

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

lion of 1792.<sup>738</sup> In *Martin v. Mott*,<sup>739</sup> which arose out of the War of 1812, the Court held that the authority to decide whether the exigency had arisen belonged exclusively to the President.<sup>740</sup> Even before that time, Jefferson had, in 1808, in the course of his efforts to enforce the Embargo Acts, issued a proclamation ordering “all officers having authority, civil or military, who shall be found in the vicinity” of an unruly combination, to aid and assist “by all means in their power, by force of arms or otherwise” the suppression of such combination.<sup>741</sup> Forty-six years later, Attorney General Cushing advised President Pierce that in enforcing the Fugitive Slave Act of 1850, marshals of the United States had authority when opposed by unlawful combinations to summon to their aid not only bystanders and citizens generally, but armed forces within their precincts, both state militia and United States officers, soldiers, sailors, and marines,<sup>742</sup> a doctrine that Pierce himself improved upon two years later by asserting, with reference to the civil war then raging in Kansas, that it lay within his obligation to take care that the laws be faithfully executed to place the forces of the United States in Kansas at the disposal of the marshal there, to be used as a portion of the *posse comitatus*. Lincoln’s call of April 15, 1861, for 75,000 volunteers was, on the other hand, a fresh invocation, though of course on a vastly magnified scale, of Jefferson’s conception of a *posse comitatus* subject to presidential call.<sup>743</sup> The provisions above extracted from the United States Code ratified this conception with regard to the state militias and the national forces.

**Suspension of Habeas Corpus by the President**

See Article I, § 9.

<sup>738</sup> 1 Stat. 264 (1792); 1 Stat. 424 (1794); 2 Stat. 443 (1807); 12 Stat. 281 (1861); now covered by 10 U.S.C. §§ 332–334.

<sup>739</sup> 25 U.S. (12 Wheat.) 19 (1827).

<sup>740</sup> 25 U.S. at 31–32.

<sup>741</sup> Wilson, *Federal Aid in Domestic Disturbances*, S. Doc. No. 209, 57th Congress, 2d Sess. (1907), 51.

<sup>742</sup> 6 Ops. Atty. Gen. 446 (1854). By the Posse Comitatus Act of 1878, 20 Stat. 152, 18 U.S.C. § 1385, it was provided that “it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress. . . .” The effect of this prohibition, however, was largely nullified by a ruling of the Attorney General “that by Revised Statutes 5298 and 5300 [10 U.S.C. §§ 332, 334] the military forces, under the direction of the President, could be used to assist a marshal. 16 Ops. Atty. Gen. 162.” B. RICH, *THE PRESIDENTS AND CIVIL DISORDER* 196 n.21 (1941).

<sup>743</sup> 12 Stat. (app.) 1258.