

## Sec. 2—Powers, Duties of the President

## Cl. 1—Commander-in-Chiefship

either side. It is so laid down by the best writers of the law of nations. A declaration of war by one country only, is not a mere challenge to be accepted or refused at pleasure by the other.’”

“The battles of Palo Alto and Resaca de la Palma had been fought before the passage of the act of Congress of May 13, 1846, which recognized ‘*a state of war as existing by the act of the Republic of Mexico.*’ This act not only provided for the future prosecution of the war, but was itself a vindication and ratification of the Act of the President in accepting the challenge without a previous formal declaration of war by Congress.”

“This greatest of civil wars was not gradually developed by popular commotion, tumultuous assemblies, or local unorganized insurrections. However long may have been its previous conception, it nevertheless sprung forth suddenly from the parent brain, a Minerva in the full panoply of *war*. The President was bound to meet it in the shape it presented itself, without waiting for Congress to baptize it with a name; and no name given to it by him or them could change the fact. . . .”

“Whether the President in fulfilling his duties, as Commander-in-chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this Court must be governed by the decisions and acts of the political department of the government to which this power was entrusted. ‘He must determine what degree of force the crisis demands.’ The proclamation of blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure, under the circumstances peculiar to the case.”<sup>120</sup>

***Impact of the Prize Cases on World Wars I and II.***—In brief, the powers that may be claimed for the President under the Commander-in-Chief Clause at a time of widespread insurrection were equated with his powers under the clause at a time when the United States is engaged in a formally declared foreign war.<sup>121</sup> And, because, especially in the early months of the Civil War, Lincoln performed various acts, such as increasing the Army and Navy, that admittedly fell within Congress’s constitutional province, it seems to have been assumed during World Wars I and II that the position of Commander-in-Chief carried with it the power to exercise like powers practically at discretion, not merely in wartime but even at a time when war became a strong possibility. No attention was given

<sup>120</sup> 67 U.S. (2 Bl.) at 668–70.

<sup>121</sup> See generally, E. CORWIN, *TOTAL WAR AND THE CONSTITUTION* (1946).