

Supreme Court and Foreign Policy

Importance of the Court:

- 1) Ultimate Adjudicator
- 2) Delineates FP powers
- 3) Affect Policy Indirectly

How has the Court Expanded Presidential Powers?

A) Missouri v Holland

-- US and UK Treaty on Migratory Birds

Missouri sues Congressional Action

Lower Courts prior to Treaty ruled against Federal Government

SC rules for Federal Government

-- Treaties delineate unspecified powers in Con.

Effect:

1) National over State

2) Strengthens President- treaties decrease implied powers of States and Congress

B) US vs Curtiss Wright- Most Important Case Expanding Presidential Powers

Congress passes joint resolution authorizing President to prohibit arms sales

May 1934- FDR does, Nov, 1935- revokes

Curtiss Wright indicted on conspiring to sell

Curtiss Wright argues invalid delegation of power from Congress to Executive

New Deal Precedents and District Court Victory

SC rules for the US against Curtiss Wright

1) internal vs external affairs

2) President is sole organ of the US in international affairs

Effects:

1) Distinction government powers internally and externally

2) President is sole head of US FP and has FP powers beyond the Constitution

C) US v Belmont and US v Pink

Litvinov Agreement

Executive Agreement

NY sues the US

SC rules for the US b/c of Executive Agreement

Effect:

Executive Agreements same force as Treaties

Years	Treaties	EA	%EA/Total
1789-1839	60	27	31
1839-1889	215	238	57
1889-1929	382	763	67
1930-1939	142	144	50
1940-1949*	116	919	89
1950-1959	138	2229	94
1960-1969	114	2324	95
1970-1979	173	3040	95
1980-1989	151	3457	96

D) INS V Chadha- Legislative Veto

Legislative Veto- Congress delegates authority but includes provision allowing them to veto executive actions

Case: Chadha overstays student visa, Deportation suspended by INS, Congress orders deported

Chadha seeks help from Court

SC rules legislative veto unconstitutional b/c 1) bicameralism

2) presentment clause

Only exceptions: Impeachment and Presidential Nominees

Effects: 1) Removes Congressional Check

2) Prevented Congressional Resurgence

Court Limits the Executive

A) Youngstown Sheet & Tube Co. et al. V

Sawyer

1952- During Korean War, Imminent Steel
Mill Strike

Truman, Sawyer, takeover of Mills

Court rules against President

Concurring Opinion- Prez Powers Vary

1) Strongest- With Congress Authorization

2) Middle- Uses own Powers, No Congress

3) Weakest- acts against will of Congress

Effect: Limited Domestic expansion of Prez
FP powers

No Huge Change Though

B) NY Times v US

US v Nixon

NY Times v US- Pentagon Papers- SE
Asian involvement

US v Nixon- tapes about Watergate

Effect: Minimal Limits on Absolute
Prez Authority

Non-Rulings that Support the President

1) Political Question Doctrine

Goldwater v Carter

Break 1954 Taiwan Treaty

Court Does Not Rule b/c PQD

Why the PQD?

1) No Authority

2) Solution involves political remedy

3) avoid the question

2) Ripeness

Goldwater v Carter

Dellums v Bush

3) Mootness

Post Gulf War Media Cases
