

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

v. Cloyd W. Miller Co.,¹⁵² the Court held constitutional the new rent control law on the ground that cessation of hostilities did not end the government's war power, but that the power continued to remedy the evil arising out of the emergency. Yet, Justice Douglas noted for the Court, "We recognize the force of the argument that the effects of war under modern conditions may be felt in the economy for years and years, and that if the war power can be used in days of peace to treat all the wounds which war inflicts on our society, it may not only swallow up all other powers of Congress but largely obliterate the Ninth and Tenth Amendments as well. There are no such implications in today's decision."¹⁵³ Justice Jackson, though concurring, noted that he found the war power "the most dangerous one to free government in the whole catalogue of powers" and cautioned that its exercise "be scrutinized with care."¹⁵⁴ And, in *Ludecke v. Watkins*,¹⁵⁵ four dissenting Justices were prepared to hold that the presumption in the statute under review of continued war with Germany was "a pure fiction" and not to be used.

But the postwar period was a time of reaction against the war-time exercise of power by President Roosevelt, and President Truman was not permitted the same liberties. The Twenty-second Amendment, writing into permanent law the two-term custom, the "Great Debate" about our participation in NATO, the attempt to limit the treaty-making power, and other actions, bespoke the reaction.¹⁵⁶ The Supreme Court signaled this reaction when it struck down the President's action in seizing the steel industry while it was struck during the Korean War.¹⁵⁷

Nonetheless, the long period of the Cold War and of active hostilities in Korea and Indochina, in addition to the issue of the use of troops in the absence of congressional authorization, further created conditions for consolidation of powers in the President. In particular, a string of declarations of national emergencies, most, in whole or part, under the Trading with the Enemy Act,¹⁵⁸ undergirded the exercise of much presidential power. In the storm of response to the Vietnamese conflict, here, too, Congress reasserted legislative power to curtail what it viewed as excessive executive power, repealing the Trading with the Enemy Act and enacting in its place

¹⁵² 333 U.S. 138 (1948).

¹⁵³ 333 U.S. at 143-44.

¹⁵⁴ 333 U.S. at 146-47.

¹⁵⁵ 335 U.S. 160, 175 (1948).

¹⁵⁶ See A. KELLY & W. HARBISON, *THE AMERICAN CONSTITUTION: ITS ORIGINS AND DEVELOPMENT*, ch. 31 (4th ed. 1970).

¹⁵⁷ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

¹⁵⁸ § 301(1), 55 Stat. 838, 839-840 (1941).