

declaration or not, and that declaration is conclusive upon the Courts. If he declares only a portion of the State to be in a state of war, under the decision in the second case a person in any other part of the State, however distant, may be arrested and delivered to the military authorities in the martial zone, and his fate, whether liberty or life, depend on the action of a military commission, for I know of no principle which authorizes a military commission to impose the punishment of imprisonment that would not equally authorize the imposition of the punishment of death. Under that doctrine, should armed resistance to the Federal authority justifying a suspension of the writ of habeas corpus occur in Arizona, a citizen could, on a charge of aiding the insurrection, be dragged from his home in Maine and delivered to the military authorities in Arizona for trial and punishment. The remedy suggested by the learned Court, of impeachment by the Legislature, would hardly seem of much efficacy. By impeachment the Governor could only be removed from office. He could not be further punished, however flagrant his oppression may have been, except by a perversion of the criminal law, for if the doctrine of the Courts is correct he would not have exceeded his legal power. The Governor might imprison or execute the members of the Legislature, or even the learned Judges of the Supreme Court themselves. Frankly, I do not regard such a danger as likely, for I have great confidence in the common sense of the American people, and I imagine that if such a course were attempted not even the devotion of those learned Judges to the principles of law they had declared would induce them to voluntarily surrender life or liberty and that in their resistance they would be supported by the mass of the people. Still, it is an unfortunate condition of the law that redress from wrong can only be achieved by violation of the law.

These decisions exalt the military power beyond any height hitherto known in this country. They assert the power of the military at the uncontrolled discretion of a single man to dispose of the life and liberty of any person within the State, not by way of detention till the termination of an insurrection nor where life is taken in the actual clash of arms, but purely as a punishment for acts which may not be offences at all by the law, or, if offences, subject to slight penalties. The case of *Moyer v. Peabody*, in the Supreme Court of the United States (212 U.S., 78), gives no support to such a proposition. It justifies