were enacted between 1916 and 1951, and summaries of seizures of industrial plants and facilities by Presidents without definite statutory warrant, eight of which occurred during World War I—justified in presidential orders as being done pursuant to "the Constitution and laws" generally—and eleven of which occurred in World War II.[781] The first such seizure in this period had been justified by then Attorney General Jackson as being based upon an "aggregate" of presidential powers stemming from his duty to see the laws faithfully executed, his commander-in-chiefship, and his general executive powers.[782] Chief Justice Vinson's dissent dwelt liberally upon this opinion,[783] which reliance drew a disclaimer from Justice Jackson, concurring.[784]

The dissent was also fortunate in that the steel companies' chief counsel, John W. Davis, a former Solicitor General of the United States, had filed a brief in 1914 in defense of Presidential action, which had taken precisely the view that the dissent now presented.[785] "Ours," the brief read, "is a self-sufficient Government within its sphere. (*Ex parte Siebold*, 100 U.S. 371, 395; *in re Debs*, 158 U.S. 564, 578.) 'Its means are adequate to its ends' (*McCulloch v. Maryland*, 4 Wheat., 316, 424), and it is rational to assume that its active forces will be found equal in most things to the emergencies that confront it. While perfect flexibility is not to be expected in a Government of divided powers, and while division of power is one of the principal features of the Constitution, it is the plain duty of those who are called upon to draw the dividing lines to ascertain the essential, recognize the practical, and avoid a slavish formalism which can only serve to ossify the government and reduce its efficiency without any compensating good. The function of making laws is peculiar to Congress, and the Executive can not exercise that function to any degree. But this is not to say that all of the *subjects* concerning which laws might be made are perforce removed from the possibility of Executive influence. The Executive may act upon things and upon men in many relations which have not, though they might have, been actually regulated by Congress. In

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[781] 343 U.S. at 611–13, 620.

[782] 89 CONG. REC. 3992 (1943).

[783] 343 U.S. at 695–96 (dissenting opinion).

[784] Thus, Justice Jackson noted of the earlier seizure, that "[i]ts superficial similarities with the present case, upon analysis, yield to distinctions so decisive that it cannot be regarded as even a precedent, much less an authority for the present seizure." 343 U.S. at 648–49 (concurring opinion). His opinion opens with the sentence: "That comprehensive and undefined presidential powers hold both practical advantages and grave dangers for the country will impress anyone who has served as legal adviser to a President in time of transition and public anxiety." Id. at 634.

[785] Brief for the United States at 11, 75–77, United States v. Midwest Oil Co., 236 U.S. 459 (1915).