

Sec. 2—Powers, Duties of the President Cl. 2—Treaties and Appointment of Officers

to duties. Under the terms thereof the President, by and with the advice and consent of the Senate, appoints ambassadors, ministers, foreign service officers, and consuls, but in practice the vast proportion of the selections are made in conformance to recommendations of a Board of the Foreign Service.

Presidential Diplomatic Agents.—What the President may have lost in consequence of the intervention of Congress in this field of diplomatic appointments, he has made good through his early conceded right to employ, in the discharge of his diplomatic function, so-called “special,” “personal,” or “secret” agents without consulting the Senate. When President Jackson’s right to resort to this practice was challenged in the Senate in 1831, it was defended by Edward Livingston, Senator from Louisiana, to such good purpose that Jackson made him Secretary of State. “The practice of appointing secret agents,” said Livingston, “is coeval with our existence as a nation, and goes beyond our acknowledgment as such by other powers. All those great men who have figured in the history of our diplomacy, began their career, and performed some of their most important services in the capacity of secret agents, with full powers. Franklin, Adams, Lee, were only commissioners; and in negotiating a treaty with the Emperor of Morocco, the selection of the secret agent was left to the Ministers appointed to make the treaty; and, accordingly, in the year 1785, Mr. Adams and Mr. Jefferson appointed Thomas Barclay, who went to Morocco and made a treaty, which was ratified by the Ministers at Paris.”

“These instances show that, even prior to the establishment of the Federal Government, secret plenipotentiaries were known, as well in the practice of our own country as in the general law of nations: and that these secret agents were not on a level with messengers, letter carriers, or spies, to whom it has been found necessary in argument to assimilate them. On the 30th March, 1795, in the recess of the Senate, by letters patent under the great broad seal of the United States, and the signature of their President, (that President being George Washington,) countersigned by the Secretary of State, David Humphreys was appointed commissioner plenipotentiary for negotiating a treaty of peace with Algiers. By instructions from the President, he was afterwards authorized to employ Joseph Donaldson as agent in that business. In May, of the same year, he did appoint Donaldson, who went to Algiers, and in September of the same year concluded a treaty with the Dey and Divan, which was confirmed by Humphreys, at Lisbon, on the 28th November in the same year, and afterwards ratified by the Senate,