MR. JUSTICE CLARK, concurring in the judgment of the Court.

One of this Court's first pronouncements upon the powers of the President under the Constitution was made by Mr. Chief Justice John Marshall some one hundred and fifty years ago. In Little v. Barreme, 1 he used this characteristically clear language in discussing the power of the President to instruct the seizure of the Flying Fish, a vessel bound from a French port: "It is by no means clear that the president of the United States whose high duty it is to `take care that the laws be faithfully executed,' and who is commander in chief of the armies and navies of the United States, might not, without any special authority for that purpose, in the then existing state of things, have empowered the officers commanding the armed vessels of the United States, to seize and send into port for adjudication, American vessels which were forfeited by being engaged in this illicit commerce. But when it is observed that [an act of Congress] gives a special authority to seize on the high seas, and limits that authority to the seizure of vessels bound or sailing to a French port, the legislature seem to have prescribed that [343 U.S. 579, 661] the manner in which this law shall be carried into execution, was to exclude a seizure of any vessel not bound to a French port." 2 Accordingly, a unanimous Court held that the President's instructions had been issued without authority and that they could not "legalize an act which without those instructions would have been a plain trespass." I know of no subsequent holding of this Court to the contrary. 3

The limits of presidential power are obscure. However, Article II, no less than Article I, is part of "a constitution intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs." 4 Some of our Presidents, such as Lincoln, "felt that measures otherwise unconstitutional might become lawful by becoming indispensable to the preservation of the Constitution through the preservation of the nation." 5 [343 U.S. 579, 662] Others, such as Theodore Roosevelt, thought the President to be capable, as a "steward" of the people, of exerting all power save that which is specifically prohibited by the Constitution or the Congress. 6 In my view - taught me not only by the decision of Mr. Chief Justice Marshall in Little v. Barreme, but also by a score of other pronouncements of distinguished members of this bench - the Constitution does grant to the President extensive authority in times of grave and imperative national emergency. In fact, to my thinking, such a grant may well be necessary to the very existence of the Constitution itself. As Lincoln aptly said, "[is] it possible to lose the nation and yet preserve the Constitution?" 7In describing this authority I care not whether one calls it "residual," "inherent," "moral," "implied," "aggregate," "emergency," or otherwise. I am of the conviction that those who have had the gratifying experience of being the President's lawyer have used one or more of these adjectives only with the utmost of sincerity and the highest of purpose.

I conclude that where Congress has laid down specific procedures to deal with the type of crisis confronting the President, he must follow those procedures in meeting the crisis; but that in the absence of such action by Congress, the President's independent power to act depends upon the gravity of the situation confronting the nation. I cannot sustain the seizure in question because

here, as in Little v. Barreme, Congress had prescribed methods to be followed by the President in meeting the emergency at hand. [343 U.S. 579, 663]

Three statutory procedures were available: those provided in the Defense Production Act of 1950, the Labor Management Relations Act, and the Selective Service Act of 1948. In this case the President invoked the first of these procedures; he did not invoke the other two.

The Defense Production Act of 1950 provides for mediation of labor disputes affecting national defense. Under this statutory authorization, the President has established the Wage Stabilization Board. The Defense Production Act, however, grants the President no power to seize real property except through ordinary condemnation proceedings, which were not used here, and creates no sanctions for the settlement of labor disputes.

The Labor Management Relations Act, commonly known as the Taft-Hartley Act, includes provisions adopted for the purpose of dealing with nationwide strikes. They establish a procedure whereby the President may appoint a board of inquiry and thereafter, in proper cases, seek injunctive relief for an 80-day period against a threatened work stoppage. The President can invoke that procedure whenever, in his opinion, "a threatened or actual strike . . . affecting an entire industry . . . will, if permitted to occur or to continue, imperil the national health or safety." 8 At the time that Act was passed, Congress specifically rejected a proposal to empower the President to seize any "plant, mine, or facility" in which a threatened work stoppage would, in his judgment, "imperil the public health or security." 9 Instead, the Taft-Hartley Act directed the President, in the event a strike had not been settled during the 80-day injunction period, to submit to Congress "a full and comprehensive report . . . together with such recommendations as he may see fit to make for consideration and [343 U.S. 579, 664] appropriate action." 10 The legislative history of the Act demonstrates Congress' belief that the 80-day period would afford it adequate opportunity to determine whether special legislation should be enacted to meet the emergency at hand. 11

The Selective Service Act of 1948 gives the President specific authority to seize plants which fail to produce goods required by the armed forces or the Atomic Energy Commission for national defense purposes. The Act provides that when a producer from whom the President has ordered such goods "refuses or fails" to fill the order within a period of time prescribed by the President, the President may take immediate possession of the producer's plant. 12 This language is significantly broader than [343 U.S. 579, 665] that used in the National Defense Act of 1916 and the Selective Training and Service Act of 1940, which provided for seizure when a producer "refused" to supply essential defense materials, but not when he "failed" to do so. 13

These three statutes furnish the guideposts for decision in this case. Prior to seizing the steel mills on April 8 the President had exhausted the mediation procedures of the Defense Production Act through the Wage Stabilization Board. Use of those procedures had failed to avert the impending crisis; however, it had resulted in a 99-day postponement of the strike. The Government argues that this accomplished more than the maximum 80-day waiting period possible under the sanctions of the Taft-Hartley Act, and therefore amounted to compliance with the substance of that Act. Even if one were to accept this somewhat hyperbolic conclusion, the hard fact remains that neither the Defense Production Act nor Taft-Hartley authorized the seizure challenged here, and the Government made no effort to comply with the procedures [343 U.S.

579, 666] established by the Selective Service Act of 1948, a statute which expressly authorizes seizures when producers fail to supply necessary defense materiel. 14

For these reasons I concur in the judgment of the Court. As Mr. Justice Story once said: "For the executive department of the government, this court entertain the most entire respect; and amidst the multiplicity of cares in that department, it may, without any violation of decorum, be presumed, that sometimes there may be an inaccurate construction of a law. It is our duty to expound the laws as we find them in the records of state; [343 U.S. 579, 667] and we cannot, when called upon by the citizens of the country, refuse our opinion, however it may differ from that of very great authorities." 15