

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

informed him that “as the President was the only channel of communication between the United States and foreign nations, it was from him alone ‘that foreign nations or their agents are to learn what is or has been the will of the nation’; that whatever he communicated as such, they had a right and were bound to consider ‘as the expression of the nation’; and that no foreign agent could be ‘allowed to question it,’ or ‘to interpose between him and any other branch of government, under the pretext of either’s transgressing their functions.’ Mr. Jefferson therefore declined to enter into any discussion of the question as to whether it belonged to the President under the Constitution to admit or exclude foreign agents. ‘I inform you of the fact,’ he said, ‘by authority from the President.’ Mr. Jefferson returned the consul’s commission and declared that the President would issue no *exequatur* to a consul except upon a commission correctly addressed.”⁶⁵⁰

The Logan Act.—When in 1798 a Philadelphia Quaker named Logan went to Paris on his own to undertake a negotiation with the French Government with a view to averting war between France and the United States, his enterprise stimulated Congress to pass “An Act to Prevent Usurpation of Executive Functions,”⁶⁵¹ which, “more honored in the breach than the observance,” still survives on the statute books.⁶⁵² The year following, John Marshall, then a Member of the House of Representatives, defended President John Adams for delivering a fugitive from justice to Great Britain under the 27th article of the Jay Treaty, instead of leaving the business to the courts. He said: “The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him. He possesses the whole Executive power. He holds and directs the force of the nation. Of consequence, any act to be performed by the force of the nation is to be performed through him.”⁶⁵³ Ninety-

⁶⁵⁰ 4 J. Moore, *supra* at 680–81.

⁶⁵¹ This measure is now contained in 18 U.S.C. § 953.

⁶⁵² See *Memorandum on the History and Scope of the Law Prohibiting Correspondence with a Foreign Government*, S. Doc. No. 696, 64th Congress, 2d Sess. (1917). The author was Mr. Charles Warren, then Assistant Attorney General. Further details concerning the observance of the “Logan Act” are given in E. Corwin, *supra* at 183–84, 430–31.

⁶⁵³ 10 ANNALS OF CONGRESS 596, 613–14 (1800). Marshall’s statement is often cited, e.g., *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318, 319 (1936), as if he were claiming sole or inherent executive power in foreign relations, but Marshall carefully propounded the view that Congress could provide the rules underlying the President’s duty to extradite. When, in 1848, Congress did enact such a statute, the Court sustained it. *Fong Yue Ting v. United States*, 149 U.S. 698, 714 (1893).