

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

edent, both judicial and presidential and congressional practice. One of the earliest pronouncements on presidential power in this area was that of Chief Justice Marshall in *Little v. Barreme*.<sup>774</sup> There, a United States vessel under orders from the President had seized a United States merchant ship bound *from* a French port allegedly carrying contraband material; Congress had, however, provided for seizure only of such vessels bound *to* French ports.<sup>775</sup> The Chief Justice wrote: "It is by no means clear, that the President of the United States, whose high duty it is to 'take care that the laws be faithfully executed,' and who is commander-in-chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited, by being engaged in this illicit commerce. But when it is observed, that [an act of Congress] . . . gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound, or sailing *to*, a French port, the legislature seems to have prescribed that the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound *to* a French port."<sup>776</sup>

Other examples are at hand. In 1799, President Adams, in order to execute the extradition provisions of the Jay Treaty, issued a warrant for the arrest of one Robbins, and the action was challenged in Congress on the ground that no statutory authority existed by which the President could act; John Marshall defended the action in the House of Representatives, the practice continued, and it was not until 1848 that Congress enacted a statute governing this subject.<sup>777</sup> Again, in 1793, President Washington issued a neutrality proclamation; the following year, Congress enacted the first neutrality statute and since then proclamations of neutrality have been based on acts of Congress.<sup>778</sup> Repeatedly, acts of the President have been in areas in which Congress could act as well.<sup>779</sup>

Justice Frankfurter's concurring opinion<sup>780</sup> listed 18 statutory authorizations for seizures of industrial property, all but one of which

<sup>774</sup> 6 U.S. (2 Cr.) 170 (1804).

<sup>775</sup> 1 Stat. 613 (1799).

<sup>776</sup> *Little v. Barreme*, 6 U.S. (2 Cr.) 170, 177–78 (1804).

<sup>777</sup> 10 ANNALS OF CONG. 596, 613–14 (1800). The argument was endorsed in *Fong Yue Ting v. United States*, 149 U.S. 698, 714 (1893). The presence of a treaty, of which this provision was self-executing, is sufficient to distinguish this example from the steel seizure situation.

<sup>778</sup> Cf. E. CORWIN, *THE PRESIDENT'S CONTROL OF FOREIGN RELATIONS* ch. 1 (1916).

<sup>779</sup> E. CORWIN, *The Steel Seizure Case: A Judicial Brick Without Straw*, 53 COLUM. L. REV. 53, 58–59 (1953).

<sup>780</sup> *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 593 (1952).