ernment under the Constitution?" [735] Obviously, an affirmative answer is assumed to the second branch of this inquiry, an assumption that is borne out by numerous precedents. And, in *United States v. Midwest Oil Co.*,[736] the Court ruled that the President had, by dint of repeated assertion of it from an early date, acquired the right to withdraw, via the Land Department, public lands, both mineral and non-mineral, from private acquisition, Congress having never repudiated the practice.

Military Power in Law Enforcement: The Posse Comitatus

"Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion."

"The President, by using the militia or the armed forces, or both . . . shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it—(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law . . . ." [737]

These quoted provisions of the United States Code consolidate a course of legislation that began at the time of the Whiskey Rebel-

---

[735] 135 U.S. at 64. The phrase, "a law of the United States," came from the Act of March 2, 1833 (4 Stat. 632). However, in the Act of June 25, 1948, 62 Stat. 965, 28 U.S.C. § 2241(c)(2), the phrase is replaced by the term, "an act of Congress," thereby eliminating the basis of the holding in *Neagle*.

[736] 236 U.S. 459 (1915). *See also* Mason v. United States, 260 U.S. 545 (1923).

[737] 10 U.S.C. §§ 332, 333. The provisions were invoked by President Eisenhower when he dispatched troops to Little Rock, Arkansas, in 1957 to counter resistance to Federal district court orders pertaining to desegregation of certain public schools in the Little Rock School District. Although the validity of his action was never expressly reviewed, the Court, in Cooper v. Aaron, 358 U.S. 1, 4, 18–19 (1958), rejected a contention advanced by critics of the legality of his conduct, namely, that the President's constitutional duty to see to the faithful execution of the laws, as implemented by the provisions quoted above, does not permit the use of troops to enforce decrees of federal courts, because the latter are not statutory enactments, which alone are comprehended within the phrase, "laws of the United States." According to the Court, a judicial decision interpreting a constitutional provision, specifically "the interpretation of the Fourteenth Amendment enunciated by this Court in the *Brown* case [Brown v. Board of Education, 347 U.S. 483 (1954)] is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States . . . ."