

## **Constitutional Law Midterm**

**Fall 2015**

**A+ Answer**

1. The President had constitutional authority to enact Executive Order #1. The President has two sources of power, statutory and Constitutional. There is no statute, therefore he must rely on Constitutional power. Article II, Section 1 vests "the executive power" in the President. Article II, Section 2 grants the President the power to nominate Ambassadors to foreign nations.

Because this power is vested solely in the presidency, this power also gives the President the sole discretion to recognize the foreign nations that he will be appointing Ambassadors to. Article II, Section 2 also couples this appointment power with the Senate's advice and consent. However, the Constitution does not give the Senate the power to determine which nations will have Ambassadors, only which Ambassadors will go where the President chooses. Likewise, Article II, Section 3 states that the President shall receive Ambassadors. By granting this power to the President, the Constitution also grants him the power of recognition over these foreign nations.

2. The Spanish Loyalty Act of 1789 was lawfully passed. Article I, Section 7 details bicameralism and presentment. In order for a law to be established, it must be agreed upon by both Houses of Congress and must then be signed by the President. In the event the President vetoes it, that veto may be overturned by a 2/3 vote in Congress. Congress successfully enacted legislation opposing the relations with France, but that may intrude on the President's Executive Powers. As described above, Article II, Section 2,3 grant the power of foreign relations solely with the President. Congress (holding the power of the purse) may have properly defunded any efforts to establish ties with France, but cannot enact legislation which strips the President of his Constitutional authority. Ambition must counteract ambition, and while there was opposition to the President's involvement in France's declaration of sovereignty, this particular ambition is outside of Congress's scope. The President's decision to send John Marshall did not violate this act, because he was acting within his foreign relations powers to ensure peace with the United States and its ally. He is acting within his Art.I, Section 1 oath to "preserve, protect and defend the Constitution." Furthermore, that oath to faithfully uphold the Constitution is as he interprets it. Acting with the sole power over foreign affairs, he is faithfully executing his role as Commander-in-Chief by attempting to bring peace to the United States by gaining an ally.

3. President Washington's removal of the Ambassador to Spain was constitutional. The Constitution is silent as to the removal of officers. While Art.II, Section 2 vests the appointment power to the President, it does not detail the power of removal. Since it is not mentioned in the text, we must look at the history. This being the first time of record this has occurred under this new Constitution, we must then infer what the framers intent was. Art.II, Sec.2 states that "Congress may by Law vest the Appointment of such inferior Officers...in the President." Because an Ambassador may be nominated and appointed by the President, he must also hold the power of removal. Resolution 1 states that the Senate does not provide its "advice and consent" for the removal of the ambassador, however, the advice and consent clause in the Constitution only refers to the appointment power. There is great policy behind this. If a President cannot trust his cabinet, he cannot abide by his oath to "faithfully execute the Oath of the President."

4. The President's appointment of John Marshall was a valid appointment. Art.II,Sec.2 states that the President shall have the Power to fill up Vacancies that may happen during the Recess. There are two types of recesses, intrasession and intersession. As a recess occurring in the middle of a session of Congress, this was an intrasession recess. The Constitution's text does not state that the appointment must be made during an intersession recess, nor does it list the amount of days that is required to be considered a recess. Here, the President and Congress did not agree on an appointment, so it must be scrutinized greatly, as the Constitution does require the Senate's consent. However, one interpretation of the language of the Constitution is that the Recess of the Senate may be interpreted as anytime the Senate is not conducting business. Congress was not conducting business that day. The urgency of filling the position's vacancy and the impending voyage of Marshall to broker peace with Spain, the President should be able to rely on his Appointment/Reception powers. Seeing as gaining allies is a matter of national security, the President's Oath to "preserve, protect and defend the Constitution of the United States" should also allow this appointment.

5. The President did have Constitutional authority to engage in military action in Mexico. Under Art.II,Sec.2, the President shall be Commander in Chief of the Army and Navy. This includes the power to invade an enemy country. Pursuant to Executive Order 1, the United States recognized France's sovereignty over Mexico. According to the President's information, the French were planning an attack through Mexico which threatened the security of the U.S. Intra armes silent leges (In times of war, the laws fall silent). The President acted dutifully to prevent harm to the United States. Article I, Section 8 grants Congress the power "To declare War." By enacting Resolution 2, Congress successfully exercised this right to declare that a State of War existed between the United States and France. Because Resolution2 was never legislatively revoked, the President may use it to attack France, through Mexico. Even if this Resolution were not enacted, the President may still have had the authority. As the Commander-in-Chief, he is faithfully executing his oath of protection by preemptively attacking France and thereby protecting the citizens of the United States. During times of war, or times of imminent threat, the President should be able to exercise his judgment in dealing with enemy combatant.