

Sec. 8—Powers of Congress

Cls. 11, 12, 13, and 14—War; Military Establishment

be produced at the site, “constitute national defense assets,” and the project was justifiable under the war powers.¹⁵⁸¹

Perhaps the most significant example of legislation adopted pursuant to the war powers when no actual “shooting war” was in progress was the Atomic Energy Act of 1946, establishing a body to oversee and further the research into and development of atomic energy for both military and civil purposes.¹⁵⁸² Congress has also authorized a vast amount of highway construction, pursuant to its conception of their “primary importance to the national defense,”¹⁵⁸³ and the first extensive program of federal financial assistance in the field of education was the National Defense Education Act.¹⁵⁸⁴ These measures, of course, might also be upheld under the power to spend for the “common defense.”¹⁵⁸⁵ The post-World War II years, though nominally peacetime, constituted the era of the Cold War and the occasions for several armed conflicts, notably in Korea and Indochina, in which congress enacted much legislation designed to strengthen national security, including an apparently permanent draft,¹⁵⁸⁶ authorization of extensive space exploration,¹⁵⁸⁷ authorization for wage and price controls,¹⁵⁸⁸ and continued extension of the Renegotiation Act to recapture excess profits on defense contracts.¹⁵⁸⁹ Additionally, the period saw extensive regulation of matter affecting individual rights, such as loyalty-security programs,¹⁵⁹⁰ passport controls,¹⁵⁹¹ and limitations on members of the Communist Party and associated organizations,¹⁵⁹² all of which are dealt with in other sections.

¹⁵⁸¹ 297 U.S. at 327–28.

¹⁵⁸² 60 Stat. 755 (1946), 42 U.S.C. §§ 1801 *et seq.*

¹⁵⁸³ 108(a), 70 Stat. 374, 378 (1956), 23 U.S.C. § 101(b), naming the Interstate System the “National System of Interstate and Defense Highways.”

¹⁵⁸⁴ 72 Stat. 1580 (1958), as amended, codified to various sections of Titles 20 and 42.

¹⁵⁸⁵ Article I, § 8, cl.1.

¹⁵⁸⁶ Universal Military Training and Service Act of 1948, 62 Stat. 604, as amended, 50 U.S.C. App. §§ 451–473. Actual conscription has been precluded as of July 1, 1973, Pub. L. 92–129, 85 Stat. 353, 50 U.S.C. App. § 467(c), although registration for possible conscription is in effect. Pub. L. 96–282, 94 Stat. 552 (1980).

¹⁵⁸⁷ National Aeronautics and Space Act of 1958, 72 Stat. 426, as amended, codified in various sections of Titles 5, 18, and 50.

¹⁵⁸⁸ Title II of the Defense Production Act Amendments of 1970, 84 Stat. 799, as amended, provided temporary authority for wage and price controls, a power which the President subsequently exercised. E.O. 11615, 36 Fed. Reg. 15727 (August 16, 1971). Subsequent legislation expanded the President’s authority. 85 Stat. 743, 12 U.S.C. § 1904 note.

¹⁵⁸⁹ Renegotiation Act of 1951, 65 Stat. 7, as amended, 50 U.S.C. App. §§ 1211 *et seq.*

¹⁵⁹⁰ *E.g.*, *Cafeteria & Restaurant Workers v. McElroy*, 367 U.S. 886 (1961); *Peters v. Hobby*, 349 U.S. 331 (1955).

¹⁵⁹¹ *Zemel v. Rusk*, 381 U.S. 1 (1965); *United States v. Laub*, 385 U.S. 475 (1967).

¹⁵⁹² *United States v. Robel*, 389 U.S. 258 (1967); *United States v. Brown*, 381 U.S. 437 (1965).