

Sec. 8—Powers of Congress

Cls. 11, 12, 13, and 14—War; Military Establishment

vert,¹⁶²² however, Justice Black asserted in a plurality opinion that wherever the United States acts it must do so only “in accordance with all the limitations imposed by the Constitution. . . . [C]onstitutional protections for the individual were designed to restrict the United States Government when it acts outside of this country, as well as at home.”¹⁶²³ The case, however, involved the trial of a United States citizen abroad and the language quoted was not subscribed to by a majority of the Court; thus, it must be regarded as a questionable rejection of the previous line of cases.¹⁶²⁴

Enemy Property.—In *Brown v. United States*,¹⁶²⁵ Chief Justice Marshall dealt definitively with the legal position of enemy property during wartime. He held that the mere declaration of war by Congress does not effect a confiscation of enemy property situated within the territorial jurisdiction of the United States, but the right of Congress by further action to subject such property to confiscation was asserted in the most positive terms. As an exercise of the war power, such confiscation was held not subject to the restrictions of the Fifth and Sixth Amendments. Since such confiscation is unrelated to the personal guilt of the owner, it is immaterial whether the property belongs to an alien, a neutral, or even to a citizen. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within his reach, whether within his territory or outside it, impairs his ability to resist the confiscating government and at the same furnishes to that government means for carrying on the war.¹⁶²⁶

Prizes of War.—The power of Congress with respect to prizes is plenary; no one can have any interest in prizes captured except by permission of Congress.¹⁶²⁷ Nevertheless, since international law is a part of our law, the Court will administer it so long as it has not been modified by treaty or by legislative or executive action. Thus, during the Civil War, the Court found that the Confiscation Act of 1861, and the Supplementary Act of 1863, which, in authorizing the condemnation of vessels, made provision for the protec-

¹⁶²² 354 U.S. 1 (1957).

¹⁶²³ 354 U.S. at 6, 7.

¹⁶²⁴ For a comprehensive treatment, preceding *Reid v. Covert*, of the matter in the context of the post-War war crimes trials, see Fairman, *Some New Problems of the Constitution Following the Flag*, 1 STAN. L. REV. 587 (1949).

¹⁶²⁵ 12 U.S. (8 Cr.) 110 (1814). See also *Conrad v. Waples*, 96 U.S. 279 (1878).

¹⁶²⁶ *Miller v. United States*, 78 U.S. (11 Wall.) 268 (1871); *Steehr v. Wallace*, 255 U.S. 239 (1921); *Central Union Trust Co. v. Garvan*, 254 U.S. 554 (1921); *United States v. Chemical Foundation*, 272 U.S. 1 (1926); *Silesian-American Corp. v. Clark*, 332 U.S. 469 (1947); *Cities Service Co. v. McGrath*, 342 U.S. 330 (1952); *Handelsbureau La Mola v. Kennedy*, 370 U.S. 940 (1962); cf. *Honda v. Clark*, 386 U.S. 484 (1967).

¹⁶²⁷ *The Siren*, 80 U.S. (13 Wall.) 389 (1871).