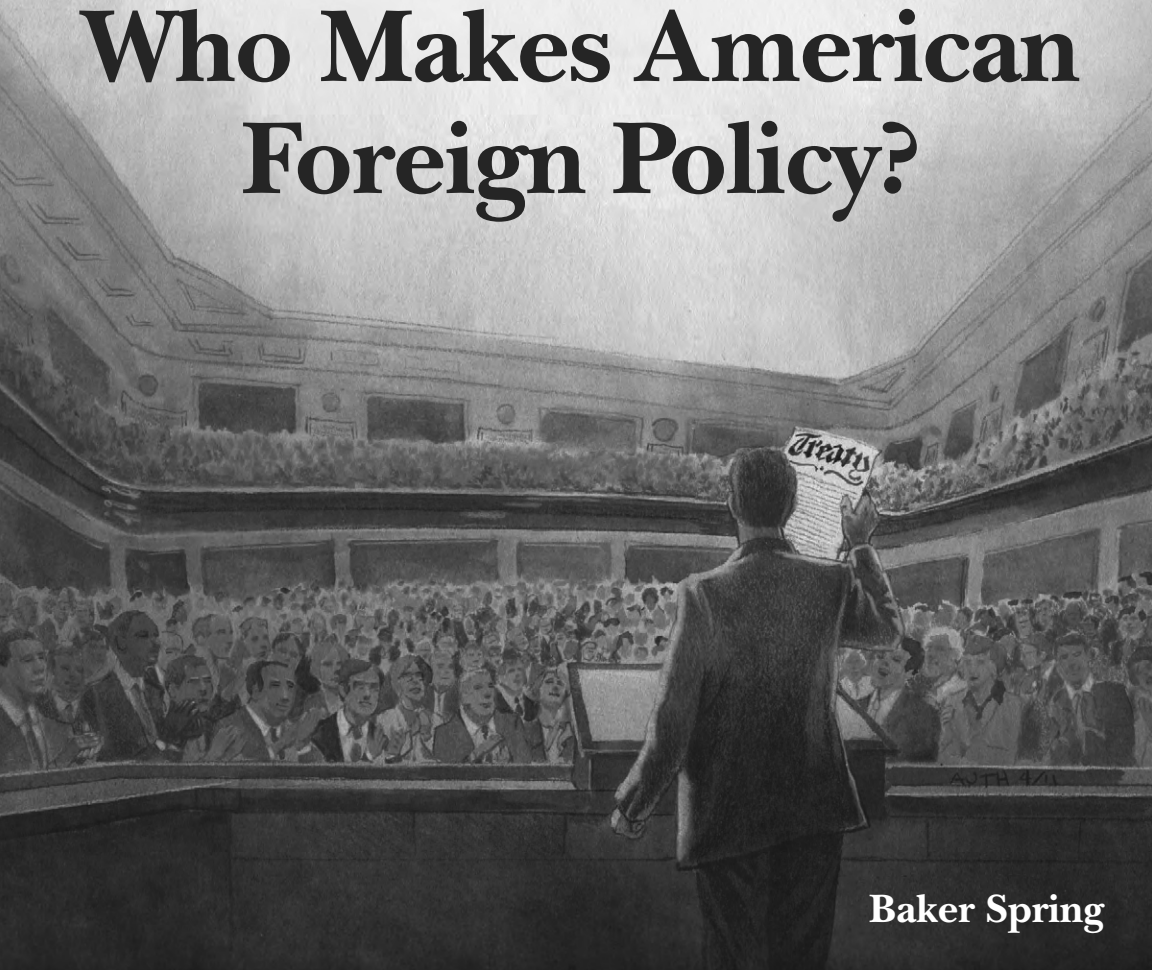


UNDERSTANDING AMERICA



Who Makes American Foreign Policy?



Baker Spring

The *Understanding America* series is founded on the belief that **America is an exceptional nation**. America is exceptional, not for what it has achieved or accomplished, but because, unlike any other nation, it is dedicated to the principles of human liberty, grounded on the truths expressed in the Declaration of Independence that all men are created equal and endowed with equal rights. As Abraham Lincoln once said, these permanent truths are “applicable to all men and all times.” The series explores these principles and explains how they must govern America’s policies, at home and abroad.

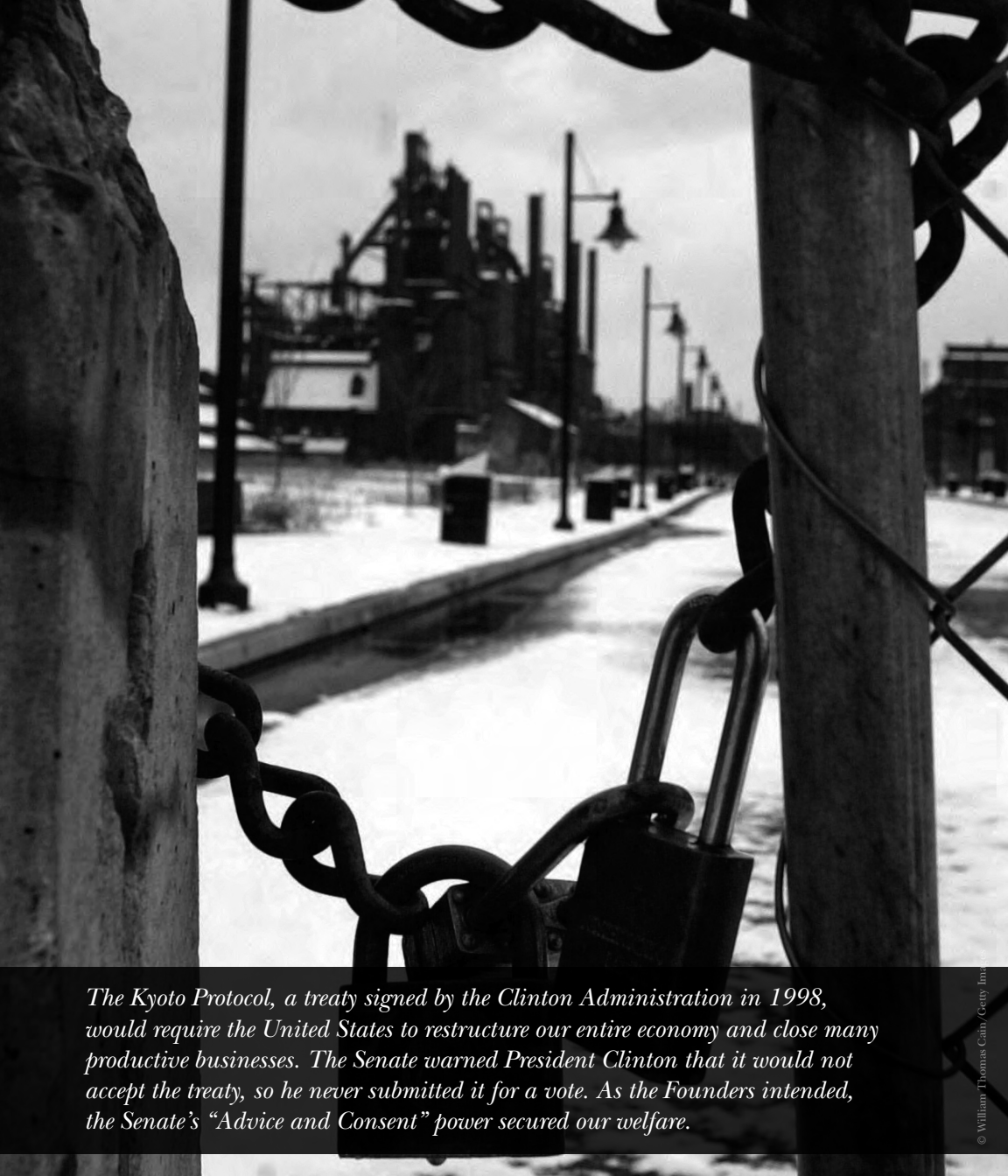
About This Cover

American foreign policy is subject to constitutional checks and balances. The cover illustration highlights part of this dynamic: the President negotiates treaties with other nations, but the Senate has the power of “Advice and Consent,” and is responsible for ratifying treaties. The Founders crafted a system that serves America’s interests abroad and preserves freedom at home.

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Who Makes American Foreign Policy?

When the United States makes treaties with other nations, or when it sends ambassadors abroad, it is practicing foreign policy. The first priority of the United States' foreign policy is to preserve and strengthen the position of the United States as an independent and sovereign nation. In the Declaration of Independence, the U.S. staked its claim "to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them." In the United States, the institutions the Constitution created must serve this central purpose, to which all other purposes are subordinate. Given this fact, who is responsible for making foreign policy in the United States?



The Kyoto Protocol, a treaty signed by the Clinton Administration in 1998, would require the United States to restructure our entire economy and close many productive businesses. The Senate warned President Clinton that it would not accept the treaty, so he never submitted it for a vote. As the Founders intended, the Senate's "Advice and Consent" power secured our welfare.



The Constitution vests the power to make foreign policy in the federal government. It precludes the states from entering into “any Treaty, Alliance, or Confederation.”¹ Within the federal government, the Constitution divides foreign-policy making power between the President and the Senate, giving them shared authority over the making of treaties and the extension of diplomatic recognition to other nations.

Specifically, the Constitution gives the Senate the power of “Advice and Consent” on treaties, which the President is responsible for negotiating. The Senate also has the power of “Advice and Consent” in the appointment of ambassadors nominated by the President.² Thus, while the Constitution reserves foreign policy for the federal government, it gives the states—as represented by their Senators—an indirect but potent influence over the making of foreign policy.

The Constitution gives the House of Representatives no separate powers in the realm of foreign policy, though in cooperation with the Senate and the President it shares the power of issuing formal declarations of war. But the House can still affect foreign policy.

The Founding Fathers understood that U.S. foreign policy would be influenced by what George Washington referred to as “enlightened” public opinion.³

In practice, and especially when American lives are not at stake, the American people rarely adopt strong views on the conduct of foreign policy. Nevertheless, the House, using its power of the purse and its ability to command the spotlight, plays a role in expressing public sentiments on foreign policy, and thus holding the President to account.



While this role is important, the Constitution makes it clear that the President—not the House, or even the Senate—must take the lead in the making of American foreign policy. That is why the Constitution places the power to make treaties and the power to appoint ambassadors in Article II, which enumerates the powers of the President. The President is thus the nation’s chief diplomat and the State Department is his executive agency in the conduct of American diplomacy.

“[The] Constitution provides that our negotiations for treaties shall have every advantage which can be derived from talents, information, integrity, and deliberate investigations, on the one hand, and from secrecy and despatch on the other.”



—John Jay
March 7, 1788



After the First World War, U.S. President Woodrow Wilson and the other leaders of the victorious powers negotiated the Treaty of Versailles. The Senate considered and rejected the Treaty because it might oblige the U.S. to enter a war against its will. The Senate exercised its “Advice and Consent” power to defend our sovereignty.

The power of the Senate to offer its “Advice and Consent” on treaties and appointments is designed to be narrow. Nevertheless, within those limits, “Advice and Consent” imposes, as it was meant to, a significant check on the President’s ability to make foreign policy. This check is intended to secure the common defense and welfare of the country, while allowing for both efficient action and the representation of enlightened public opinion.⁴ In foreign as in domestic policy, the Constitution seeks to create a strong but limited government.

In the realm of treaties, the Senate’s “Advice and Consent” power is designed to prevent the U.S. from entering into an international agreement that is simply defective, or that endangers America’s status as a sovereign and independent nation. The Senate must take action to ratify a treaty; treaties do not enter into force if the Senate fails to act within a time limit. The approval of treaties also requires a super-majority vote of two-thirds of the Senate.

The Founders believed that this was an important safeguard that would prevent a small majority of the nation from committing the whole people. Ratified treaties are fully incorporated in American law and are legally enforceable through our courts. They are a

serious commitment of the honor of the United States and must reflect the will and interests of a substantial majority.

The Senate is not limited to an up-or-down vote on a treaty. As part of its “Advice” power, it may adopt amendments that alter the text of a treaty. The “Advice” power also allows it to add rules that govern how the U.S. interprets and carries out the terms of a treaty. These rules, called “understandings and reservations,” can impose legally binding conditions on the President if the treaty comes into effect. Finally, the Senate may adopt what are known as “declarations,” which state for the record the views of the United States on issues relevant to the treaty. In short, the Senate’s role is not simply about “Consent”; its power of “Advice” is vital.



In the realm of the appointment of ambassadors, the Senate has the power to confirm the nominees of the President. This confirmation requires a simple majority vote. The Senate’s role is not limited to reviewing a nominee’s personal qualifications. As Alexander Hamilton stated, a nominee should be rejected by the Senate only for

“Genuine popular support in the United States is required to carry out any Government policy, foreign or domestic.

The American people make up their own minds and no governmental action can change it.”



**–Franklin D. Roosevelt,
writing to Joseph Stalin
*March 29, 1945***



North Korea is an oppressive regime that threatens America and starves its own people. It fails to meet minimum standards of decency. The U.S. should therefore not recognize North Korea, and other places like it, as legitimate states. The Senate must remember this fact when it decides whether to confirm American ambassadors.

“special and strong reasons.” This implies that, during the confirmation of a nominee, the Senate must also consider questions of policy.

The most important question of this nature that the Senate has to consider is whether the ambassador has been nominated to serve in a foreign nation that deserves to be recognized by the United States. The Senate can and should reject an ambassadorial nominee if it believes that the U.S. should not extend diplomatic recognition to the nation in question. Presidents and the Senate have paid too little attention to this responsibility in recent years.

The United States is a sovereign nation, and the duty of its foreign policy is to protect that sovereignty. When the U.S. extends diplomatic recognition to a so-called state that does not qualify as sovereign, it undermines the legitimacy of all claims to sovereignty, including its own. All states must meet minimum standards if they are to qualify as sovereign. They must provide for the security of their people, have a fair and honest system of justice, and maintain a currency and a diplomatic service. Finally, the state must serve the people, not force the people to serve the state. The United States should not be in the business of extending diplomatic recognition to so-called states that do not meet these minimum standards, and so are not genuinely sovereign.



It is important to understand why the Founding Fathers divided these powers between the President and the Senate, and did not share them with the House of Representatives. The Founders believed that the smaller Senate would be better able to take account of the delicacies inherent in the foreign policy process. Alexander Hamilton pointed out why the House of Representatives was not suited to have the power of “Advice and Consent” on treaties:

Accurate and comprehensive knowledge of foreign politics; a steady and systematic adherence to the same views; a nice and uniform sensibility to national character; decision, **SECRECY**, and despatch, are incompatible with the genius of a body so variable and so numerous.⁵

The conduct of foreign policy is an essential task for any sovereign power. The Constitution regulates the conduct of American foreign policy by subjecting it—like all federal power—to a system of checks and balances. In the realm of foreign policy, the President’s powers are particularly substantial, but they are not unlimited.

This is because the United States is a nation founded on an idea of liberty. It therefore did not succumb to the temptation of believing that foreign policy is best conducted by an efficient autocrat. The Founders recognized that giving unlimited power to the President in the realm of foreign policy was incompatible with the principles held by the American people, and with the claim in the Declaration of Independence that political power must flow from the people. If America is rightfully sovereign because the American people rule themselves, then American foreign policy must ultimately express the will of the people. The Constitution therefore created institutions to express that will.

The constitutional system checks power by separating it. Yet even in the sphere of foreign policy, where separating power is particularly difficult, the Founding Fathers crafted a delicate relationship between the President and the Senate, and thus found a way to permit the effective conduct of foreign relations while imposing accountability on it. With the Constitution, the Founders created a powerful but limited government in order to achieve efficient action abroad, to protect liberty at home, to allow the expression of enlightened opinion, and to provide in the sovereignty of the people the ultimate justification for the actions the government takes abroad.

The President must lead on foreign policy, but the American system gives the Senate, and through it the American people, a powerful role in controlling and shaping foreign policy. The President makes foreign policy but he does not make it by himself. The United States must respect this constitutional system if its foreign policy is to fulfill its first priority of preserving and defending American independence.



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Enduring Truths

For links to these titles, go to heritage.org/UnderstandingAmerica.

- **Alexander Hamilton**, *The Federalist Papers*, **Essay No. 75**,
“**The Treaty-Making Power of the Executive**”

In this analysis of the “Advice and Consent” clause, Hamilton defends giving the President the power to negotiate treaties, but agrees that it would be “utterly unsafe and improper” to allow the President to commit the nation without securing the Senate’s “Advice and Consent.”

- **Matthew Spalding**, *America’s Founders and the Principles of Foreign Policy: Sovereign Independence, National Interests, and the Cause of Liberty in the World*

In dealing with the world, America should be guided by her founding principles. The Founders, as Spalding shows, understood this and designed a truly American foreign policy—fundamentally shaped by our principles but neither driven by nor ignorant of the place of necessity in international relations.

- **Ted R. Bromund, *How Must America Practice Diplomacy?***

The checks and balances on the making of American foreign policy, and the principles that guide it, reflect the respect the Founding Fathers had for responsible diplomacy. As Bromund demonstrates, the U.S. must respect the wisdom of the Founders, including their intention that American diplomacy be subject to the consent of the governed.

- **Jeremy Rabkin, *Law Without Nations? Why Constitutional Government Requires Sovereign States***

By giving the Senate the power of “Advice and Consent” on treaties, the Constitution limits the power of the President to commit the United States. Many on the left resent this fact: because the American people will not vote for their agenda, liberal activists hope to achieve their aims through international negotiations instead, thereby circumventing the “Advice and Consent” power of the democratically-elected Senate. In this important book, Rabkin demonstrates the dangers of this supranational doctrine.

Current Issues

For links to these reports, go to heritage.org/UnderstandingAmerica.

- **THE SENATE.** Baker Spring, “Advice and Consent? The Senate Should START with Advice,” September 15, 2010.

The New START treaty with Russia offered the Senate a textbook opportunity to apply its responsibility to give “Advice” to the President. Spring demonstrates that, especially when the common defense is concerned, this “Advice” should be broad and substantive.

- **SOVEREIGNTY.** Brett Schaefer and Steven Groves, “The ICC Review Conference: A Threat to U.S. Interests,” May 28, 2010.

The U.S. has refused to join the International Criminal Court (ICC) because, unlike the American system, it lacks robust checks and balances on its authority. Schaefer and Groves argue that the U.S. should continue to view the ICC with caution.

- **LEADERSHIP.** Kim Holmes, “Defending Freedom Is a Choice,” May 3, 2010.

America became a world power to protect our freedoms, which are deeply tied to the security and freedom of countries around

the world. Holmes shows that America will decline only if most Americans decide that what is unique about their country—its Constitution and legacy of liberty—is no longer worth fighting for.

- **GLOBAL WARMING.** Hans von Spakovsky, “Climate Policy by Judicial Fiat: How Global Warming Lawsuits Subvert the Democratic Process,” February 16, 2011.

The recent spate of global warming lawsuits is an attempt to circumvent the political process and implement public policy by judicial fiat. Unable to advance their policies through Congress, global warming activists have turned to the judiciary to implement their agenda. It is up to the Supreme Court to affirm that global warming is a political issue that must be left to the elected branches of the U.S. government, not a tiny minority of unelected federal judges.

Endnotes

- 1 U.S. Constitution, Article I, Section 10.
- 2 U.S. Constitution, Article II, Section 2.
- 3 George Washington, “Farewell Address,” May 15, 1796.
- 4 John Jay, *The Federalist Papers*, Federalist No. 64, March 7, 1788.
- 5 Alexander Hamilton, *The Federalist Papers*, Federalist No. 75, March 26, 1788.

About *Understanding America*

AMERICANS HAVE ALWAYS BELIEVED that this nation, founded on the idea of freedom, has a vital responsibility to the rest of the world. As George Washington first recognized, the “preservation of the sacred fire of liberty” depended on the American people. These words remain true today.

Understanding America explores how the United States’ commitment to the universal truths of human equality and the right to self-government—as proclaimed in the Declaration of Independence—requires a vigilant defense of the cause of liberty, both at home and abroad.

Other volumes in the series:

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Who Makes American Foreign Policy?

“The President must lead on foreign policy, but the American system gives the Senate, and through it the American people, a powerful role in controlling and shaping foreign policy.”

The Constitution, which governs how America makes foreign policy, creates a strong but limited government to protect Americans’ liberty. This volume in the *Understanding America* series explains how the Senate and the President share responsibility for making foreign policy, and why this balance of power is critical to preserving and defending American independence.

