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International Law

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*Prize Cases*, 67 U.S. 635 (1863)

**Facts:**

1. This case was heard by the United States Supreme Court on February 10<sup>th</sup>, 1863. It was decided on March 10<sup>th</sup> 1863, with Justice Cooper delivering the opinion of the court.
2. In 1862, President Abraham Lincoln ordered a blockade of Southern ports in retaliation for the Confederate military attack against Fort Sumter in North Carolina. The petitioners are the owners of four ships, the *Amy Warwick*, the *Crenshaw*, the *Hiawatha* and the *Brillante*, which were captured by Northern vessels, which claimed their cargo as prizes. The *Amy Warwick* was a merchant vessel from Virginia which was traveling to Cape Henry under the American flag when captured by a Northern ship. The *Crenshaw*, also a Virginian ship was captured at the mouth of the Charles River on its way to England. The *Hiawatha* was a British ship captured on a return ship to Liverpool after picking up southern produce for trade. The *Brillante* is Mexican owned and was captured while anchored in the port of Biloxi after taking in a cargo of flour from New Orleans for trade.
3. Petitioners argue that the capture and seizure of their cargo was unlawful. To support this, they argue that they were neutral ships, not subject to the penalties of the belligerency and that they were not given notification of the belligerency's existence as required by law. They argue that those who are leading the insurrection are individuals and subjects of the sovereign, therefore do not constitute as enemies under international law. This means that the confiscation of property falls under municipal law and the confiscation required a specific offense. They also argue that the declaration of the blockade and the seizure of ships on the high seas is unlawful because a war does not exist. Only Congress can make such a declaration and authorize the lawful seizure of Southern ships as enemy property, which it had at that time failed to do. They also argue that an "insurrection" cannot be held to the same degree as a war.

4. The government argues that the seizure and confiscation of the four ships is lawful because the declaration of the blockade itself constitutes an act of war. They argue that the laws of war apply equally to a civil war and that because such a war was in effect, any Southern ships whether neutral or even loyal to the U.S. Government are subject to seizure and confiscation. They argue that Congress, by giving the President the authority and duty to suppress insurrections in the 1795 *Acts of Congress*, they gave preapproval to the blockade to suppress the Southern insurrection.

### Questions:

1. Whether the President had the right to institute a blockade on its own ports, a right typically reserved for belligerent nations acting against other belligerent nations?
2. Whether a war existed between the United States government and the Confederacy in the absence of a formal declaration?
3. Whether the laws of war apply to civil wars alike?
4. Whether the property of neutral ships in these circumstances may be lawfully confiscated as “enemy property.”

### Decisions:

1. The court found that the President had a right to institute a blockade on its own ports absent a formal declaration of war from congress under the Article II<sup>1</sup> of the Constitution and the Acts of 1795 and 1807.<sup>2</sup> Whereas Article II gives the President the whole Executive power and the responsibility to see that the laws be faithfully executed, the subsequent Acts of Congress authorized the president to use the military and navy in case of invasion by foreign nations and to suppress an insurrection. The Court found that the President was upholding his Article II duties by ordering a blockade to suppress an insurrection.

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<sup>1</sup> U.S. Constitution, Article II.

<sup>2</sup> *Prize Cases* 67 U.S. 635

2. The Court found that a war did exist between the Union and the Confederacy absent a formal declaration from Congress. According to International Law, or the law of nations, being deemed an “insurrection” is not mutually exclusive to a full out “belligerency.” Just because it is a civil dispute and because the revolted region is not recognized as a state, evidence that a war exists comes from foreign declarations of neutrality. The Court argues that England and several other countries would not have declared neutrality if there wasn’t a war already in place. They find that the actual proclamation of a blockade suffices as an official declaration of war.
  
3. The Court finds that the laws of war apply equally to civil wars because civil wars are similarly two belligerent parties claiming rights against each other. It is nonsensical that the rebels be allowed to exercise rights of war whereas the sovereign may not. According to international law, actions taken against the challenged sovereign state are considered acts of war committed by a foreign power. The recognition of this concept means that the President must abide by laws of humane conduct, but is also permitted to seize ships on the high seas, blockade ports and seize enemy property.
  
4. The Court found that the confiscation and cargo seizure of the four ships was lawful as a state of war existed which authorizes the confiscation of enemy property. The neutrality of the ships is irrelevant as in a state of war all persons residing within enemy territory are liable to be deemed enemies themselves. The fact that the cargo was Southern produce and vital to the Southern economy, legitimizes the seizure to a greater degree.

#### **Principles:**

1. **A state of war may exist without a formal declaration.**
2. A state of war must exist to legalize the seizure of neutral ships.
3. **The parties in a civil war are akin to the parties in a war between two foreign nations and thus equally abide to the laws of war.**
4. **All persons residing in or ships docking in enemy territory are considered enemy property and thus subject to seizure regardless of neutrality or loyalty.**
5. The President may assume the powers of Congress to declare war, as Abraham Lincoln did by initiating the blockade, under his **Executive powers to faithfully carry out the laws in times of emergency.**

6. The President can use international law as the basis for legitimizing actions.

**Conclusion:**

This case is extremely important given the trend of expanding Executive powers. The power to take military action or action regarding emergency situations without specific grant of approval from action has been one sought out by many subsequent presidents. Despite attempts of Congress to reign in this power, the War Powers Resolution, for example, which prohibited military actions without express legitimization from Congress, Presidents have found ways to expand their role as “Commander-In-Chief.” During President’ Bush’s presidency, the cases were used several times by the Department of Justice to legitimize terrorist interrogation techniques, warrantless wiretapping, and detentions.<sup>3</sup>The Prize Cases are of particular importance because they highlight a theme in American history, the deference of the courts and of the legislature to the Executive during times of war or emergency. This theme needs to be continually examined as it will determine to what degree United States will depart from its Constitution in the name of protection before the very thing it is trying to protect is erroneous.

Submitted: Mary Anne McElroy

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<sup>3</sup> Pearlstein, Deborah. “Contemporary Lessons From the Age-Old Prize Cases: A Comment on the Civil War in U.S. Foreign Relations Law.” St. Louis University Law Journal. 26 February 2009.

## **Works Cited**

### **Laws and Statutes:**

U.S. Constitution, Article 2.

### **Cases**

Prize cases 67 U.S. 635 (1863)

### **Articles**

Pearlstein, Deborah. "Contemporary Lessons From the Age-Old Prize Cases: A Comment on the Civil War in U.S. Foreign Relations Law." *St. Louis University Law Journal*. 26 February 2009.

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