

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

frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; but many such questions uniquely demand single-voiced statement of the Government's views. Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action."<sup>687</sup> However, the Court came within one vote of creating a broad application of the political question doctrine in foreign relations disputes, at least in the context of a dispute between Congress and the President with respect to a proper allocation of constitutional powers.<sup>688</sup> In any event, the Court, in adjudicating on the merits disputes in which the foreign relations powers are called into question, follows a policy of such deference to executive and congressional expertise that the result may not be dissimilar to a broad application of the political question doctrine.<sup>689</sup>

**THE PRESIDENT AS LAW ENFORCER****Powers Derived From The "Take Care" Duty**

The Constitution does not say that the President shall execute the laws, but that "he shall take Care that the Laws be faithfully executed," i.e., by others, who are commonly, but not always with

<sup>687</sup> 369 U.S. at 211–12. A case involving "a purely legal question of statutory interpretation" is not a political question simply because the issues have significant political and foreign relations overtones. *Japan Whaling Ass'n v. American Cetacean Society*, 478 U.S. 221, 229–30 (1986) (Fisherman's Protective Act does not completely remove Secretary of Commerce's discretion in certifying that foreign nationals are "diminishing the effectiveness of" an international agreement by taking whales in violation of quotas set pursuant to the agreement).

<sup>688</sup> *Goldwater v. Carter*, 444 U.S. 996, 1002–06 (Justices Rehnquist, Stewart, and Stevens and Chief Justice Burger). The doctrine was applied in just such a dispute in *Dole v. Carter*, 569 F.2d 1109 (10th Cir. 1977).

<sup>689</sup> "Matters intimately related to foreign policy and national security are rarely proper subjects for judicial intervention." *Haig v. Agee*, 453 U.S. 280, 292 (1981). See also *Dames & Moore v. Regan*, 453 U.S. 654, 688 (1981); *Rostker v. Goldberg*, 453 U.S. 57, 64–68 (1981); *Greer v. Spock*, 424 U.S. 828, 837–838 (1976); *Parker v. Levy*, 417 U.S. 733, 756, 758 (1974); *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952). Neither may private claimants seek judicial review of executive actions denying constitutional rights "in such sensitive areas as national security and foreign policy" in suits for damages against offending officials, inasmuch as the President is absolutely immune, *Nixon v. Fitzgerald*, 457 U.S. 731 (1982), and the Court has strongly hinted that in these areas the immunity of presidential aides and other executive officials "entrusted with discretionary authority" will be held to be absolute rather than qualified. *Harlow v. Fitzgerald*, 457 U.S. 800, 812–13 (1982).