

CONSTITUTIONAL CONVENTION US TREATY MAKING

CONSTITUTIONAL CONVENTION US TREATY MAKING ESTABLISHED THE FOUNDATIONAL PRINCIPLES THAT CONTINUE TO SHAPE HOW THE UNITED STATES ENTERS INTO INTERNATIONAL AGREEMENTS. THE FRAMERS OF THE CONSTITUTION GRAPPLED WITH BALANCING THE EXECUTIVE AND LEGISLATIVE BRANCHES' ROLES IN THIS CRITICAL FOREIGN POLICY FUNCTION, SEEKING TO PREVENT BOTH EXECUTIVE OVERREACH AND LEGISLATIVE PARALYSIS. THIS ARTICLE DELVES INTO THE INTRICATE DEBATES AND DECISIONS MADE DURING THE CONSTITUTIONAL CONVENTION CONCERNING THE U.S. TREATY-MAKING PROCESS, EXAMINING THE POWERS VESTED IN THE PRESIDENT AND THE SENATE, AND THE HISTORICAL CONTEXT THAT INFORMED THESE CHOICES. WE WILL EXPLORE THE CHECKS AND BALANCES IMPLEMENTED, THE EVOLUTION OF TREATY INTERPRETATION, AND THE LASTING IMPACT OF THESE ORIGINAL DELIBERATIONS ON CONTEMPORARY U.S. FOREIGN RELATIONS. UNDERSTANDING THIS HISTORICAL FRAMEWORK IS ESSENTIAL FOR APPRECIATING THE COMPLEXITIES OF CONSTITUTIONAL CONVENTION US TREATY MAKING TODAY.

TABLE OF CONTENTS

THE GENESIS OF TREATY POWERS: DEBATES AT THE CONVENTION
PRESIDENTIAL AUTHORITY IN TREATY MAKING
THE SENATE'S CRUCIAL ROLE: ADVICE AND CONSENT
THE TREATY PROCESS: FROM NEGOTIATION TO RATIFICATION
CHECKS, BALANCES, AND THE EVOLUTION OF TREATY LAW
CONTEMPORARY IMPLICATIONS OF CONSTITUTIONAL TREATY PROVISIONS

THE GENESIS OF TREATY POWERS: DEBATES AT THE CONVENTION

THE FRAMERS OF THE U.S. CONSTITUTION, CONVENING IN PHILADELPHIA IN 1787, RECOGNIZED THE ABSOLUTE NECESSITY OF ESTABLISHING A CLEAR AND EFFECTIVE MECHANISM FOR THE UNITED STATES TO ENGAGE WITH FOREIGN POWERS THROUGH TREATIES. THE EXPERIENCE UNDER THE ARTICLES OF CONFEDERATION HAD DEMONSTRATED THE DEBILITATING WEAKNESSES OF A SYSTEM WHERE THE CENTRAL GOVERNMENT LACKED THE AUTHORITY TO ENTER INTO BINDING INTERNATIONAL AGREEMENTS. CONSEQUENTLY, THE QUESTION OF HOW TO BEST GRANT AND CONTROL TREATY-MAKING POWER WAS A SUBJECT OF INTENSE DISCUSSION AND DELIBERATION THROUGHOUT THE CONVENTION. VARIOUS PROPOSALS WERE FLOATED, REFLECTING A DEEP-SEATED CONCERN ABOUT BOTH FOREIGN INFLUENCE AND DOMESTIC FACTIONALISM. THE ULTIMATE DESIGN WAS A CAREFULLY CONSTRUCTED COMPROMISE, AIMING TO GRANT SUFFICIENT POWER TO CONDUCT FOREIGN POLICY WHILE EMBEDDING ROBUST SAFEGUARDS AGAINST POTENTIAL ABUSES.

ONE OF THE CENTRAL ANXIETIES REVOLVED AROUND THE POTENTIAL FOR EITHER THE EXECUTIVE OR THE LEGISLATIVE BRANCH TO WIELD TOO MUCH POWER INDEPENDENTLY IN MATTERS OF FOREIGN RELATIONS. DELEGATES UNDERSTOOD THAT SWIFT AND DECISIVE ACTION COULD BE CRUCIAL IN INTERNATIONAL DIPLOMACY, YET THEY ALSO HARBORED A PROFOUND DISTRUST OF UNCHECKED EXECUTIVE AUTHORITY, A SENTIMENT ROOTED IN THEIR RECENT EXPERIENCE WITH BRITISH MONARCHICAL RULE. CONVERSELY, A PURELY LEGISLATIVE PROCESS MIGHT PROVE TOO CUMBERSOME AND SLOW, POTENTIALLY JEOPARDIZING NATIONAL INTERESTS IN A RAPIDLY CHANGING GLOBAL LANDSCAPE. THE DEBATES REFLECTED THIS TENSION, WITH DIFFERENT FACTIONS ADVOCATING FOR VARYING DEGREES OF PRESIDENTIAL AND SENATORIAL INVOLVEMENT IN THE TREATY-MAKING PROCESS. THE RESULTING FRAMEWORK SOUGHT A DYNAMIC EQUILIBRIUM, ONE THAT WOULD FOSTER BOTH EFFICACY AND ACCOUNTABILITY.

PRESIDENTIAL AUTHORITY IN TREATY MAKING

THE U.S. CONSTITUTION, IN ARTICLE II, SECTION 2, UNEQUIVOCALLY VESTS THE PRESIDENT WITH THE POWER TO "MAKE TREATIES, PROVIDED TWO THIRDS OF THE SENATORS PRESENT CONCUR." THIS PROVISION CLEARLY DESIGNATES THE PRESIDENT AS THE PRIMARY ACTOR IN THE NEGOTIATION AND FORMALIZATION OF TREATIES. THE PRESIDENT, ACTING THROUGH DESIGNATED REPRESENTATIVES, IS RESPONSIBLE FOR CONDUCTING THE DELICATE AND OFTEN PROTRACTED NEGOTIATIONS WITH FOREIGN GOVERNMENTS. THIS ROLE ALLOWS FOR A UNIFIED AND CONSISTENT NATIONAL VOICE IN INTERNATIONAL FORUMS, A STARK CONTRAST TO THE DISUNITY THAT PLAGUED THE CONFEDERATION PERIOD. THE PRESIDENT'S AUTHORITY EXTENDS TO PROPOSING TREATY TERMS, ENGAGING IN DIPLOMACY, AND ULTIMATELY SIGNING AGREEMENTS ON BEHALF OF THE UNITED STATES.

HOWEVER, THE PRESIDENT'S POWER IN TREATY MAKING IS NOT ABSOLUTE. THE WORDING OF THE CONSTITUTION ITSELF IMMEDIATELY INTRODUCES A SIGNIFICANT CHECK: "PROVIDED TWO THIRDS OF THE SENATORS PRESENT CONCUR." THIS CRUCIAL QUALIFIER MEANS THAT WHILE THE PRESIDENT INITIATES AND NEGOTIATES TREATIES, THEY CANNOT BE RATIFIED OR BECOME BINDING INTERNATIONAL LAW WITHOUT THE EXPLICIT CONSENT OF A SUPERMAJORITY OF THE SENATE. THIS SEPARATION OF POWERS WAS A DELIBERATE DESIGN CHOICE BY THE FRAMERS, ENSURING THAT THE EXECUTIVE BRANCH'S FOREIGN POLICY INITIATIVES WOULD BE SUBJECT TO THE SCRUTINY AND APPROVAL OF A KEY LEGISLATIVE BODY. THE PRESIDENT'S ROLE, THEREFORE, IS ONE OF LEADERSHIP IN NEGOTIATION, BUT ULTIMATE RATIFICATION RESTS ON A SHARED AUTHORITY.

THE EXECUTIVE'S ROLE IN NEGOTIATION AND EXECUTION

THE PRESIDENT'S EXECUTIVE AUTHORITY IS MOST PROMINENTLY DISPLAYED IN THE NEGOTIATION PHASE OF TREATY MAKING. THE PRESIDENT APPOINTS AND INSTRUCTS DIPLOMATS, SETS THE AGENDA FOR INTERNATIONAL DISCUSSIONS, AND HAS THE FINAL SAY ON THE TERMS OF AN AGREEMENT BEFORE IT IS SUBMITTED TO THE SENATE. THIS POWER ALLOWS THE PRESIDENT TO PURSUE FOREIGN POLICY OBJECTIVES ALIGNED WITH THEIR ADMINISTRATION'S VISION. FURTHERMORE, ONCE A TREATY IS RATIFIED, THE PRESIDENT IS RESPONSIBLE FOR ITS EXECUTION, ENSURING THAT THE UNITED STATES ADHERES TO ITS COMMITMENTS. THIS INVOLVES IMPLEMENTING DOMESTIC LEGISLATION IF NECESSARY, COMMUNICATING WITH FOREIGN GOVERNMENTS, AND REPRESENTING THE U.S. IN INTERNATIONAL BODIES ESTABLISHED BY THE TREATY.

LIMITS ON PRESIDENTIAL TREATY POWER

DESPITE THE PRESIDENT'S CENTRAL ROLE, THEIR TREATY-MAKING POWER IS SIGNIFICANTLY CONSTRAINED BY THE SENATE'S CONSTITUTIONAL PREROGATIVE. THE PRESIDENT CANNOT UNILATERALLY ENTER INTO BINDING TREATIES. THE REQUIREMENT OF A TWO-THIRDS SENATE SUPERMAJORITY FOR RATIFICATION IS A FORMIDABLE HURDLE, OFTEN NECESSITATING EXTENSIVE CONSULTATION AND NEGOTIATION BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES EVEN BEFORE A TREATY REACHES THE FLOOR FOR A VOTE. MOREOVER, THE SENATE HAS THE POWER TO PROPOSE AMENDMENTS, RESERVATIONS, OR UNDERSTANDINGS TO A TREATY, WHICH THE PRESIDENT MAY OR MAY NOT CHOOSE TO ACCEPT, POTENTIALLY LEADING TO FURTHER NEGOTIATIONS OR EVEN THE ABANDONMENT OF THE TREATY ALTOGETHER. THIS INHERENT TENSION BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES IS A DEFINING CHARACTERISTIC OF THE U.S. TREATY-MAKING SYSTEM.

THE SENATE'S CRUCIAL ROLE: ADVICE AND CONSENT

THE U.S. SENATE OCCUPIES A UNIQUE AND INDISPENSABLE POSITION IN THE CONSTITUTIONAL TREATY-MAKING PROCESS, ACTING AS A VITAL CHECK ON EXECUTIVE POWER THROUGH ITS "ADVICE AND CONSENT" ROLE. THIS FUNCTION, OUTLINED IN ARTICLE II, SECTION 2, MEANS THAT THE SENATE DOES NOT MERELY RUBBER-STAMP PRESIDENTIAL DECISIONS; IT IS EMPOWERED TO ACTIVELY PARTICIPATE IN SHAPING AND APPROVING INTERNATIONAL AGREEMENTS. THE FRAMERS INTENDED THIS BICAMERAL APPROACH TO FOREIGN POLICY TO ENSURE THAT TREATIES, WHICH CARRY THE WEIGHT OF LAW AND SIGNIFICANT NATIONAL COMMITMENTS, WOULD BE THE PRODUCT OF BROAD CONSENSUS RATHER THAN THE UNILATERAL DECISION OF A SINGLE BRANCH.

THE SENATE'S INVOLVEMENT IS NOT LIMITED TO A SIMPLE UP-OR-DOWN VOTE. IT CAN, AND OFTEN DOES, PROVIDE ADVICE DURING THE NEGOTIATION PROCESS, THOUGH THIS IS TYPICALLY DONE THROUGH INFORMAL CHANNELS OR BY SENATORS SERVING AS ADVISORS TO THE PRESIDENT'S NEGOTIATING TEAM. THE FORMAL "ADVICE" ASPECT IS OFTEN INTERTWINED WITH THE "CONSENT" PHASE. DURING COMMITTEE HEARINGS AND FLOOR DEBATES, SENATORS CAN VOICE CONCERNS, PROPOSE MODIFICATIONS, AND ULTIMATELY VOTE ON WHETHER TO CONSENT TO THE TREATY AS PRESENTED, OR TO CONSENT WITH SPECIFIC RESERVATIONS, UNDERSTANDINGS, OR EVEN AMENDMENTS. THIS DELIBERATION PROCESS IS CRUCIAL FOR ENSURING THAT TREATIES ALIGN WITH U.S. VALUES AND INTERESTS AND ARE SUBJECT TO THOROUGH PUBLIC AND LEGISLATIVE SCRUTINY.

THE TWO-THIRDS REQUIREMENT: A HIGH BAR

THE CONSTITUTIONAL MANDATE FOR A TWO-THIRDS VOTE OF THE SENATORS PRESENT TO APPROVE A TREATY IS A SIGNIFICANT HURDLE DESIGNED TO PROMOTE BROAD CONSENSUS AND PREVENT HASTY OR ILL-CONSIDERED AGREEMENTS. THIS SUPERMAJORITY REQUIREMENT MEANS THAT A SUBSTANTIAL MINORITY OF THE SENATE CAN EFFECTIVELY BLOCK A TREATY, FORCING THE PRESIDENT TO BUILD BROADER SUPPORT OR RECONSIDER THE TERMS. THIS HIGH THRESHOLD REFLECTS THE FRAMERS' CONCERN ABOUT THE POTENTIAL FOR TREATIES TO BYPASS THE NORMAL LEGISLATIVE PROCESS AND CREATE LASTING INTERNATIONAL OBLIGATIONS WITHOUT WIDESPREAD NATIONAL AGREEMENT. IT ENCOURAGES COMPROMISE AND ENSURES THAT TREATIES REFLECT A NATIONAL, RATHER THAN MERELY PARTISAN, WILL.

SENATE COMMITTEES AND TREATY REVIEW

THE SENATE FOREIGN RELATIONS COMMITTEE PLAYS A PIVOTAL ROLE IN THE TREATY-MAKING PROCESS. BEFORE A TREATY IS BROUGHT TO THE FULL SENATE FOR A VOTE, IT IS TYPICALLY REFERRED TO THIS COMMITTEE, WHICH THEN CONDUCTS EXTENSIVE HEARINGS. THESE HEARINGS INVOLVE TESTIMONY FROM ADMINISTRATION OFFICIALS, FOREIGN POLICY EXPERTS, AND OTHER STAKEHOLDERS. THE COMMITTEE RIGOROUSLY EXAMINES THE TREATY'S PROVISIONS, ITS IMPLICATIONS FOR U.S. FOREIGN POLICY, NATIONAL SECURITY, AND DOMESTIC LAW, AND ITS OVERALL BENEFIT TO THE NATION. THE COMMITTEE'S RECOMMENDATIONS—WHETHER TO APPROVE, REJECT, OR AMEND THE TREATY—CARRY CONSIDERABLE WEIGHT IN SHAPING THE SUBSEQUENT DEBATE AND VOTE IN THE FULL SENATE. THIS DETAILED REVIEW PROCESS IS AN ESSENTIAL PART OF THE "ADVICE AND CONSENT" MECHANISM.

THE TREATY PROCESS: FROM NEGOTIATION TO RATIFICATION

THE JOURNEY OF A TREATY FROM CONCEPTION TO BECOMING BINDING U.S. LAW IS A COMPLEX AND MULTI-STAGE PROCESS, DEEPLY EMBEDDED WITHIN THE U.S. CONSTITUTIONAL FRAMEWORK. IT BEGINS WITH INTERNATIONAL NEGOTIATIONS, WHERE THE PRESIDENT, THROUGH APPOINTED REPRESENTATIVES, ENGAGES WITH FOREIGN POWERS TO DEFINE THE TERMS OF A PROPOSED AGREEMENT. THIS PHASE IS CRUCIAL FOR ESTABLISHING THE FOUNDATIONAL UNDERSTANDING AND COMMITMENTS THAT WILL FORM THE BASIS OF THE TREATY. ONCE NEGOTIATIONS CONCLUDE AND THE PRESIDENT APPROVES THE TEXT, THE TREATY IS THEN FORMALLY SIGNED BY THE U.S. REPRESENTATIVE.

FOLLOWING SIGNATURE, THE TREATY IS TRANSMITTED TO THE U.S. SENATE FOR ITS CONSIDERATION. THIS MARKS THE TRANSITION FROM EXECUTIVE NEGOTIATION TO LEGISLATIVE REVIEW. THE SENATE'S ROLE HERE IS PARAMOUNT, AS IT HOLDS THE EXCLUSIVE POWER TO GRANT "ADVICE AND CONSENT" FOR RATIFICATION. THE PROCESS WITHIN THE SENATE INVOLVES REFERRAL TO THE APPROPRIATE COMMITTEE, TYPICALLY THE COMMITTEE ON FOREIGN RELATIONS, FOLLOWED BY HEARINGS, DEBATE, AND ULTIMATELY A VOTE. IF THE SENATE APPROVES THE TREATY BY THE CONSTITUTIONALLY REQUIRED TWO-THIRDS MAJORITY, THE PRESIDENT THEN FORMALLY RATIFIES THE TREATY, AND IT ENTERS INTO FORCE FOR THE UNITED STATES, BECOMING A BINDING PART OF INTERNATIONAL AND, OFTEN, DOMESTIC LAW.

NEGOTIATION AND SIGNATURE

THE PRESIDENT, THROUGH THE DEPARTMENT OF STATE AND OTHER RELEVANT AGENCIES, IS THE PRINCIPAL ARCHITECT OF TREATY NEGOTIATIONS. THE PRESIDENT SELECTS THE NEGOTIATORS, DEFINES THEIR OBJECTIVES, AND GUIDES THE STRATEGIC DIRECTION OF THE TALKS. THIS PHASE REQUIRES CONSIDERABLE DIPLOMATIC SKILL AND AN UNDERSTANDING OF INTERNATIONAL LAW AND RELATIONS. ONCE AN AGREEMENT IS REACHED ON THE TREATY'S TEXT, IT IS TYPICALLY SIGNED BY THE DESIGNATED PLENIPOTENTIARIES, SIGNIFYING THE INTENT OF THE NEGOTIATING PARTIES TO PROCEED WITH DOMESTIC RATIFICATION PROCESSES. THIS SIGNATURE DOES NOT, HOWEVER, OBLIGATE THE UNITED STATES TO BE BOUND BY THE TREATY; THAT REQUIRES SUBSEQUENT PRESIDENTIAL RATIFICATION WITH SENATE CONSENT.

SENATE CONSIDERATION AND RATIFICATION

UPON SUBMISSION TO THE SENATE, A TREATY EMBARKS ON A RIGOROUS REVIEW PROCESS. IT IS FIRST REFERRED TO THE SENATE FOREIGN RELATIONS COMMITTEE, WHICH HOLDS HEARINGS, GATHERS EXPERT TESTIMONY, AND DEBATES THE MERITS AND POTENTIAL CONSEQUENCES OF THE AGREEMENT. FOLLOWING COMMITTEE APPROVAL, THE TREATY IS PLACED ON THE SENATE CALENDAR FOR CONSIDERATION BY THE FULL BODY. SENATORS ENGAGE IN FURTHER DEBATE, AND AMENDMENTS, RESERVATIONS, OR UNDERSTANDINGS MAY BE PROPOSED. THE ULTIMATE VOTE REQUIRES A TWO-THIRDS MAJORITY OF SENATORS PRESENT FOR THE TREATY TO BE CONSENTED TO. ONCE CONSENT IS GRANTED, THE PRESIDENT FORMALLY RATIFIES THE TREATY, AND IT IS THEN DEPOSITED WITH THE APPROPRIATE INTERNATIONAL BODY, SUCH AS THE UNITED NATIONS, OR EXCHANGED WITH THE OTHER CONTRACTING STATE(S), MAKING IT LEGALLY BINDING.

CHECKS, BALANCES, AND THE EVOLUTION OF TREATY LAW

THE CONSTITUTIONAL FRAMEWORK SURROUNDING TREATY MAKING IN THE U.S. IS A TESTAMENT TO THE FRAMERS' COMMITMENT TO A SYSTEM OF CHECKS AND BALANCES. THE INTERPLAY BETWEEN THE PRESIDENT'S EXECUTIVE AUTHORITY AND THE SENATE'S LEGISLATIVE OVERSIGHT ENSURES THAT FOREIGN COMMITMENTS ARE MADE WITH BROAD GOVERNMENTAL CONSENSUS. THIS SYSTEM, WHILE SOMETIMES LEADING TO LENGTHY DELIBERATIONS, IS DESIGNED TO PREVENT THE U.S. FROM ENTERING INTO AGREEMENTS THAT MIGHT BE DETRIMENTAL TO ITS LONG-TERM INTERESTS OR THAT LACK SUFFICIENT DOMESTIC SUPPORT. THE "ADVICE AND CONSENT" MECHANISM IS A CORNERSTONE OF THIS BALANCE, FOSTERING A DELIBERATIVE FOREIGN POLICY.

OVER TIME, THE INTERPRETATION AND APPLICATION OF TREATY PROVISIONS HAVE EVOLVED, LEADING TO COMPLEX LEGAL DOCTRINES AND A DYNAMIC UNDERSTANDING OF THE U.S. TREATY-MAKING PROCESS. COURT DECISIONS, LEGISLATIVE ACTIONS, AND EVOLVING INTERNATIONAL NORMS HAVE ALL SHAPED HOW TREATIES ARE VIEWED AND IMPLEMENTED WITHIN THE U.S. LEGAL SYSTEM. THE QUESTION OF SELF-EXECUTING VERSUS NON-SELF-EXECUTING TREATIES, FOR INSTANCE, HAS BEEN A RECURRING THEME, DETERMINING WHETHER A TREATY AUTOMATICALLY BECOMES DOMESTIC LAW UPON RATIFICATION OR REQUIRES IMPLEMENTING LEGISLATION FROM CONGRESS. THIS EVOLUTION UNDERSCORES THE ADAPTABILITY OF THE CONSTITUTIONAL DESIGN TO CHANGING GLOBAL REALITIES AND DOMESTIC LEGAL INTERPRETATIONS.

SELF-EXECUTING VS. NON-SELF-EXECUTING TREATIES

A CRITICAL ASPECT OF U.S. TREATY LAW IS THE DISTINCTION BETWEEN SELF-EXECUTING AND NON-SELF-EXECUTING TREATIES. A SELF-EXECUTING TREATY AUTOMATICALLY BECOMES DOMESTIC LAW UPON RATIFICATION, MEANING INDIVIDUALS CAN DIRECTLY INVOKE ITS PROVISIONS IN U.S. COURTS. CONVERSELY, A NON-SELF-EXECUTING TREATY REQUIRES IMPLEMENTING LEGISLATION PASSED BY CONGRESS BEFORE IT CAN HAVE DOMESTIC LEGAL EFFECT. THE DETERMINATION OF WHETHER A TREATY IS SELF-EXECUTING IS OFTEN MADE BY THE COURTS, BASED ON THE TREATY'S LANGUAGE, THE INTENT OF THE SIGNATORY PARTIES, AND THE CONSTITUTIONAL FRAMEWORK. THIS DISTINCTION SIGNIFICANTLY IMPACTS THE PRACTICAL APPLICATION OF TREATIES WITHIN THE U.S. LEGAL SYSTEM AND HIGHLIGHTS THE CONTINUED ROLE OF CONGRESS IN TREATY IMPLEMENTATION.

THE ROLE OF CUSTOMARY INTERNATIONAL LAW

THE RELATIONSHIP BETWEEN U.S. TREATY LAW AND CUSTOMARY INTERNATIONAL LAW IS ANOTHER AREA THAT HAS SEEN SIGNIFICANT DEVELOPMENT. CUSTOMARY INTERNATIONAL LAW REFERS TO NORMS AND PRACTICES THAT ARE ACCEPTED AS BINDING BY STATES, EVEN IN THE ABSENCE OF FORMAL TREATIES. WHILE THE U.S. CONSTITUTION EXPLICITLY GRANTS CONGRESS THE POWER TO REGULATE IN AREAS ADDRESSED BY TREATIES, COURTS HAVE GRAPPLED WITH THE EXTENT TO WHICH CUSTOMARY INTERNATIONAL LAW CAN BE DIRECTLY APPLIED WITHIN THE U.S. LEGAL SYSTEM. GENERALLY, U.S. COURTS WILL DEFER TO TREATIES AND LEGISLATION PASSED BY CONGRESS, BUT CUSTOMARY INTERNATIONAL LAW CAN PLAY A ROLE IN INTERPRETING TREATIES OR FILLING GAPS WHERE NO SPECIFIC STATUTORY OR TREATY PROVISION EXISTS. THIS ONGOING INTERPLAY DEMONSTRATES THE EVOLVING NATURE OF INTERNATIONAL LAW'S INTEGRATION INTO U.S. JURISPRUDENCE.

CONTEMPORARY IMPLICATIONS OF CONSTITUTIONAL TREATY PROVISIONS

THE FOUNDATIONAL PRINCIPLES OF CONSTITUTIONAL CONVENTION US TREATY MAKING ESTABLISHED IN 1787 CONTINUE TO EXERT A PROFOUND INFLUENCE ON HOW THE UNITED STATES CONDUCTS ITS FOREIGN RELATIONS TODAY. THE CAREFULLY CONSTRUCTED BALANCE OF POWER BETWEEN THE PRESIDENT AND THE SENATE REMAINS A DEFINING CHARACTERISTIC OF THE U.S. APPROACH TO INTERNATIONAL AGREEMENTS. WHILE THE PRESIDENT RETAINS THE PRIMARY ROLE IN NEGOTIATION AND PROPOSAL, THE SENATE'S SUPERMAJORITY REQUIREMENT FOR RATIFICATION ENSURES THAT MAJOR INTERNATIONAL COMMITMENTS ARE SUBJECT TO ROBUST LEGISLATIVE SCRUTINY AND REQUIRE BROAD BIPARTISAN CONSENSUS TO SUCCEED.

IN THE MODERN ERA, THE COMPLEXITIES OF GLOBAL DIPLOMACY AND THE SPEED OF INTERNATIONAL EVENTS OFTEN TEST THE DELIBERATIVE NATURE OF THE TREATY PROCESS. THE RISE OF EXECUTIVE AGREEMENTS, WHICH DO NOT REQUIRE SENATE RATIFICATION, HAS PROVIDED THE EXECUTIVE BRANCH WITH MORE FLEXIBILITY IN CONDUCTING FOREIGN POLICY. HOWEVER, TREATIES, CARRYING THE HIGHEST LEVEL OF LEGAL AUTHORITY AND INTERNATIONAL COMMITMENT, REMAIN INDISPENSABLE FOR SIGNIFICANT AND ENDURING INTERNATIONAL RELATIONSHIPS. THE ONGOING DEBATES SURROUNDING TREATY RATIFICATION AND THE ROLE OF THE SENATE HIGHLIGHT THE ENDURING RELEVANCE OF THE FRAMERS' WISDOM IN DESIGNING A SYSTEM THAT PRIORITIZES BOTH EFFECTIVE FOREIGN POLICY AND DEMOCRATIC ACCOUNTABILITY.

THE RISE OF EXECUTIVE AGREEMENTS

IN PARALLEL WITH THE FORMAL TREATY-MAKING PROCESS, PRESIDENTS HAVE INCREASINGLY UTILIZED EXECUTIVE AGREEMENTS TO ENTER INTO INTERNATIONAL COMMITMENTS WITHOUT SUBMITTING THEM TO THE SENATE FOR RATIFICATION. THESE AGREEMENTS, WHICH CAN TAKE VARIOUS FORMS SUCH AS SOLE EXECUTIVE AGREEMENTS OR CONGRESSIONAL-EXECUTIVE AGREEMENTS, ARE GENERALLY CONSIDERED TO BE LESS FORMAL AND OFTEN ADDRESS MORE SPECIFIC OR TECHNICAL MATTERS THAN FULL TREATIES. WHILE THE CONSTITUTION DOES NOT EXPLICITLY MENTION EXECUTIVE AGREEMENTS, THEIR USE HAS BEEN RECOGNIZED AND ACCEPTED THROUGH LEGISLATIVE ACTION AND JUDICIAL PRECEDENT, PROVIDING THE EXECUTIVE BRANCH WITH GREATER AGILITY IN NAVIGATING INTERNATIONAL RELATIONS, THOUGH THEY DO NOT CARRY THE SAME WEIGHT OR PERMANENCE AS CONSTITUTIONALLY RATIFIED TREATIES.

CHALLENGES AND ADAPTATIONS IN THE MODERN ERA

THE CONTEMPORARY GEOPOLITICAL LANDSCAPE PRESENTS UNIQUE CHALLENGES TO THE CONSTITUTIONAL TREATY-MAKING FRAMEWORK. THE RAPID PACE OF GLOBAL CHANGE, THE EMERGENCE OF COMPLEX TRANSNATIONAL ISSUES LIKE CLIMATE CHANGE AND CYBERSECURITY, AND THE RISE OF NON-STATE ACTORS NECESSITATE SWIFT AND ADAPTABLE RESPONSES. WHILE THE TREATY PROCESS, WITH ITS EMPHASIS ON DELIBERATION AND CONSENSUS, CAN BE SLOW, IT ALSO ENSURES THAT U.S. INTERNATIONAL COMMITMENTS ARE WELL-CONSIDERED AND BROADLY SUPPORTED. ADAPTATIONS HAVE INCLUDED INCREASED USE OF EXECUTIVE AGREEMENTS, INNOVATIVE APPROACHES TO SENATE CONSULTATION, AND A GREATER EMPHASIS ON THE DOMESTIC IMPLEMENTATION OF TREATY OBLIGATIONS TO ENSURE THEIR PRACTICAL EFFECT. THE ENDURING CHALLENGE REMAINS TO BALANCE THE NEED FOR DECISIVE FOREIGN POLICY WITH THE CONSTITUTIONAL REQUIREMENT FOR DEMOCRATIC ACCOUNTABILITY IN INTERNATIONAL ENGAGEMENT.

FAQ

Q: WHAT WAS THE PRIMARY CONCERN OF THE FRAMERS REGARDING TREATY MAKING AT THE CONSTITUTIONAL CONVENTION?

A: THE PRIMARY CONCERN OF THE FRAMERS REGARDING TREATY MAKING WAS TO STRIKE A BALANCE BETWEEN GRANTING THE FEDERAL GOVERNMENT SUFFICIENT POWER TO CONDUCT EFFECTIVE FOREIGN POLICY AND PREVENTING THE POTENTIAL FOR EXECUTIVE OVERREACH OR UNDUE FOREIGN INFLUENCE. THEY SOUGHT TO AVOID THE WEAKNESSES OF THE ARTICLES OF CONFEDERATION, WHERE TREATY-MAKING WAS INEFFECTIVE, WHILE ALSO GUARDING AGAINST A TOO-POWERFUL EXECUTIVE.

Q: HOW DOES THE U.S. CONSTITUTION DEFINE THE PRESIDENT'S ROLE IN TREATY MAKING?

A: THE U.S. CONSTITUTION, IN ARTICLE II, SECTION 2, STATES THAT THE PRESIDENT "SHALL HAVE POWER, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, TO MAKE TREATIES, PROVIDED TWO THIRDS OF THE SENATORS PRESENT CONCUR." THIS MEANS THE PRESIDENT NEGOTIATES TREATIES BUT REQUIRES A SUPERMAJORITY OF THE SENATE FOR RATIFICATION.

Q: WHAT IS THE SIGNIFICANCE OF THE SENATE'S "ADVICE AND CONSENT" ROLE IN TREATY MAKING?

A: THE SENATE'S "ADVICE AND CONSENT" ROLE IS A CRUCIAL CHECK ON PRESIDENTIAL POWER. IT ENSURES THAT TREATIES, WHICH ARE BINDING AGREEMENTS WITH FOREIGN NATIONS, ARE SUBJECT TO THOROUGH LEGISLATIVE SCRUTINY AND REQUIRE BROAD CONSENSUS BEFORE THEY CAN BE RATIFIED BY THE UNITED STATES.

Q: WHY DOES THE U.S. CONSTITUTION REQUIRE A TWO-THIRDS MAJORITY OF THE SENATE FOR TREATY RATIFICATION?

A: THE REQUIREMENT OF A TWO-THIRDS MAJORITY OF THE SENATE FOR TREATY RATIFICATION WAS INTENDED TO ENSURE THAT TREATIES REFLECT A STRONG NATIONAL CONSENSUS AND TO PREVENT THEM FROM BEING RATIFIED BASED ON A SIMPLE MAJORITY, WHICH COULD POTENTIALLY LEAD TO ILL-CONSIDERED OR PARTISAN AGREEMENTS.

Q: WHAT IS THE DIFFERENCE BETWEEN A SELF-EXECUTING AND A NON-SELF-EXECUTING TREATY IN THE U.S.?

A: A SELF-EXECUTING TREATY AUTOMATICALLY BECOMES DOMESTIC LAW UPON RATIFICATION AND CAN BE DIRECTLY APPLIED BY U.S. COURTS. A NON-SELF-EXECUTING TREATY, ON THE OTHER HAND, REQUIRES IMPLEMENTING LEGISLATION PASSED BY CONGRESS BEFORE IT CAN HAVE DOMESTIC LEGAL EFFECT.

Q: HOW HAVE EXECUTIVE AGREEMENTS EVOLVED AS A TOOL IN U.S. FOREIGN POLICY ALONGSIDE TREATIES?

A: EXECUTIVE AGREEMENTS HAVE BECOME AN INCREASINGLY COMMON WAY FOR THE U.S. TO ENTER INTO INTERNATIONAL COMMITMENTS. THEY DO NOT REQUIRE SENATE RATIFICATION AND ARE OFTEN USED FOR MORE ROUTINE OR SPECIFIC MATTERS, ALLOWING THE EXECUTIVE BRANCH GREATER FLEXIBILITY IN FOREIGN POLICY.

Q: WHAT IS THE ROLE OF THE SENATE FOREIGN RELATIONS COMMITTEE IN THE TREATY PROCESS?

A: THE SENATE FOREIGN RELATIONS COMMITTEE PLAYS A CRITICAL GATEKEEPING ROLE. IT HOLDS HEARINGS, GATHERS TESTIMONY, AND DEBATES THE MERITS OF A TREATY BEFORE RECOMMENDING IT, OR NOT, TO THE FULL SENATE FOR A VOTE, SIGNIFICANTLY INFLUENCING THE TREATY'S PROSPECTS.

Q: CAN THE SENATE AMEND A TREATY NEGOTIATED BY THE PRESIDENT?

A: WHILE THE SENATE CANNOT DIRECTLY AMEND A TREATY TEXT BEFORE RATIFICATION, IT CAN PROPOSE RESERVATIONS, UNDERSTANDINGS, OR DECLARATIONS THAT MODIFY THE TREATY'S APPLICATION OR INTERPRETATION FOR THE U.S. IF THE PRESIDENT ACCEPTS THESE MODIFICATIONS, THE TREATY CAN PROCEED. THE SENATE CAN ALSO VOTE DOWN A TREATY, FORCING THE PRESIDENT TO RENEGOTIATE.

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