

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

had been a treaty of alliance, offensive and defensive, between the United States and that country, the unqualified acknowledgment of the new government would have put the United States in a condition to become as an associate in the war with France, and would have laid the legislature under an obligation, if required, and there was otherwise no valid excuse, of exercising its power of declaring war. This serves as an example of the right of the executive, in certain cases, to determine the condition of the nation, though it may, in its consequences, affect the exercise of the power of the legislature to declare war. Nevertheless, the executive cannot thereby control the exercise of that power. The legislature is still free to perform its duties, according to its own sense of them; though the executive, in the exercise of its constitutional powers, may establish an antecedent state of things, which ought to weigh in the legislative decision. The division of the executive power in the Constitution, creates a concurrent authority in the cases to which it relates.”⁶⁵⁷

Jefferson’s Real Position.—Nor did Jefferson himself officially support Madison’s point of view, as the following extract from his “minutes of a Conversation,” which took place July 10, 1793, between himself and Citizen Genet, show: “He asked if they [Congress] were not the sovereign. I told him no, they were sovereign in making laws only, the executive was sovereign in executing them, and the judiciary in construing them where they related to their department. ‘But,’ said he, ‘at least, Congress are bound to see that the treaties are observed.’ I told him no; there were very few cases indeed arising out of treaties, which they could take notice of; that the President is to see that treaties are observed. ‘If he decides against the treaty, to whom is a nation to appeal?’ I told him the Constitution had made the President the last appeal. He made me a bow, and said, that indeed he would not make me his compliments on such a Constitution, expressed the utmost astonishment at it, and seemed never before to have had such an idea.”⁶⁵⁸

The Power of Recognition

In his endeavor in 1793 to minimize the importance of the President’s power of reception, Madison denied that it involved cognizance of the question, whether those exercising the government of the accrediting state had the right along with the possession. He said: “This belongs to the nation, and to the nation alone, on whom the government operates. . . . It is evident, therefore, that if the

⁶⁵⁷ Letter of Pacificus, No. 1, 7 WORKS OF ALEXANDER HAMILTON 76, 82–83 (J. Hamilton ed., 1851).

⁶⁵⁸ 4 J. Moore, *supra* at 680–81.