Background

U.S. Foreign Policy Powers: Congress and the President

The separation of powers has spawned a great deal of debate over the role of the president and Congress in foreign affairs, as well as the authorities of the executive in unprecedented times. This explainer has been updated.

WRITTEN BY
Jonathan Masters

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Signing the Constitution of the United States by Thomas Pickard Rossiter and Edward Mitchell Bruce, 1862. Wikimedia

Summary

The Constitution and Congress have some exclusive foreign policy powers, while others are shared or not explicitly assigned by the Constitution.

These two branches of government often clash over foreign policy—including over the use of military force, international agreements, and, most recently, trade.

The judicial branch is limited in how much it can arbitrate constitutional disputes over foreign policy, and it is often reluctant to do so.

Introduction

The U.S. Constitution grants our foreign relations powers to both the executive and legislative branches. It grants some powers, like command of the military, exclusively to the president and others, like the regulation of foreign commerce, to Congress, while still others it divides among the two or simply does not assign.

The separation of powers has spawned a great deal of debate over the roles of the president and Congress in foreign affairs, as well as over the limits on their respective authorities. "The Constitution, considered only for the affirmative grants of power capable of affecting the issue, is as inflexible as any document in that which separates the legislative, executive, and judicial powers," wrote James Madison, U.S. representative from Virginia, in the Federalist papers.

Many scholars say there is much friction over foreign affairs because the Constitution is ambiguous and, in the view of some, it is the intrinsic division of labor between the two political branches that there is with domestic affairs, that says. Because the indicators, the third branch, has generally been reluctant to provide much clarity on these questions, constitutional scuffles over foreign policy are likely to endure.

Powers of Congress

Article I of the Constitution enumerates several of Congress's foreign affairs powers, including those to "regulate commerce with foreign nations," "declare war," "raise and support armies," "provide and maintain a navy," and "make rules for the government and regulation of the land and naval forces." The Constitution also makes two of the president's foreign affairs powers—making treaties and appointing diplomats—dependent on Senate approval.

Beyond these, Congress has general powers—to "lay and collect taxes," to draw money from the Treasury, and to "make all laws which shall be necessary and proper"—that, collectively, allow legislators to influence nearly all domestic foreign policy issues. For example, the 1 cent Congress once had to spend laws on military bases, the 1 cent Congress once had to spend laws on military bases, the 1 cent Congress once had to spend laws on military bases