

Sec. 1—The President

Clause 1—Powers and Term of the President

is *Youngstown Sheet & Tube Co. v. Sawyer*,³⁶ and its multiple opinions make it difficult to evaluate the matter. During the Korean War, President Truman seized the steel industry, then in the throes of a strike. No statute authorized the seizure, and the Solicitor General defended the action as an exercise of the President's executive powers that were conveyed by the first section of Article II, by the obligation to enforce the laws, and by the vesting of the function of commander-in-chief. By vote of six-to-three, the Court rejected this argument and held the seizure void. But the doctrinal problem is complicated by the fact that Congress had expressly rejected seizure proposals in considering labor legislation and had authorized procedures not followed by the President that did not include seizure. Thus, four of the majority Justices³⁷ appear to have been decisively influenced by the fact that Congress had denied the power claimed and that this in an area in which the Constitution vested the power to decide at least concurrently if not exclusively in Congress. Three and perhaps four Justices³⁸ appear to have rejected the government's argument on the merits while three³⁹ accepted it in large measure. Despite the inconclusiveness of the opinions, it seems clear that the result was a substantial retreat from the proclamation of vast presidential powers made in *Myers* and *Curtiss-Wright*.⁴⁰

The Practice in the Presidential Office.—However contested the theory of expansive presidential powers, the practice in fact has been one of expansion of those powers, an expansion that a number of “weak” Presidents and the temporary ascendancy of

powers. *But see* Haig v. Agee, 453 U.S. 280 (1981), in which the statutory and congressional ratification analyses is informed with a view of a range of presidential foreign affairs discretion combined with judicial deference according the President *de facto* much of the theoretically-based authority spelled out in *Curtiss-Wright*.

³⁶ 343 U.S. 579 (1952). *See* Corwin, *The Steel Seizure Case: A Judicial Brick Without Straw*, 53 COLUM. L. REV. 53 (1953). A case similar to *Youngstown* is *AFL-CIO v. Kahn*, 618 F.2d 784 (D.C. Cir.) (en banc), *cert. denied*, 443 U.S. 915 (1979), which, on the basis of statutory interpretation of certain congressional delegations, sustained a presidential order denying government contracts to companies that failed to comply with certain voluntary wage and price guidelines.

³⁷ 343 U.S. 593, 597–602 (Justice Frankfurter concurring, though he also noted he expressly joined Justice Black's opinion as well), 634, 635–40 (Justice Jackson concurring), 655, 657 (Justice Burton concurring), 660 (Justice Clark concurring).

³⁸ 343 U.S. at 582 (Justice Black delivering the opinion of the Court), 629 (Justice Douglas concurring, but note his use of the Fifth Amendment just compensation argument), 634 (Justice Jackson concurring), 655 (Justice Burton concurring).

³⁹ 343 U.S. at 667 (Chief Justice Vinson and Justices Reed and Minton dissenting).

⁴⁰ *Myers v. United States*, 272 U.S. 52 (1926); *United States v. Curtiss-Wright Corp.*, 299 U.S. 304 (1936). In *Dames & Moore v. Regan*, 453 U.S. 654, 659–62, 668–69 (1981), the Court turned to *Youngstown* as embodying “much relevant analysis” on an issue of presidential power. And, in *Hamdan v. Rumsfeld*, 548 U.S. 557, 593 n.23 (2006), the Court cited *Youngstown* with approval, as did Justice Kennedy, in a concurring opinion joined by three other Justices, *id.* at 638.