

US Supreme Court, War Powers and Foreign Policy

“every word [of the US Constitution] ... decides a question between power and liberty.”

--James Madison, 1792

1863 The Prize Cases (5-4)

“The President was bound to meet [the rebellion] in the shape it presented itself, without waiting for Congress to baptize it with a name.” (*Justice Robert Cooper Grier*)

1890 In re Neagle (6-2)

"the rights, duties, and obligations growing out of the Constitution itself, our international relations, and all the protection implied by the nature of the government under the Constitution." (*Justice Samuel Miller*)

1901 The Insular Cases (5-4)

[Commenting] “Yes, as near as I can make it out the Constitution follows the flag –but doesn’t quite catch up with it.” (*Secretary of War Elihu Root*)

1936 US v. Curtiss-Wright Export Corp (7-1)

“In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. He makes treaties with the advice and consent of the Senate; but he alone negotiates.” (*Justice George Sutherland*)

1952 Youngstown Sheet & Tube Co. v. Sawyer (6-3)

“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.” (*Justice Hugo Black*)