

Session 6: Congressional-Executive Balance of Power in Foreign Relations

I. Constitutional Provisions

- A. Congress:
 - Article I, § 8: “The Congress shall have Power”
 - “To regulate Commerce with foreign Nations” clause 3.
 - “To establish an uniform Rule of Naturalization” clause 4.
 - “To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations” clause 10.
 - Article II, § 2:
 - No treaties without two-thirds of Senators present concurring
 - Requisite Senate consent to appointments of ambassadors, public Ministers and consuls, and other officers of the United States
 - Supremacy Clause, Article VI, § 2:
 - “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”
- B. Executive
 - Article II, § 1: “The executive Power shall be vested in a President of the United States of America. . . .”
 - Article II, § 2:
 - The President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur”

- . . . and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls . . . “
- Article II, § 3: “[H]e shall receive Ambassadors and other public Ministers”

II. Topics for Discussion

- Vesting of “executive” power & historical practice
- International agreements
 - Treaties
 - Congressional-executive agreements
 - Sole executive agreements
 - Supremacy Clause—effect of international agreements on domestic law
 - Termination of agreements—Open Skies Treaty, NAFTA
 - Iran nuclear deal
- Ukraine
- Presidential role in diplomacy & receiving ambassadors
- Congressional regulation of foreign commerce
- Congressional regulation of immigration policy
- Sanctions, Visas, Foreign Aid—significant congressional authority under the Constitution, but Congress often delegates broad discretion to the President
 - IEEPA
 - Section 232 (Trade Expansion Act used to impose steel & aluminum tariffs)
 - Immigration & Nationality Act Section 212(f) proclamations