



AMERICAN CONSTITUTIONALISM
 VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 8: The New Deal/Great Society Era – Powers of the National Government

Wood v. Miller, 333 U.S. 138 (1948)

Demobilization after World War II presented many problems, as former soldiers readjusted to civilian life. Complications included gender relationships in the workplace, which had attracted many women during the war due to overcrowding at colleges, thanks to the GI Bill. Housing posed particular difficulties, as dramatically increased demands for apartments in urban areas threatened rampant inflation. In order to maintain affordable housing, Congress passed the Housing and Rent Act of 1947. The crucial provision of the act extended wartime rent control policies. Landlords under the statute could, at most, obtain 15 percent increases in the rents they had previously charged. When Cloyd Miller demanded his tenants pay 40 percent and 60 percent increases, the government sought an injunction that would keep rents at their wartime level.

The Supreme Court had little difficulty sustaining the Housing and Rent Act under a generalized war power, although Justice Jackson's concurrence suggested some theoretical difficulties he admitted were not present in this case. Significantly, Wood is an example of a post-New Deal case that seemed to be a straightforward application of pre-New Deal precedents. During World War I, Congress had also passed laws regulating matters usually left to states, and those measures had also been sustained by the Supreme Court as a legitimate exercise of the war power. Those precedents had already indicated that the war powers gave Congress substantial powers in the domestic sphere. The challenge for Wood was the extent to which the war powers extended after the war was over.

Consider when you read the opinion whether Congress could have invoked the war power during the Cold War or the war against terrorism. Does Justice Douglas limit his analysis to declared wars? If not, what are the limits on the war power? Does the reliance on the World War I precedents in Douglas's opinion impose some implicit limits on how far the war power might be stretched into peacetime?

JUSTICE DOUGLAS delivered the opinion of the Court.

We conclude, in the first place, that the war power sustains this legislation. The Court said in *Hamilton v. Kentucky Distilleries Co.* (1919) . . . that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues for the duration of that emergency. Whatever may be the consequences when war is officially terminated, the war power does not necessarily end with the cessation of hostilities. . . . In *Hamilton v. Kentucky Distilleries Co.* and *Ruppert v. Caffey* (1920), prohibition laws which were enacted after the Armistice in World War I were sustained as exercises of the war power because they conserved manpower and increased efficiency of production in the critical days during the period of demobilization, and helped to husband the supply of grains and cereals depleted by the war effort.

The constitutional validity of the present legislation follows *a fortiori* from those cases. The legislative history of the present Act makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials to military projects. Since the war effort contributed heavily to that deficit, Congress has the power even after the cessation of hostilities to act to control the forces that a short supply of the needed article created. If that were not true, the Necessary and Proper Clause, Art. I, § 8, cl. 18, would be drastically limited in its application to the several war powers. . . . The result would be paralyzing. It would render Congress powerless to remedy conditions the creation of which necessarily followed from the mobilization of men and materials for successful prosecution of the war. So to read the



Constitution would be to make it self-defeating.

JUSTICE JACKSON, concurring.

I agree with the result in this case, but the arguments that have been addressed to us lead me to utter more explicit misgivings about war powers than the Court has done. The Government asserts no constitutional basis for this legislation other than this vague, undefined and undefinable "war power."

No one will question that this power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by judges under the influence of the same passions and pressures. Always, as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.

I think we can hardly deny that the war power is as valid a ground for federal rent control now as it has been at any time. We still are technically in a state of war. I would not be willing to hold that war powers may be indefinitely prolonged merely by keeping legally alive a state of war that had in fact ended. I cannot accept the argument that war powers last as long as the effects and consequences of war, for if so they are permanent -- as permanent as the war debts. But I find no reason to conclude that we could find fairly that the present state of war is merely technical. We have armies abroad exercising our war power and have made no peace terms with our allies, not to mention our principal enemies. I think the conclusion that the war power has been applicable during the lifetime of this legislation is unavoidable.