

Sec. 3—Legislative, Diplomatic, and Law Enforcement Duties of the President

other words, just as there are fields which are peculiar to Congress and fields which are peculiar to the Executive, so there are fields which are common to both, in the sense that the Executive may move within them until they shall have been occupied by legislative action. These are not the fields of legislative prerogative, but fields within which the lawmaking power may enter and dominate whenever it chooses. This situation results from the fact that the President is the active agent, not of Congress, but of the Nation. As such he performs the duties which the Constitution lays upon him immediately, and as such, also, he executes the laws and regulations adopted by Congress. He is the agent of the people of the United States, deriving all his powers from them and responsible directly to them. In no sense is he the agent of Congress. He obeys and executes the laws of Congress, not because Congress is enthroned in authority over him, but because the Constitution directs him to do so.”

“Therefore it follows that in ways short of making laws or disobeying them, the Executive may be under a grave constitutional duty to act for the national protection in situations not covered by the acts of Congress, and in which, even, it may not be said that his action is the direct expression of any particular one of the independent powers which are granted to him specifically by the Constitution. Instances wherein the President has felt and fulfilled such a duty have not been rare in our history, though, being for the public benefit and approved by all, his acts have seldom been challenged in the courts.”⁷⁸⁶

Power Denied by Congress

Justice Black’s opinion of the Court in *Youngstown Sheet and Tube Co. v. Sawyer* notes that Congress had refused to give the President seizure authority and had authorized other actions, which had not been taken.⁷⁸⁷ This statement led him to conclude merely that, since the power claimed did not stem from Congress, it had to be found in the Constitution. But four of the concurring Justices made considerably more of the fact that Congress had considered seizure and had refused to authorize it. Justice Frankfurter stated: “We must . . . put to one side consideration of what powers the President would have had if there had been no legislation whatever bearing on the authority asserted by the seizure, or if the seizure had been only for a short, explicitly temporary period, to be terminated automati-

⁷⁸⁶ Quoted in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, 689–91 (1952) (dissenting opinion).

⁷⁸⁷ 343 U.S. at 585–87.