

Sec. 8—Powers of Congress

Cl. 10—Maritime Crimes

gress had “exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons for offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals.”¹⁴⁷⁶ Where, conversely, Congress defines with particularity a crime which is “an offense against the law of nations,” the law is valid, even if it contains no recital disclosing that it was enacted pursuant to this clause. Thus, the duty which the law of nations casts upon every government to prevent a wrong being done within its own dominion to another nation with which it is at peace, or to the people thereof, was found to furnish a sufficient justification for the punishment of the counterfeiting within the United States, of notes, bonds, and other securities of foreign governments.¹⁴⁷⁷

Extraterritorial Reach of the Power

Since this clause contains the only specific grant of power to be found in the Constitution for the punishment of offenses outside the territorial limits of the United States, a lower federal court held in 1932¹⁴⁷⁸ that the general grant of admiralty and maritime jurisdiction by Article III, § 2, could not be construed as extending either the legislative or judicial power of the United States to cover offenses committed on vessels outside the United States but not on the high seas. Reversing that decision, the Supreme Court held that this provision “cannot be deemed to be a limitation on the powers, either legislative or judicial, conferred on the National Government by Article III, § 2. The two clauses are the result of separate steps independently taken in the Convention, by which the jurisdiction in admiralty, previously divided between the Confederation and the states, was transferred to the National Government. It would be a surprising result, and one plainly not anticipated by the framers or justified by principles which ought to govern the interpretation of a constitution devoted to the redistribution of governmental powers, if part of them were lost in the process of transfer. To construe the one clause as limiting rather than supplementing the other would be to ignore their history, and without effecting any discernible purpose of their enactment, to deny to both the states and the National Government powers which were common attributes of sovereignty before the adoption of the Constitution. The result would be to deny to both the power to define and punish crimes of less gravity than felonies committed on vessels of the United States while

¹⁴⁷⁶ 317 U.S. at 28.

¹⁴⁷⁷ *United States v. Arjona*, 120 U.S. 479, 487, 488 (1887).

¹⁴⁷⁸ *United States v. Flores*, 3 F. Supp. 134 (E.D. Pa. 1932).