

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

nine years later, a Senate Foreign Relations Committee took occasion to reiterate Marshall's doctrine with elaboration.⁶⁵⁴

A Formal or a Formative Power.—In his attack, instigated by Jefferson, upon Washington's Proclamation of Neutrality in 1793 at the outbreak of war between France and Great Britain, Madison advanced the argument that all large questions of foreign policy fell within the ambit of Congress, by virtue of its power "to declare war" In support of this proposition he disparaged the presidential function of reception: "I shall not undertake to examine, what would be the precise extent and effect of this function in various cases which fancy may suggest, or which time may produce. It will be more proper to observe, in general, and every candid reader will second the observation, that little, if anything, more was intended by the clause, than to provide for a particular mode of communication, almost grown into a right among modern nations; by pointing out the department of the government, most proper for the ceremony of admitting public ministers, of examining their credentials, and of authenticating their title to the privileges annexed to their character by the law of nations. This being the apparent design of the constitution, it would be highly improper to magnify the function into an important prerogative, even when no rights of other departments could be affected by it."⁶⁵⁵

The President's Diplomatic Role.—Hamilton, although he had expressed substantially the same view in *The Federalist* regarding the power of reception,⁶⁵⁶ adopted a very different conception of it in defense of Washington's proclamation. Writing under the pseudonym, "Pacificus," he said: "The right of the executive to receive ambassadors and other public ministers, may serve to illustrate the relative duties of the executive and legislative departments. This right includes that of judging, in the case of a revolution of government in a foreign country, whether the new rulers are competent organs of the national will, and ought to be recognized, or not; which, where a treaty antecedently exists between the United States and such nation, involves the power of continuing or suspending its operation. For until the new government is acknowledged, the treaties between the nations, so far at least as regards public rights, are of course suspended. This power of determining virtually upon the operation of national treaties, as a consequence of the power to receive public ministers, is an important instance of the right of the executive, to decide upon the obligations of the country with regard to foreign nations. To apply it to the case of France, if there

⁶⁵⁴ S. Doc. No. 56, 54th Congress, 2d Sess. (1897).

⁶⁵⁵ 1 LETTERS AND OTHER WRITINGS OF JAMES MADISON 611 (1865).

⁶⁵⁶ No. 69 (J. Cooke ed. 1961), 468.