

Sec. 2—Powers, Duties of the President

Cl. 1—Commander-In-Chiefship

nonstrike, no-lock-out agreement and . . . to carry out the directives of the tribunal created under that agreement by the Commander in Chief.”¹²⁹ Nor, the Court continued, had the later War Labor Disputes Act vested War Labor Board orders with any greater authority, with the result that they were still judicially unenforceable and unreviewable. Following this theory, the War Labor Board was not an office wielding power, but a purely advisory body, such as Presidents have frequently created in the past without the aid or consent of Congress. Congress itself, nevertheless, both in its appropriation acts and in other legislation, treated the presidential agencies as in all respects offices.¹³⁰

Evacuation of the West Coast Japanese.—On February 19, 1942, President Roosevelt issued an executive order, “by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy,” providing, as a safeguard against subversion and sabotage, power for his military commanders to designate areas from which “any person” could be excluded or removed and to set up facilities for such persons elsewhere.¹³¹ Pursuant to this order, more than 112,000 residents of the Western states, all of Japanese descent and more than two out of every three of whom were natural-born citizens, were removed from their homes and herded into temporary camps and later into “relocation centers” in several states.

It was apparently the original intention of the Administration to rely on the general principle of military necessity and the power of the Commander-in-Chief in wartime as authority for the relocations. But before any action of importance was taken under the order, Congress ratified and adopted it by the Act of March 21, 1942,¹³² by which it was made a misdemeanor to knowingly enter, remain in, or leave prescribed military areas contrary to the orders of the Secretary of War or of the commanding officer of the area. The cases which subsequently arose in consequence of the order were decided under the order plus the Act. The question at issue, said Chief Justice Stone for the Court, “is not one of Congressional power to delegate to the President the promulgation of the Executive Order, but whether, acting in cooperation, Congress and the Executive have constitutional . . . [power] to impose the curfew restriction here com-

¹²⁹ 143 F.2d at 149.

¹³⁰ E. Corwin, *supra* at 244, 245, 459.

¹³¹ E.O. 9066, 7 FED. REG. 1407 (1942).

¹³² 56 Stat. 173 (1942).