

CONSTITUTION 101

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YOUNGSTOWN SHEET & TUBE CO. V. SAWYER (1952) (STEEL SEIZURE CASE)

View the case on the National Constitution Center's website [here](#).

SUMMARY

During the Korean War, there was a labor dispute between steel workers and steel mill operators. President Truman used an executive order to take control of the steel mills and ensure the continued production of steel during wartime. Youngstown and other steel mill operators challenged the president's executive order, claiming that Truman's action was an executive overreach because it was not authorized by statute. The Supreme Court held that the president had acted unconstitutionally because neither Congress nor the Constitution gave him the authority to seize the steel mills. In his influential concurrence, Justice Jackson described a three-category framework for analyzing separation of powers conflicts between the president and Congress. This key opinion took further steps toward defining the constitutional limits on executive orders and the boundaries between the branches of government.

[Read the Full Opinion](#)

Excerpt: Majority Opinion, Justice Black

The President must be able to root his authority for seizing the steel mills in some part of the Constitution. It is clear that if the President had authority to issue the order he did, it must be found in some provisions of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "the executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States."

The President can't derive this power from the Commander in Chief Clause; this is a job for Congress, not the President. The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. . . . Even though 'theater of war' be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

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We can't find this authority in any other provision of the Constitution either; the President's actions violate the separation of powers; he is trying to make the laws (Congress's job) rather than enforce them (his job). Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States . . ." After granting many powers to the Congress, Article I goes on to provide that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

This is Congress's job, not the President's. The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President. The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution. The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution did not subject this law-making power of Congress to presidential or military supervision or control.

Excerpt: Concurrence, Justice Frankfurter

The Court should decide no more than necessary today. It is . . . incumbent upon this Court to avoid putting fetters upon the future by needless pronouncements today. . . .

We shouldn't try to define all of the President's powers today; we should approach these sorts of separation of powers disputes with humility. The issue before us can be met, and therefore should be, without attempting to define the President's powers comprehensively. I shall not attempt to delineate what belongs to him by virtue of his office beyond the power even of Congress to contract; what authority belongs to him until Congress acts; what kind of problems may be dealt with either by the Congress or by the President, or by both . . . ; what

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power must be exercised by the Congress and cannot be delegated to the President. It is as unprofitable to lump together in an indiscriminating hotch-potch past presidential actions claimed to be derived from occupancy of the office as it is to conjure up hypothetical future cases. The judiciary may, as this case proves, have to intervene in determining where authority lies as between the democratic forces in our scheme of government. But, in doing so, we should be wary and humble. Such is the teaching of this Court's role in the history of the country. . . .

We can't resolve all of these difficult issues by recourse to the Constitution's text or to broad theory; instead, we should turn to historical practice as a key guide to how we should read the Constitution in this context; this requires us to look at how the President and Congress have exercised their powers over time. [T]he content of the three authorities of government is not to be derived from an abstract analysis. The areas are partly interacting, not wholly disjointed. The Constitution is a framework for government. Therefore, the way the framework has consistently operated fairly establishes that it has operated according to its true nature. Deeply embedded traditional ways of conducting government cannot supplant the Constitution or legislation, but they give meaning to the words of a text or supply them. It is an inadmissibly narrow conception of American constitutional law to confine it to the words of the Constitution and to disregard the gloss which life has written upon them. In short, a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, engaged in by Presidents who have also sworn to uphold the Constitution, making as it were such exercise of power part of the structure of our government, may be treated as a gloss on "executive Power" vested in the President by § 1 of Art. II. . . .

The President's actions here can't be justified by historical practice. No [well-settled] practice can be vouched for executive seizure of property at a time when this country was not at war, in the only constitutional way in which it can be at war. It would pursue the irrelevant to reopen the controversy over the constitutionality of some acts of Lincoln during the Civil War. . . . Suffice it to say that he seized railroads in territory where armed hostilities had already interrupted the movement of troops to the beleaguered Capital, and his order was ratified by the Congress. . . .

I can't find a well-established line of historical precedent to support the President's actions here; at best, I see a few scattered examples. Down to the World War II period . . . , the record is barren of instances comparable to the one before us. Of twelve seizures by President Roosevelt prior to the enactment of the War Labor Disputes Act in June, 1943, three were sanctioned by existing law, and six others were effected after Congress, on December 8, 1941, had declared the existence of a state of war. In this case, reliance on the powers that flow from declared war has been commendably disclaimed by the Solicitor General. Thus, the list of executive assertions of the power of seizure in circumstances comparable to the present reduces to three in the six-month period from June to December of 1941. We need not split hairs in comparing those actions to the one before us, though much might be said by way of

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differentiation. Without passing on their validity . . . it suffices to say that these three isolated instances do not add up, either in number, scope, duration or contemporaneous legal justification, to the kind of executive construction of the Constitution revealed in [previous cases]. Nor do they come to us sanctioned by long-continued acquiescence of Congress giving decisive weight to a construction by the Executive of its powers.

Excerpt: Concurrence, Justice Jackson

To resolve a separation of powers dispute like this one, we must consider the relationship between the President and Congress. Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress. . . .

When the President acts side by side with Congress, his power is at its maximum. 1. When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate. In these circumstances, and in these only, may he be said (for what it may be worth), to personify the federal sovereignty. If his act is held unconstitutional under these circumstances, it usually means that the Federal Government as an undivided whole lacks power. A seizure executed by the President pursuant to an Act of Congress would be supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it.

When the President acts in an area in which Congress has not weighed in on the issue, he operates within a zone of twilight in which the relative powers of the branches is uncertain. 2. When the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain. Therefore, congressional inertia, indifference or quiescence may sometimes, at least as a practical matter, enable, if not invite, measures on independent presidential responsibility. In this area, any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law.

When the President acts in a way opposed by Congress, his power is at its minimum. 3. When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb, for then he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter. Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject. Presidential claim to a power at once so conclusive and preclusive must be scrutinized with caution, for what is at stake is the equilibrium established by our constitutional system.

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The President isn't acting side by side with Congress here. Into which of these classifications does this executive seizure of the steel industry fit? It is eliminated from the first by admission, for it is conceded that no congressional authorization exists for this seizure. That takes away also the support of the many precedents and declarations which were made in relation, and must be confined, to this category.

Since Congress has acted on this issue, it also takes this case out of the zone of twilight. Can it then be defended under flexible tests available to the second category? It seems clearly eliminated from that class, because Congress has not left seizure of private property an open field, but has covered it by three statutory policies inconsistent with this seizure. In cases where the purpose is to supply needs of the Government itself, two courses are provided: one, seizure of a plant which fails to comply with obligatory orders placed by the Government; another, condemnation of facilities, including temporary use under the power of eminent domain. The third is applicable where it is the general economy of the country that is to be protected, rather than exclusive governmental interests. None of these were invoked. In choosing a different and inconsistent way of his own, the President cannot claim that it is necessitated or invited by failure of Congress to legislate upon the occasions, grounds and methods for seizure of industrial properties.

Truman is acting in opposition to Congress; so, his power is at its minimum. This leaves the current seizure to be justified only by the severe tests under the third grouping, where it can be supported only by any remainder of executive power after subtraction of such powers as Congress may have over the subject. In short, we can sustain the President only by holding that seizure of such strike-bound industries is within his domain and beyond control by Congress. Thus, this Court's first review of such seizures occurs under circumstances which leave presidential power most vulnerable to attack and in the least favorable of possible constitutional postures.

Excerpt: Dissent, Chief Justice Vinson

These are extraordinary times. Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times. A world not yet recovered from the devastation of World War II has been forced to face the threat of another and more terrifying global conflict. . . .

The stakes are high; the nation's steel industry would have been shut down in a time of conflict if the President didn't seize the steel mills; national security is at stake. One is not here called upon even to consider the possibility of executive seizure of a farm, a corner grocery store or even a single industrial plant. Such considerations arise only when one ignores the central fact of this case—that the Nation's entire basic steel production would have shut down completely if there had been no Government seizure. Even ignoring for the moment whatever

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confidential information the President may possess as “the Nation’s organ for foreign affairs,” the uncontroverted affidavits in this record amply support the finding that “a work stoppage would immediately jeopardize and imperil our national defense.”

The President satisfied his duties under the Take Care Clause here. Focusing now on the situation confronting the President on the night of April 8, 1952, we cannot but conclude that the President was performing his duty under the Constitution to “take Care that the Laws be faithfully executed”—a duty described by President Benjamin Harrison as “the central idea of the office.” . . .

The President isn’t defying Congress; he informed Congress of his actions and stood ready to follow its directions. Much of the argument in this case has been directed at straw men. We do not now have before us the case of a President acting solely on the basis of his own notions of the public welfare. Nor is there any question of unlimited executive power in this case. The President himself closed the door to any such claim when he sent his Message to Congress stating his purpose to abide by any action of Congress, whether approving or disapproving his seizure action. Here, the President immediately made sure that Congress was fully informed of the temporary action he had taken only to preserve the legislative programs from destruction until Congress could act.

The President must have flexibility to act in moments like this one. The absence of a specific statute authorizing seizure of the steel mills as a mode of executing the laws – both the military procurement program and the anti-inflation program – has not until today been thought to prevent the President from executing the laws. Unlike an administrative commission confined to the enforcement of the statute under which it was created, or the head of a department when administering a particular statute, the President is a constitutional officer charged with taking care that a “mass of legislation” be executed. Flexibility as to mode of execution to meet critical situations is a matter of practical necessity. . . .

There is no congressional law saying that the President can’t do this. There is no statute prohibiting seizure as a method of enforcing legislative programs. Congress has in no wise indicated that its legislation is not to be executed by the taking of private property (subject, of course, to the payment of just compensation) if its legislation cannot otherwise be executed. Indeed, the Universal Military Training and Service Act authorizes the seizure of any plant that fails to fill a Government contract or the properties of any steel producer that fails to allocate steel as directed for defense production. And the Defense Production Act authorizes the President to requisition equipment and condemn real property needed without delay in the defense effort. Where Congress authorizes seizure in instances not necessarily crucial to the defense program, it can hardly be said to have disclosed an intention to prohibit seizures where essential to the execution of that legislative program.

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This is an emergency; the President should have the power to maintain the status quo.

Whatever the extent of Presidential power on more tranquil occasions, and whatever the right of the President to execute legislative programs as he sees fit without reporting the mode of execution to Congress, the single Presidential purpose disclosed on this record is to faithfully execute the laws by acting in an emergency to maintain the status quo, thereby preventing collapse of the legislative programs until Congress could act. The President's action served the same purposes as a judicial stay entered to maintain the status quo in order to preserve the jurisdiction of a court. In his Message to Congress immediately following the seizure, the President explained the necessity of his action in executing the military procurement and anti-inflation legislative programs and expressed his desire to cooperate with any legislative proposals approving, regulating or rejecting the seizure of the steel mills. Consequently, there is no evidence whatever of any Presidential purpose to defy Congress or act in any way inconsistent with the legislative will. . . .

There is no threat of presidential tyranny here. There is no cause to fear Executive tyranny so long as the laws of Congress are being faithfully executed. Certainly there is no basis for fear of dictatorship when the Executive acts, as he did in this case, only to save the situation until Congress could act.

***Bold sentences give the big idea of the excerpt and are not a part of the primary source.**