

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

as joining in some degree the opinion of the Court by Justice Black.<sup>771</sup> The holding and the multiple opinions represent a setback for the adherents of “inherent” executive powers,<sup>772</sup> but they raise difficult conceptual and practical problems with regard to presidential powers.

**The Doctrine of the Opinion of the Court**

The chief points urged in the Black opinion are the following: There was no statute that expressly or impliedly authorized the President to take possession of the property involved. On the contrary, in its consideration of the Taft-Hartley Act in 1947, Congress refused to authorize governmental seizures of property as a method of preventing work stoppages and settling labor disputes. Authority to issue such an order in the circumstances of the case was not deducible from the aggregate of the President’s executive powers under Article II of the Constitution; nor was the order maintainable as an exercise of the President’s powers as Commander in Chief of the Armed Forces. The power sought to be exercised was the law-making power, which the Constitution vests in the Congress alone. Even if it were true that other Presidents have taken possession of private business enterprises without congressional authority in order to settle labor disputes, Congress was not thereby divested of its exclusive constitutional authority to make the laws necessary and proper to carry out all powers vested by the Constitution “in the Government of the United States, or any Department or Officer thereof.”<sup>773</sup>

**The Doctrine Considered**

The pivotal proposition of the opinion of the Court is that, inasmuch as Congress could have directed the seizure of the steel mills, the President had no power to do so without prior congressional authorization. To this reasoning, not only the dissenters but Justice Clark, in a concurring opinion, would not concur, and in fact they stated baldly that the reasoning was contradicted by prece-

<sup>771</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952). In the majority with Justice Black were Justices Frankfurter, Douglas, Jackson, Burton, and Clark. Dissenting were Chief Justice Vinson and Justices Reed and Minton. For critical consideration of the case, see Corwin, *The Steel Seizure Case: A Judicial Brick Without Straw*, 53 COLUM. L. REV. 53 (1953); Roche, *Executive Power and Domestic Emergency: The Quest for Prerogative*, 5 WEST. POL. Q. 592 (1952). For a comprehensive account, see M. MARCUS, *TRUMAN AND THE STEEL SEIZURE CASE: THE LIMITS OF PRESIDENTIAL POWER* (1977).

<sup>772</sup> Indeed, the breadth of the Government’s arguments in the district court may well have contributed to the defeat, despite the much more measured contentions set out in the Supreme Court. See A. WESTIN, *THE ANATOMY OF A CONSTITUTIONAL LAW CASE* 56–65 (1958) (argument in district court).

<sup>773</sup> 343 U.S. at 585–89.