

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

is the body that lays and collects taxes for the common defense, that creates armies and maintains navies, although it does not direct them, that pledges the public credit, that declares war, that defines offenses against the law of nations, that regulates foreign commerce; and it has the further power “to make all laws which shall be necessary and proper”—that is, which it deems to be such—for carrying into execution not only its own powers but all the powers “of the government of the United States and of any department or officer thereof.” Moreover, its laws made “in pursuance” of these powers are “supreme law of the land,” and the President is bound constitutionally to “take Care that” they “be faithfully executed.” In point of fact, congressional legislation has operated to augment presidential powers in the foreign field much more frequently than it has to curtail them. The Lend-Lease Act of March 11, 1941⁶⁶⁵ is the classic example, although it only brought to culmination a whole series of enactments with which Congress had aided and abetted the administration’s foreign policy in the years between 1934 and 1941.⁶⁶⁶ Disillusionment with presidential policies in the context of the Vietnamese conflict led Congress to legislate restrictions, not only with respect to the discretion of the President to use troops abroad in the absence of a declaration of war, but also limiting his economic and political powers through curbs on his authority to declare national emergencies.⁶⁶⁷ The lesson of history, however, appears to be that congressional efforts to regain what is deemed to have been lost to the President are intermittent, whereas the presidential exercise of power in today’s world is unrelenting.⁶⁶⁸

⁶⁶⁵ 55 Stat. 31 (1941).

⁶⁶⁶ E. Corwin, *supra* at 184–93, 423–25, 435–36.

⁶⁶⁷ Legislation includes the War Powers Resolution, Pub. L. 93–148, 87 Stat. 555 (1953), 50 U.S.C. §§ 1541–1548; the National Emergencies Act, Pub. L. 94–412, 90 Stat. 1255 (1976), 50 U.S.C. §§ 1601–1651 (establishing procedures for presidential declaration and continuation of national emergencies and providing for a bicameral congressional veto); the International Emergency Economic Powers Act, Pub. L. 95–223, 91 Stat. 1626 (1977), 50 U.S.C. §§ 1701–1706 (limiting the great economic powers conferred on the President by the Trading with the Enemy Act of 1917, 40 Stat. 415, 50 U.S.C. App. § 5(b), to times of declared war, and providing new and more limited powers, with procedural restraints, for nonwartime emergencies); *see also* the Foreign Sovereign Immunities Act of 1976, Pub. L. 94–583, 90 Stat. 2891, 28 U.S.C. §§ 1330, 1602–1611 (removing from executive control decisions concerning the liability of foreign sovereigns to suit).

⁶⁶⁸ “We may say that power to legislate for emergencies belongs in the hands of Congress, but only Congress itself can prevent power from slipping through its fingers.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 654 (1952) (Justice Jackson concurring). For an account of how the President usually prevails, *see* H. KOH, *THE NATIONAL SECURITY CONSTITUTION: SHARING POWER AFTER THE IRAN-CONTRA AFFAIRS* (1990).