Handout E: Excerpts from the Pacificus-Helvidius Debate

Background: *In February 1793, France declared war on Great Britain, and news of this move reached the United States in early April. President George Washington and his cabinet were in agreement that the United States must remain neutral with respect to this conflict. However, when Washington asked his cabinet's advice concerning implementation of the policy of neutrality, the issue prompted a serious rift in the cabinet, pitting Secretary of the Treasury Alexander Hamilton against Secretary of State Thomas Jefferson. Foremost among Washington's questions was whether he should issue a formal proclamation of neutrality. The president issued his proclamation on April 22, and Jefferson resigned his cabinet post in protest against the proclamation. Shortly thereafter began an exchange of essays written by Hamilton (writing as "Pacificus") and James Madison (writing as "Helvidius"), who took up the argument expressing the viewpoint he shared with Jefferson. Everyone recognized that the United States, in these early days of the republic, must not be drawn into a European war. Pacificus maintained that it was the proper role of the president to formally make such a proclamation, even though the Constitution does not explicitly list "neutrality proclamations" as an executive power. Helvidius argued for a stricter interpretation – that Congress, not the president, had the primary responsibility to steer such foreign policy issues.*

Pacificus [Italics original]

The inquiry then is- what department of the Government of the United States is the proper one to make a declaration of Neutrality in the cases in which the engagements of the Nation permit and its interests require such a declaration.

A correct and well informed mind will discern at once that it can belong neither to the Legislature nor Judicial Department and of course must belong to the Executive.

The Legislative Department is not the *organ* of intercourse between the United States and foreign Nations. It is charged neither with *making* nor *interpreting* Treaties. It is therefore not naturally that Organ of the Government, which is to pronounce the existing condition of the Nation, with regard to foreign Powers, or to admonish the Citizens of their obligations and duties as founded upon that condition of things. Still less is it charged with execution and observance of those obligations and those duties.

It is equally obvious that the act in question is foreign to the Judiciary Department of Government. The province of that Department is to decide litigations in particular cases. It is indeed charged with the interpretation of treaties; but it exercises this function only in the litigated cases; that is where contending parties bring before it a specific controversy. It has no concern with pronouncing upon the external political relations of Treaties between Government and Government. This position is too plain to need being insisted upon.

It must then of necessity belong to the Executive Department to exercise the function in Question- when a proper case for the exercise of it occurs…

If the Legislature have a right to make war on the one hand-it is on the other the duty of the

Executive to preserve Peace till war is declared; and in fulfilling that duty, it must necessarily possess a right of judging what is the nature of the obligations which the treaties of the Country impose on the Government; and when in pursuance of this right it has concluded that there is nothing in them inconsistent with a *state* of neutrality, it becomes both its province and its duty to enforce the laws incident to that state of the Nation. The Executive is charged with the execution of all laws, the law of Nations as well as the Municipal law, which recognizes and adopts those laws. It is consequently bound, by faithfully executing the laws of neutrality, when that is the state of the Nation, to avoid giving a cause of war to foreign Powers.

Helvidius [Italics original]

[T}he powers to declare war, to conclude peace, and to form alliances, [are] among the highest acts of the sovereignty; of which the legislative power must at least be an integral and preeminent part…

To say then that the power of making treaties which are confessedly laws, belongs naturally to the department which is to execute laws, is to say, that the executive department naturally includes a legislative power. In theory, this is an absurdity – in practice a tyranny."

…From this view of the subject it must be evident, that although the executive may be a convenient organ of preliminary communications with foreign governments, on the subjects of treaty or war; and the proper agent for carrying into execution the final determinations of the competent authority; yet it can have no pretensions from the nature of the powers in question compared with the nature of the executive trust, to that essential agency which gives validity to such determinations.

It must be further evident that, if these powers be not in their nature purely legislative, they partake so much more of that, than of any other quality, that under a constitution leaving them to result to their most natural department, the legislature would be without a rival in its claim.

Another important inference to be noted is, that the powers of making war and treaty being substantially of a legislative, not an executive nature, the rule of interpreting exceptions strictly, must narrow instead of enlarging executive pretensions on those subjects…

In the general distribution of powers, we find that of declaring war expressly vested in the Congress, where every other legislative power is declared to be vested, and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature.

…The power of treaties is vested jointly in the President and in the Senate, which is a branch of the legislature. From this arrangement merely, there can be no inference that would necessarily exclude the power from the executive class: since the senate is joined with the President in another power, that of appointing to offices, which as far as relate to executive offices at least, is considered as of an executive nature. Yet on the other hand, there are sufficient indications that the power of treaties is regarded by the constitution as materially different from mere executive power, and as having more affinity to the legislative than to the executive character.

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…that treaties when formed according to the constitutional mode, are confessedly to have the force and operation of *laws*, and are to be a rule for the courts in controversies between man and man, as much as any *other laws*. They are even emphatically declared by the constitution to be "the supreme law of the land."

…"The President shall be commander in chief of the army and navy of the United States, and of the militia when called into the actual service of the United States."

There can be no relation worth examining between this power and the general power of making treaties. And instead of being analogous to the power of declaring war, it affords a striking illustration of the incompatibility of the two powers in the same hands. Those who are to *conduct a war* cannot in the nature of things, be proper or safe judges, whether *a war ought* to be *commenced*, *continued*, or *concluded*. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws…

"Tho' several writers on the subject of government place that power (*of making treaties*) in the class of *Executive authorities*, yet this is *evidently* an *arbitrary disposition*. For if we attend *carefully*, to its operation, it will be found to partake *more* of the *legislative* than of the *executive* character, though it does not seem strictly to fall within the definition of either of them. The essence of the legislative authority, is to enact laws; or in other words, to prescribe rules for the regulation of the society. While the execution of the laws and the employment of the common strength, either for this purpose, or for the common defense, seem to comprise *all* the functions of the *Executive magistrate*. The power of making treaties is *plainly* neither the one nor the other. It relates neither to the execution of the subsisting laws, nor to the enaction of new ones, and still less to an exertion of the common strength. Its objects are contracts with foreign nations, which have the *force of law*, but derive it from the obligations of good faith. They are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong properly neither to the legislative nor to the executive. The qualities elsewhere detailed as indispensable in the management of foreign *negotiations*, point out the executive as the most fit agent in those transactions: whilst the vast importance of the trust, and the operation of treaties *as Laws*, plead strongly for the participation of the whole or a part of the *legislative body* in the office of making them."

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Comprehension Questions

1. According to Pacificus, which branch of government was the proper one to make a proclamation of United States neutrality in the war between France and Great Britain? Why?
2. According to Helvidius, which branch of government was the proper one to make a proclamation of United States neutrality in the war between France and Great Britain? Why?
3. With which position do you agree? To what extent, if at all, is this debate about the relative roles of the executive and the legislative branches relevant today?