Amendment is by its terms both substantive and absolute. While the application of the First Amendment has never been presumed to be so absolute, the effect has often been indistinguishable. Thus, the trend over the years has been to withdraw more and more speech and "speech-plus" from the regulatory and prohibitive hand of government and to free not only speech directed to political ends but speech that is totally unrelated to any political purpose.

The constitutionalization of the law of defamation, narrowing the possibility of recovery for damage caused by libelous and slanderous criticism of public officials, political candidates, and public figures, epitomizes this trend. In addition, the government's right to proscribe the advo-