

TEACHING DEMOCRACY WEBINAR SERIES
The Power of the Presidency, April 25, 2012**YOUNGSTOWN CO. v. SAWYER, 343 U.S. 579 (1952)**

343 U.S. 579 YOUNGSTOWN SHEET & TUBE CO. ET AL. v. SAWYER. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT. * No. 744. Argued May 12-13, 1952. Decided June 2, 1952.

To avert a nation-wide strike of steel workers in April 1952, which he believed would jeopardize national defense, the President issued an Executive Order directing the Secretary of Commerce to seize and operate most of the steel mills. The Order was not based upon any specific statutory authority but was based generally upon all powers vested in the President by the Constitution and laws of the United States and as President of the United States and Commander in Chief of the Armed Forces. The Secretary issued an order seizing the steel mills and directing their presidents to operate them as operating managers for the United States in accordance with his regulations and directions. The president promptly reported these events to Congress; but Congress took no action. It had provided other methods of dealing with such situations and had refused to authorize governmental seizures of property to settle labor disputes. The steel companies sued the Secretary in Federal District Court, praying for a declaratory judgment and injunctive relief. The District Court issued a preliminary injunction, which the Court of Appeals stayed. Held:

1. Although this case has proceeded no further than the preliminary injunction stage, it is ripe for determination of the constitutional validity of the Executive Order on the record presented. Pp. 584-585.
 - (a) Under prior decisions of this Court, there is doubt as to the right to recover in the Court of Claims on account of properties unlawfully taken by government officials for public use. P. 585.
 - (b) Seizure and governmental operation of these going businesses were bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement. P. 585. [[343 U.S. 579, 580](#)]

2. The Executive Order was not authorized by the Constitution or laws of the United States; and it cannot stand. Pp. 585-589.
 - (a) There is no statute which expressly or impliedly authorizes the President to take possession of this property as he did here. Pp. 585-586.
 - (b) In its consideration of the Taft-Hartley Act in 1947, Congress refused to authorize governmental seizures of property as a method of preventing work stoppages and settling labor disputes. P. 586.
 - (c) Authority of the President to issue such an order in the circumstances of this case cannot be implied from the aggregate of his powers under Article II of the Constitution. Pp. 587-589.

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- (d) The Order cannot properly be sustained as an exercise of the President's military power as commander in Chief of the Armed Forces. P. 587.
- (e) Nor can the Order be sustained because of the several provisions of Article II which grant executive power to the President. Pp. 587-589.
- (f) The power here sought to be exercised is the lawmaking power, which the Constitution vests in the Congress alone, in both good and bad times. Pp. 587-589.
- (g) Even if it be true that other Presidents have taken possession of private business enterprises without congressional authority in order to settle labor disputes, Congress has not thereby lost its exclusive constitutional authority to make the laws necessary and proper to carry out all powers vested by the Constitution "in the Government of the United States, or any Department or Officer thereof." Pp. 588-589.

MR. JUSTICE BLACK delivered the opinion of the Court. We are asked to decide whether the President was acting within his constitutional power when he issued an order directing the Secretary of Commerce to take possession of and operate most of the Nation's steel mills. The mill owners argue that the President's order amounts to lawmaking, a legislative function which the Constitution has expressly confided to the Congress and not to the President. The Government's position is that the order was made on findings of the President that his action was necessary to avert a national catastrophe which would inevitably result from a stoppage of steel production, and that in meeting this grave emergency the President was acting within the aggregate of his constitutional powers as the Nation's Chief Executive and the Commander in Chief of the Armed Forces of the United States. The issue emerges here from the following series of events: In the latter part of 1951, a dispute arose between the steel companies and their employees over terms and conditions that should be included in new collective bargaining agreements. Long-continued conferences failed to resolve the dispute. On December 18, 1951, the employees' representative, United Steelworkers of America, C. I. O., gave notice of an intention to strike when the existing bargaining agreements expired on December 31. The Federal Mediation and Conciliation Service then intervened in an effort to get labor and management to agree. This failing, the President on December 22, 1951, referred the dispute to the Federal Wage Stabilization [343 U.S. 579, 583] Board 1 to investigate and make recommendations for fair and equitable terms of settlement. This Board's report resulted in no settlement. On April 4, 1952, the Union gave notice of a nation-wide strike called to begin at 12:01 a. m. April 9. The indispensability of steel as a component of substantially all weapons and other war materials led the President to believe that the proposed work stoppage would immediately jeopardize our national defense and that governmental seizure of the steel mills was necessary in order to assure the continued availability of steel. Reciting these considerations for his action, the President, a few hours before the strike was to begin, issued Executive Order 10340, a copy of which is

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attached as an appendix, post, p. 589. The order directed the Secretary of Commerce to take possession of most of the steel mills and keep them running. The Secretary immediately issued his own possessory orders, calling upon the presidents of the various seized companies to serve as operating managers for the United States. They were directed to carry on their activities in accordance with regulations and directions of the Secretary. The next morning the President sent a message to Congress reporting his action. Cong. Rec., April 9, 1952, p. 3962. Twelve days later he sent a second message. Cong. Rec., April 21, 1952, p. 4192. Congress has taken no action. Obeying the Secretary's orders under protest, the companies brought proceedings against him in the District Court. Their complaints charged that the seizure was not authorized by an act of Congress or by any constitutional provisions. The District Court was asked to declare the orders of the President and the Secretary invalid and to issue preliminary and permanent injunctions restraining their enforcement. Opposing the motion for preliminary [343 U.S. 579, 584] injunction, the United States asserted that a strike disrupting steel production for even a brief period would so endanger the well-being and safety of the Nation that the President had "inherent power" to do what he had done—power "supported by the Constitution, by historical precedent, and by court decisions." The Government also contended that in any event no preliminary injunction should be issued because the companies had made no showing that their available legal remedies were inadequate or that their injuries from seizure would be irreparable. Holding against the Government on all points, the District Court on April 30 issued a preliminary injunction restraining the Secretary from "continuing the seizure and possession of the plants . . . and from acting under the purported authority of Executive Order No. 10340." 103 F. Supp. 569. On the same day the Court of Appeals stayed the District Court's injunction. 90 U.S. App. D.C. ___, 197 F.2d 582. Deeming it best that the issues raised be promptly decided by this Court, we granted certiorari on May 3 and set the cause for argument on May 12. [343 U.S. 937](#) . Two crucial issues have developed: First. Should final determination of the constitutional validity of the President's order be made in this case which has proceeded no further than the preliminary injunction stage? Second. If so, is the seizure order within the constitutional power of the President?

I.

It is urged that there were non-constitutional grounds upon which the District Court could have denied the preliminary injunction and thus have followed the customary judicial practice of declining to reach and decide constitutional questions until compelled to do so. On this basis it is argued that equity's extraordinary injunctive relief should have been denied because (a) seizure of the companies' properties did not inflict irreparable damages, [343 U.S. 579, 585] and (b) there were available legal remedies adequate to afford compensation for any possible damages which they might suffer. While separately argued by the Government, these two contentions are here closely related, if not identical. Arguments as to both rest in large part on the Government's claim that should the seizure ultimately be held unlawful, the companies could recover full compensation in the Court of Claims for the unlawful taking. Prior cases in this Court have cast doubt on the right to recover in the

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Court of Claims on account of properties unlawfully taken by government officials for public use as these properties were alleged to have been. See e. g., *Hoe v. United States*, [218 U.S. 322, 335](#) -336; *United States v. North American Co.*, [253 U.S. 330, 333](#) . But see *Larson v. Domestic & Foreign Corp.*, [337 U.S. 682, 701](#) -702. Moreover, seizure and governmental operation of these going businesses were bound to result in many present and future damages of such nature as to be difficult, if not incapable, of measurement. Viewing the case this way, and in the light of the facts presented, the District Court saw no reason for delaying decision of the constitutional validity of the orders. We agree with the District Court and can see no reason why that question was not ripe for determination on the record presented. We shall therefore consider and determine that question now.

II.

The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President [\[343 U.S. 579, 586\]](#) to take both personal and real property under certain conditions. ² However, the Government admits that these conditions were not met and that the President's order was not rooted in either of the statutes. The Government refers to the seizure provisions of one of these statutes (201 (b) of the Defense Production Act) as "much too cumbersome, involved, and time-consuming for the crisis which was at hand."

Moreover, the use of the seizure technique to solve labor disputes in order to prevent work stoppages was not only unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes. When the Taft-Hartley Act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency. ³ Apparently it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective bargaining. ⁴ Consequently, the plan Congress adopted in that Act did not provide for seizure under any circumstances. Instead, the plan sought to bring about settlements by use of the customary devices of mediation, conciliation, investigation by boards of inquiry, and public reports. In some instances temporary injunctions were authorized to provide cooling-off periods. All this failing, unions were left free to strike after a secret vote by employees as to whether they wished to accept their employers' final settlement offer. ⁵ [\[343 U.S. 579, 587\]](#)

It is clear that if the President had authority to issue the order he did, it must be found in some provision of the

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Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "The executive Power shall be vested in a President . . ."; that "he shall take Care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States."

The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The [343 U.S. 579, 588] first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States" After granting many powers to the Congress, Article I goes on to provide that Congress may "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress - it directs that a presidential policy be executed in a manner prescribed by the President. The preamble of the order itself, like that of many statutes, sets out reasons why the President believes certain policies should be adopted, proclaims these policies as rules of conduct to be followed, and again, like a statute, authorizes a government official to promulgate additional rules and regulations consistent with the policy proclaimed and needed to carry that policy into execution. The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules

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designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control.

It is said that other Presidents without congressional authority have taken possession of private business enterprises in order to settle labor disputes. But even if this be true, Congress has not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution [343 U.S. 579, 589] "in the Government of the United States, or any Department or Officer thereof."

The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.

The judgment of the District Court is

- Affirmed.