

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

in 1897, made an elaborate investigation of the whole subject and came to the following conclusions as to this power: "The 'recognition' of independence or belligerency of a foreign power, technically speaking, is distinctly a diplomatic matter. It is properly evidenced either by sending a public minister to the government thus recognized, or by receiving a public minister therefrom. The latter is the usual and proper course. Diplomatic relations with a new power are properly, and customarily inaugurated at the request of that power, expressed through an envoy sent for the purpose. The reception of this envoy, as pointed out, is the act of the President alone. The next step, that of sending a public minister to the nation thus recognized, is primarily the act of the President. The Senate can take no part in it at all, until the President has sent in a nomination. Then it acts in its executive capacity, and, customarily, in 'executive session.' The legislative branch of the government can exercise no influence over this step except, very indirectly, by withholding appropriations. . . . Nor can the legislative branch of the government hold any communications with foreign nations. The executive branch is the sole mouthpiece of the nation in communication with foreign sovereignties."

"Foreign nations communicate only through their respective executive departments. Resolutions of their legislative departments upon diplomatic matters have no status in international law. In the department of international law, therefore, properly speaking, a Congressional recognition of belligerency or independence would be a nullity. . . . Congress can help the Cuban insurgents by legislation in many ways, but it cannot help them legitimately by mere declarations, or by attempts to engage in diplomatic negotiations, if our interpretation of the Constitution is correct. That it is correct . . . [is] shown by the opinions of jurists and statesmen of the past."⁶⁶¹ Congress was able ultimately to bundle a clause recognizing the independence of Cuba, as distinguished from its government, into the declaration of war of April 11, 1898, against Spain. For the most part, the sponsors of the clause defended it by the following line of reasoning. Diplomacy, they said, was now at an end, and the President himself had appealed to Congress to provide a solution for the Cuban situation. In response, Congress was about to exercise its constitutional power of declaring war, and it has consequently the right to state the purpose of the war which it was about to de-

⁶⁶¹ S. Doc. No. 56, 54th Congress, 2d Sess. (1897), 20–22.