

ADVANCE COPY

To be held in confidence and  
not released until the delivery  
of the address at 1:00 p.m., P.C.T.,  
September 18, 1941

Address of

FRANCIS BIDDLE

Attorney General of the United States

Before the

Annual Convention of the California State Bar Association

Yosemite National Park, California

Thursday, September 18, 1941

1:00 P.M.

Pacific Standard Time

Broadcast Through the Facilities of the National Broadcasting Company

## THE POWER OF DEMOCRACY

The pleasure which I experience in being able to meet with my brethren of the Bar of the great State of California, in this superb place and upon so important an occasion, cannot be expressed in the common clichés of the visiting speaker. Will you, Mr. President, and your Board of Governors and indeed your entire membership accept my most sincere thanks for this opportunity. Permit me, as well, to express my enthusiasm for the splendid program of expanded public service which the State Bar of California is inaugurating in this hour of grave national emergency. "Making Democracy Work" is indeed a well chosen theme for this Convention and one which may be said to epitomize the confidence and the determination which we as lawyers share.

As you well know, there have always been timid souls who doubted that democracy could be made to work when disaster threatened. Their voices have been heard in every great crisis, domestic or international, through which this country has passed during more than one hundred and fifty years of national life. History has been kind to them and most of their gloomy forecasts have been soon forgotten. At this moment their voices are raised again to express the familiar fear that the very measures essential to defend democracy may in the end prove to be democracy's undoing. If there are those among them who do not believe sincerely in democratic processes, I can only regret that they are not placed elsewhere in associations more congenial to the political paganism which they profess. My present concern is for the sincere believers who are troubled by the discordant counsels of these

tumultuous times. Without minimizing our dangers, I would seek to fortify their faith, for ultimately the vitality of democracy must depend upon the faith of those who would conserve and strengthen its essential principles. For myself, I hold firmly to that faith in free institutions which is implicit in the theme of this Convention. I am confident that the same vitality of free government which has brought our nation through one hundred fifty years to its present stature will enable it in the future as in the past to

meet with Triumph and Disaster  
And treat those two imposters just the same.

It will come as no surprise to this audience that my first article of faith is in the Constitution of the United States. Among their many virtues the draftsmen of this great instrument were masters of a brevity which could be embracing without dissipation in vague generality. The word "emergency" is nowhere used in the Constitution, yet it is elemental law that there are ample powers in the several departments of our national government to cope with any crisis. As former Chief Justice Hughes observed, when addressing the American Bar Association in 1917, "the framers of the Constitution did not contrive an imposing spectacle of impotency . . . Self-preservation is the first law of national life and the Constitution itself provides the necessary powers in order to defend and preserve the United States."<sup>1</sup>/

Whatever doubts may have emerged at one time or another in our history, no lawyer today questions the adequacy of the national legislative power. It is significant that the enumeration of legislative powers granted to the Congress begins with the power "to lay and collect taxes . . . to pay the debts and provide for the common defense and general welfare of the United States."<sup>2/</sup> The enumeration includes the power to declare war, to raise and support armies, to provide and maintain a navy, and to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions. Speaking through the late Mr. Justice Cardozo, the Supreme Court has reminded us that the concept of the general welfare is not static but is equal to any emergency. In Justice Cardozo's own words: "Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times."<sup>3/</sup>

It has never been seriously questioned that the efficacy of emergency legislative power depends upon an assurance of prompt and vigorous execution. In recognition of this elemental principle, the Congress throughout our history has repeatedly delegated broad emergency powers to the executive. Thus, in the first volume of our national statutes, we find the President authorized to call forth the militia whenever the United States shall be invaded or in imminent danger of invasion.<sup>4/</sup> In sustaining this statute and holding that the President's decision as to the existence of an emergency must be conclusive, the Supreme Court stated tersely some elemental principles concerning free government and its defense. Mr. Justice Story said: "It is no answer that such

a power may be abused, for there is no power which is not susceptible of abuse. The remedy for this . . . if it should occur, is to be found in the Constitution itself."<sup>5/</sup> And again: "One of the best means to repel invasions is to provide the requisite force for action, before the invader himself has reached the soil."<sup>6/</sup>

Having in mind the part which the executive must always be called upon to take in time of crisis, it is further tribute to the wisdom of those who framed our Constitution that there need never be serious doubt as to the adequacy of national executive power. Article II begins with the terse statement that "the executive power shall be vested in a President of the United States of America."<sup>7/</sup> It requires an oath or affirmation that he will "faithfully execute the office" and that he will, to the best of his ability, "preserve, protect and defend the Constitution of the United States."<sup>8/</sup> It provides that he shall be Commander in Chief of the armed forces of the United States.<sup>9/</sup> It makes of the President, as Marshall declared in his famous argument in the House of Representatives on March 7, 1800,<sup>10/</sup> "the sole organ of the nation in its external relations."<sup>11/</sup> And finally, in the same terse but dynamic style, it admonishes the President to "take care that the laws be faithfully executed."<sup>12/</sup> I am here speaking of powers which stem directly from the Constitution, without benefit of legislative interposition, and which constitute the basic charter of the President's responsibility for the defense of the Nation in time of grave national peril. In what is undoubtedly one of the major crises of our history,

when the pressure of events must force many vital decisions and when charges of usurpation or dictatorial action are too lightly made, it is essential that we return from time to time to the fundamental charter of our liberties.

My second article of faith is in the Constitutional history of the United States. The record of great issues met and resolved by democratic processes is one which inspires an enduring confidence. If those timid Americans who are now saying that it cannot be done, or that if it is done it will prove our undoing, will only look at the record with an open mind, their misgivings may be speedily dissipated. How, or why, or under what tragic circumstances, other less fortunate peoples may have surrendered to cruel tyranny while still in the kindergarden of democratic experience is of no immediate relevance. Vitally relevant are the venerable roots of our own sacred liberties, the soil in which they have been traditionally nurtured, and the toughness which they have developed in resisting adversity. In the cavalcade of our one hundred and fifty years, we may observe the sequence of minor and major crises the response of democratic statesmanship to each succeeding challenge. We may witness the tempo of national decision accelerated to cope with situations which have not permitted delay, and retarded to restore the utmost of patience in deliberation when storm clouds passed. Who has read American history and doubted that the passion for liberty under law has emerged more insistent after each period of stress! Who has really shared the American way of life yet denied the conviction that

the ultimate responses of a free people are wiser and more humane than the dictates of a despot benevolent or otherwise!

In noting the adequacy of national legislative powers and reminding you of the necessity for assurance of prompt and vigorous execution of all emergency laws, I have already called attention to the legislative practice of making broad grants of power to the President to meet emergencies. The necessity for this practice is sufficiently confirmed by its consistent use throughout our national history and its wisdom is demonstrated in our long and varied experience with administration under such legislative grants. Contrary to the somewhat naive assumption which seems to prevail in some quarters, this is neither a new nor a dangerous practice. From the very beginning, Congress has repeatedly granted the President extraordinary powers with which to meet extraordinary situations. In some instances the grant of power has been ephemeral, designed to meet an immediate but temporary need. In others it has passed into the body of our national jurisprudence where it constitutes a reserve of legislative preparedness for the emergencies of national defense.

Among emergencies arising from crises primarily internal or domestic, the Pennsylvania rebellion of 1792 was one of the earliest occasions for resort to this type of legislation. On that occasion Congress promptly

empowered the President to call out the militia of the states to enforce the laws "whenever the laws of the United States shall be opposed or the execution thereof obstructed."<sup>13/</sup> In 1861, as is well known, new precedents were established for similar delegations of broad emergency powers.<sup>14/</sup> Included among our national statutes<sup>†</sup> in force at the present time are many such laws, deriving from different periods in our history, conceived to safeguard against emergencies of various kinds, and granting powers in the broadest terms.<sup>15/</sup> With your indulgence, I propose to refer to a few examples, quoting briefly from the statutory definition of executive discretion in each instance.

The executive may waive or modify the monthly apportionment of appropriations for governmental departments "upon the happening of some extraordinary emergency or unusual circumstance which could not be anticipated at the time of making such apportionment"<sup>16/</sup>; may take action with respect to credit expansion when "an economic emergency requires an expansion of credit"<sup>17/</sup>; may regulate or prohibit certain transactions in foreign exchange or with respect to the currency "during time of war or during any other period of national emergency"<sup>18/</sup>; may regulate the transaction of business by the Federal Reserve Banks "during such emergency period as the President . . . by proclamation may prescribe"<sup>19/</sup>; and may suspend trading in securities when "the public interest so requires."<sup>20/</sup> By proclaiming an emergency, the President



may make it unlawful to transfer American ships to foreign ownership<sup>21/</sup> and authorize the Maritime Commission to requisition American ships.<sup>22/</sup> In time of war or threatened war, the President's broad powers over transportation,<sup>23/</sup> industry,<sup>24/</sup> and communication<sup>25/</sup> are writ large in our national legislation and are well understood among members of our profession.

In emergencies arising from crises primarily external or international, Congress has always met or anticipated the event with the broadest grants of power and with few departures from an approved pattern of legislative action. Since the President, as the Senate Committee on Foreign Relations long ago observed, is "the constitutional representative of the United States with regard to foreign nations,"<sup>26/</sup> the implementing of a foreign policy, whether in emergency or in due course, could hardly be accomplished otherwise. From the earliest enactments concerned with our foreign relations, in the turbulent years which followed the French Revolution,<sup>27/</sup> to the recent Lend-Lease statute, there has been an uninterrupted progress of consistent practice. Under the terms of the Lend-Lease Act, "the President may . . . when he deems it in the interest of national defense" authorize the manufacture or procurement of any defense article "for the government of any country whose defense the President deems vital to the defense of the United States." The terms and conditions of aid are to be "those which the President deems satisfactory" and the benefit to the United States may be payment, repayment in kind, "or any other direct or indirect benefit which the President deems satisfactory."<sup>28/</sup> I refrain from burdening you with samplings from the years intervening between 1789 and 1941.<sup>29/</sup>

The wisdom of such action may always be debated when the occasion arises, but its propriety and validity under our form of government is no longer doubted. In 1936, in sustaining a criminal prosecution for violation of the Joint Resolution of Congress authorizing the President to embargo the sale of arms to belligerents in the Chaco war, the Supreme Court reviewed the practice at length and affirmed its constitutional validity in the case presented in no uncertain terms. Speaking for the Court, Mr. Justice Sutherland said: "As a member of the family of nations, the right and power of the United States in that field are equal to the right and power of the other members of the international family. In this vast external realm, with its important, complicated, delicate and manifold problems, the Presidency<sup>c</sup> alone has the power to speak or listen as a representative of the nation. The principles which justify such legislation find overwhelming support in the unbroken legislative practice which has prevailed almost from the inception of the national government to the present day".<sup>30/</sup>

Needless to say, the summation of all grants of emergency power, both internal and external, occurs in war time, for modern war is an economic and social struggle as well as a conflict of arms, and the concentration of responsibility must perforce be correspondingly extended. Before the World War ended our executive was exercising, among other powers, the power to take over manufacturing plants, to operate transportation systems, to fix charter rates for shipping, to license the distribution of food and fuel, to fix the prices of coal and coke, to control imports and exports, and to redistribute the functions of the executive departments of government as circumstances might require. In

the light of World War experience, our legislative preparedness for war has been supplemented and strengthened. The power to apprehend and detain alien enemies derives from legislation first enacted in 1798,<sup>31/</sup> the power to control transportation priorities from an enactment of 1920,<sup>32/</sup> the power to commandeer manufacturing plants from a statute of 1916 as well as from a statute of 1940,<sup>33/</sup> the power to suspend trading in securities from a statute of 1934.<sup>34/</sup> More recently our legislative preparedness has been supplemented at vital points.<sup>35/</sup> Today, insofar as legislation can effectively anticipate the requirements of a war time emergency, the nation is better prepared than ever before in its history.

In reviewing some aspects of our constitutional history, I have dwelt chiefly, up to this point, upon legislative practice in meeting or anticipating emergencies. It remains to say something of the executive powers which stem directly from the Constitution. I have reminded you that executive power is vested in the President; that he is sworn to preserve, protect, and defend the Constitution; that he is made Commander in Chief of the armed forces and our sole spokesman in foreign relations; and that he is responsible for the faithful execution of the laws. Traditionally, every president of the United States, from the first to the present, has preferred to discharge his constitutional duties within a pattern formulated in appropriate legislative action. Traditionally, every president of the United States, from the first to the present, has been prepared to use his constitutional powers when the nation or its citizens were endangered in circumstances requiring prompt and vigorous action. There have been differences of opinion with respect to action taken, both before and after the event; but over the years the wisdom of the

framers of our organic law has been repeatedly confirmed. If you were to press me for a distillation of principle from the full harvest of our national experience, I would suggest that the magnitude of the threatened disaster is the measure of the President's power and duty to take steps necessary to avert it.

When Abraham Lincoln took the oath of office, the Congress was not in session and rebellion was spreading swiftly throughout the southern states. The measures which he took to preserve, protect, and defend the Constitution in that critical hour are familiar history. I need hardly remind you that it was as chief executive and commander in chief of the armed forces that President Lincoln, among other emergency measures, called out the militia, issued a call for volunteers, increased the army and navy, ordered the blockade of southern ports, and proclaimed the emancipation of the slaves.<sup>36/</sup> When strikes flamed into mob violence threatening paralysis of railroad traffic in Chicago in 1894, President Cleveland sent troops to restore order.<sup>37/</sup> To the contention that the measures taken were beyond the scope of executive power, the Supreme Court later replied: "There is no such impotency in the national government. The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws."<sup>38/</sup> Within recent months, here in this state and on the Atlantic seaboard,

the same fundamental powers have been invoked to restore strike-bound plants to their necessary place in the program of national defense.<sup>39/</sup>

Throughout our history these great reserves of constitutional authority have been drawn upon with courage and vigor in the protection of American lives and property abroad. In 1798 President Adams authorized the arming of American merchantmen to resist the attacks which were being made upon our commerce by the French.<sup>40/</sup> In 1801 President Jefferson sent a squadron of frigates into the Mediterranean to protect our commerce against the Barbary raiders.<sup>41/</sup> In 1853 one Koszta, a Hungarian who had declared his intention to become a citizen of the United States, was seized in Smyrna by Austrian forces and confined on an Austrian vessel. The commander of an American warship in those waters demanded his release and enforced compliance by training his guns on the Austrian vessel. The commander was voted a gold medal by Congress; and the Supreme Court, in the case of *Neagle*, which I believe is regarded as a leading case in California, referred approvingly to the episode as "an attractive historical incident."<sup>42/</sup>

In the following year the United States Consul at Greytown, Nicaragua, was attacked by a local mob. When appropriate reparation was not forthcoming, the commander of a United States warship bombarded the town. President Pierce referred to the action taken as the only alternative to "submissive acquiescence in national indignity" <sup>43/</sup>; and later, when the commander was sued for the value of property destroyed, Associate Justice Nelson, sitting on circuit, upheld what had been done in vigorous language. The duty to act, he declared, "must, of necessity, rest in the discretion of the President." "The great object and duty of government," he concluded, "is the protection of the lives,

liberty, and property of the people composing it, whether abroad or at home; and any government failing in the accomplishment of the object, or the performance of the duty, is not worth preserving."<sup>44/</sup>

The significance of the record appears in the consistent pattern of national action. Bold executives and cautious executives, presidents avowedly sympathetic with the Hamiltonian philosophy and presidents professing a more guarded conception of their powers, have kept the oath as the ever changing stream of circumstance has challenged them to add present decision to the unfolding page of history. Within the memory of many here present, President McKinley sent naval vessels and a military force of five thousand men to the Far East to cooperate with other powers in suppressing disorders which had resulted from the Boxer rebellion.<sup>45/</sup> It was nearly a half century earlier that President Buchanan, one of the most cautious of our executives, when the right was asserted to search American vessels in the Gulf of Mexico, had ordered the dispatch of a naval force with instructions "to protect all vessels of the United States on the high seas from search or detention by the vessels of any other nation."<sup>46/</sup> In the same consistent determination to safeguard our heritage, we are today cooperating with friendly powers in the Pacific and are fortifying new bases and reinforcing the far flung patrol which guards the vital highways of the Atlantic. Long experience in the democratic way of life has taught us patience; but neither contriving faction within nor hostile force without should ever mistake patience for impotence. In all earnestness, to those here or abroad who may be confused by the swift march of events, I commend the revealing record of our constitutional experience.

My third article of faith is in liberty under law as it has come down to us, conserved and strengthened, through a thousand years of Anglo-American institutional history. I need hardly remind this audience of the unique vitality of the rule of law wherever the Common Law has become firmly established. Nor is it necessary to stress the well known circumstance that our civil liberties have their roots in and are part and parcel of this venerable heritage. As the Supreme Court has observed, our Bill of Rights was "not intended to lay down any novel principle of Government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors." 47/

Our heritage of liberty under law is guaranteed in terms in our Constitution. It has acquired a richer meaning and a more enduring substance in our constitutional experience. We should remember, however, that all this was possible because we were coheirs to the Common Law inheritance; and faint hearts may be fortified once more in recalling the turbulent centuries in which that heritage has been formed and toughened. It is no made-to-order credo of the passing moment which attaches our people so firmly to freedom of religion when such freedom is brutally denied in many lands; to freedom of speech and the press when elsewhere terror stifles utterance and the press has survived only as a servile agent of unscrupulous power; to freedom from unreasonable searches and seizures when a continent languishes under the dread hand of the secret police; to trial by jury, with its ancient safeguards; when uncounted thousands are rushed to the concentration camp or the firing squad after proceedings which make a mockery of justice; or to due process of law when the ideas and the ideals of justice which are implicit in

that phrase have been violently repudiated over wide reaches of the earth. These things are a part of us, they belong to our way of life, and they will endure so long as we continue to believe in them, and have the will to defend them.

A government with ample power to defend the liberties of its people is a strong government. A government dedicated to the protection of those liberties is a just government. In asserting that our American form of government has traditionally been both strong and just, I would neither minimize the difficulties which confront us nor ignore the dangers to which we are peculiarly vulnerable. When revolutionary forces sweep over the earth, sparing no means and knowing no honor; when there can be no true peace for peoples selected for the sinister softening which precedes destruction; when those who wage total war take pride in the repudiation of conventional restraints upon the brutal incidents of armed conflict, the way of the strong and the just government is a hard one. Abroad, it must resist every aggression, however subtle or insidious, while continuing to deserve the confidence and friendship of the distracted peoples of less fortunate countries. At home, it must deal firmly yet fairly with those miserable saboteurs who make a mask of the very liberties which they are seeking to destroy. That America will achieve these things in ample measure, with whatever strength the emergency may require and without impairment of our essential liberties, I have no doubt.

In support of this confidence, I invite you to recall for the moment something of our experience with liberty under law in war time. It is of course axiomatic that no liberty can be absolute. Some things



permissible in ordinary times cannot be safely tolerated in a time of grave peril. Thus Mr. Justice Holmes reminded us, in one of the cases arising under the First Amendment during the World War, that "when a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any Constitutional right." 48/ Yet in another of the cases in this group, the same great Justice declared that "we do not lose our right to condemn either measures or men because the Country is at war." 49/

In other cases arising out of the same war time emergency, the Supreme Court returned frequently to the theme that "the war power of the United States, like its other powers . . . is subject to applicable Constitutional limitations" 50/; and, in denouncing an indictment under one of the war time statutes as violative of the Fifth and Sixth Amendments, the Court gave emphatic approval to the proposition that "the mere status of war did not of its own force suspend or limit the effect of the Constitution, but only caused limitations, which the Constitution made applicable as the necessary and appropriate result of the status of war, to become operative." 51/ It was in the midst of the World War that Attorney General Gregory reported that the Department of Justice was proceeding upon "the general principle that the constitutional right of free speech, free assembly and petition exist in war times as in peace time and that the right of discussion of governmental policy and the right of political agitation are most fundamental rights in a democracy." 52/

Whatever contempt we may feel for the misguided malcontents who assert liberties only to destroy them, we need have no fear that

government founded upon the processes and principles of our common law will cease to be just because the emergency compels it to be strong. I commend to you the homely wisdom of President Lincoln, who wrote on June 12, 1863: "I can no more be persuaded that the Government can constitutionally take ne strong measures in time of rebellion, because it could be shown that the same could not be lawfully taken in time of peace, than I can be persuaded that a particular drug is not good medicine for a sick man, because it can be shown to not be good for a well one. Nor am I quite able to appreciate the danger, apprehended by the meeting, that the American people will by means of military arrests during the rebellion lose the right of public discussion, the liberty of speech and the press, the law of evidence, trial by jury and habeas corpus throughout the indefinite peaceful future which I trust lies before them, any more than I am able to believe that a man could contract so strong an appetite for emetics during temporary illness as to persist in feeding upon them during the remainder of his healthful life." 53/

In a more tranquil future, students of government will spell out the contrast between the functioning of free government in time of peril and the techniques which enabled Europe's dictators to strut their little hour. There are obvious differences of underlying principle which they will surely stress. They will have something to say, certainly, of the toughness which free institutions had developed in centuries of sacrifice and struggle. They will point out how free peoples achieved essential unity under Constitutional government, rather than personal dictate. They will see significance in the rugged persistence of orderly legal processes in democratic countries, as contrasted with the procedures of hypnosis

or terror. They will emphasize the innate vitality of governments conceived in a passion for human liberty, yet strong enough to defend their heritage, as distinguished from regimes born in liberty's negation. They will recall a period in which two philosophies of life were in irreconcilable conflict, one exalting the dignity and worth of the human individual, another concerned only with the all-powerful state. Finally, they will record free government triumphant because it was founded ultimately upon the consent of the governed, because of its vast reserves of strength and its immeasurable capacities for self-renewal, and because its legions wore the uniform of the common man.

- 1/ "War Powers under the Constitution," 42 Am. Bar Assoc. Rep. 232 (1917).
- 2/ Art. II, sec. 8.
- 3/ Helvering v. Davis (1937) 301 U. S. 619, 641.
- 4/ Act of February 28, 1795, c. 36, 1 Stat. 424.
- 5/ Martin v. Mott (1827) 12 Wh. 19, 32.
- 6/ Ibid. at p. 29.
- 7/ Art. II, sec. 1.
- 8/ Ibid.
- 9/ Art. II, sec. 2.
- 10/ 2 Abridgment of Debates of Congress 466.
- 11/ Art. II, secs. 2 and 3.
- 12/ Art. II, sec. 3.
- 13/ Act of May 2, 1792, c. 28, 1 Stat. 264.
- 14/ E. g. Act of July 13, 1861, c. 3, secs. 2 and 5, 12 Stat. 255, 256, 257.
- 15/ See Sen. Doc. No. 133, 26th Congress, 2d Session.
- 16/ Act of July 12, 1870, 16 Stat. 251 (R. S., sec. 3679), as amended (U.S.C., Tit. 31, sec. 665).

- 17/ Act of May 12, 1933, sec. 43, 48 Stat. 31, 51, as amended (U.S.C., Tit. 31, sec. 821).
- 18/ Act of October 6, 1917, sec. 5 (b), 40 Stat. 411, 415, as amended (U.S.C., Tit. 12, sec. 95a).
- 19/ Act of March 9, 1933, sec. 4, 48 Stat. 1, 2 (U.S.C., Tit. 12, sec. 95).
- 20/ Act of June 6, 1934, sec. 19, 48 Stat. 881, 898 (U.S.C., Tit. 15, Sec. 78s(a)(4)).
- 21/ Act of July 15, 1918, sec. 4, 40 Stat. 900, 901 (U.S.C., Tit. 46, sec. 835).
- 22/ Act of June 29, 1936, sec. 902(a), 49 Stat. 1985, 2015, as amended (U.S.C., Tit. 46, sec. 1242).
- 23/ Act of February 28, 1920, sec. 402, 41 Stat. 456, 476 (U.S.C., Tit. 49, sec. 1 (15)).
- 24/ Act of September 16, 1940, sec. 9, Public No. 783, 76th Congress.
- 25/ Act of June 19, 1934, sec. 606, 48 Stat. 1064, 1104 (U.S.C., Tit. 47, sec. 606).
- 26/ U. S. Senate, Reports, Committee on Foreign Relations, Vol. 8, p. 24.
- 27/ See United States v. Curtiss-Wright Export Corporation (1936) 299 U. S. 304, 322 - 324.
- 28/ Act of March 11, 1941, Public No. 11, 77th Congress.
- 29/ See United States v. Curtiss-Wright Export Corporation (1936) 299 U. S. 304, 322 et seq.
- 30/ Ibid. at pp. 318, 319, 322.

- 31/ Act of July 6, 1798 (R. S., sec. 4067), as amended by Act of April 16, 1918, 40 Stat. 531 (U.S.C., Tit. 50, sec. 21).
- 32/ Act of February 28, 1920, sec. 402, 41 Stat. 456, 476 (U.S.C., Tit. 49, sec. 1 (15)).
- 33/ Act of June 3, 1916, sec. 120, 39 Stat. 166, 213 (U.S.C., Tit. 50, sec. 80); Act of September 16, 1940, sec. 9, Public No. 783, 76th Congress.
- 34/ Act of June 6, 1934, sec. 19, 48 Stat. 881, 898 (U.S.C., Tit. 15, sec. 78s(a) (4)).
- 35/ E. g. Public No. 671, 76th Congress as amended by Public No. 89, 77th Congress (priorities); Public No. 703, 76th Congress (control of exports); Public No. 829, 76th Congress (requisition of exports).
- 36/ Sec. 12 Stat. 1258, 1259, 1260, 1268.
- 37/ 9 Richardson, Messages and Papers, 499.
- 38/ In re Debs (1895) 158 U. S. 564, 582.
- 39/ 6 Fed. Reg. 2777 (June 10, 1941); 6 ibid. 4349 (August 23, 1941).
- 40/ 1 Richardson, Messages and Papers, 264-265.
- 41/ 1 ibid. 326.
- 42/ 1 Rhodes, History of the United States, 416-419; In re Neagle (1890) 135 U. S. 1, 64.
- 43/ 5 Richardson, Messages and Papers, 273, 284.
- 44/ Durand v. Hollins (C.C.S.D.N.Y., 1860) 4 Blatchf. 451, 454, 8 Fed Cas. 111, 112 (No. 4,186).

- 45/ For. Rel. U. S. (1900) pp. vii et seq.
- 46/ 5 Richardson, Messages and Papers, 497, 507.
- 47/ Robertson v. Baldwin (1897) 165 U. S. 275, 281.
- 48/ Schenck v. United States (1919) 249 U. S. 47, 52
- 49/ Frowerck v. United States (1919) 249 U. S. 204, 208.
- 50/ Hamilton v. Kentucky Distilleries Co. (1919) 251 U. S. 146, 156
- 51/ United States v. Cohen Grocery Co. (1921) 255 U. S. 81, 87
- 52/ Report (1918) p. 20
- 53/ Letter to Erastus Corning and others, June 12, 1863, in Nicolay and Hay, Abraham Lincoln: A History, Vol. VII, p. 347