



# The Declare War Clause, Part 6: The Spanish-American War and First and Second World Wars

September 30, 2024

This Legal Sidebar is the sixth part of an [eight-part series](#) that discusses the [Declare War Clause](#) in Article I, Section 8, Clause 11 of the Constitution, which grants Congress the power “To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water[.]” The power to take the nation to war is a central element of the Constitution’s scheme of war powers, but interpretation of the Declare War Clause is complex and evolving. This Sidebar series discusses the Supreme Court’s jurisprudence related to declarations of war by Congress and highlights interbranch practices that illuminate the executive and legislative branches’ sometimes differing interpretations of the clause. This Sidebar focuses on the implications of authorizing language found in declarations of war issued in World War I and World War II, which differed from the language used in the 1898 declaration of war against Spain and earlier declarations. Additional information on Congress’s [war powers](#) and the President’s powers as [Commander-in-Chief](#) can be found in the [Constitution Annotated](#).

## The Spanish-American War

The United States [declared war on Spain](#) in 1898 following a [Cuban insurrection](#) against Spanish rule and the sinking of the USS *Maine* in the harbor outside Havana. The war did not give rise to major Supreme Court decisions addressing the meaning of the Declare War Clause, but it did lead to other constitutional questions, such as how the Constitution would [apply to the territories](#) that the United States acquired from Spain at the close of the war, including Guam, Puerto Rico, and the Philippines. Other elements of the war and its aftermath, such as the U.S. [acquisition of a long-term land lease](#) in Guantanamo Bay, Cuba, and [interrogation techniques](#) in American-annexed Philippines, would set the stage for [later Supreme Court cases](#) in the [post-September 11, 2001, era](#).

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LSB11235

## The First World War

Issuing two declarations of war in World War I, first against [Germany](#) in April 1917 and then against [Austria-Hungary](#) in December 1917, Congress pledged “all resources of the country” necessary to bring the conflict to a successful conclusion. This was a marked departure from earlier war [declarations](#), such as that used in the Spanish-American War, which had authorized the President to “[use the whole land and naval force of the United States](#).” Consistent with the new language, the United States carried out its military action during the First World War on a much larger scale than the Spanish-American War.

In line with the view that the United States must marshal nationwide resources to achieve victory in the Great War, Congress passed a set of [economic mobilization statutes](#) that gave the President the authority to take control of private property for public use. Exercising statutory delegations, the Wilson Administration assumed control of many elements of the domestic economy, including privately owned [transportation networks](#) and [communications systems](#) inside the United States. In response to legal challenges to the President’s seizure of railroads and telephone lines, the Supreme Court [upheld](#) the constitutionality of the statutory delegations, emphasizing the “[completeness](#)” of Congress’s war powers. The Supreme Court also upheld other wartime economic authorizations, including a statutory delegation to the President to [regulate sale of enemy properties](#), war-related [rent control requirements](#), and a [wartime prohibition](#) on trafficking in liquor, which the Court [described](#) as “an appropriate means of increasing our war efficiency.” The Court also [held](#) that Congress had constitutional power to enact a nationwide compulsory draft law.

Another World War I-era statute known as the [Lever Act](#) gave the President broad power to regulate and ensure an adequate supply of domestic food and fuel production. The Supreme Court [held](#) that executive branch regulations promulgated under this statute were [unconstitutionally vague](#), leading the Court to strike down criminal convictions based on those regulations. In so doing, the Court did not suggest that Congress lacked the power to authorize wartime food pricing restrictions. (The First World War also generated a body of First Amendment jurisprudence discussed in this [Constitution Annotated essay](#).)

By the 1930s, the Supreme Court began to apply elements of its reasoning in war powers cases to uphold legislation enacted in response to the economic emergency created by the Great Depression. In [Home Building & Loan Association v. Blaisdell](#), which addressed the constitutionality of a Minnesota debtor relief statute, the Supreme Court likened the emergency created by period of economic distress to a wartime emergency. As part of this analogy, Chief Justice Charles Evans Hughes [stated](#) in his opinion for the Court that the “war power of the federal government . . . is a power to wage war suc[c]essfully, and thus it permits the harnessing of the entire energies of the people in a supreme co-operative effort to preserve the nation.” Chief Justice Hughes’s description was derived from a [1917 speech](#) he gave to the American Bar Association in which used the same phrase about the “power to wage war successfully.” The Supreme Court would [quote](#) Hughes’s speech [at length](#) in later cases.

## The Second World War

The attacks at Pearl Harbor led the United States to declare war against [Japan](#) on December 8, 1941. Three days later, the United States declared war on [Germany](#) in response to Germany’s declaration of war against the United States. Congress later [declared war](#) against Bulgaria, Hungary, and Rumania (now Romania) in June 1942 after President Franklin D. Roosevelt determined they had become “[instruments of Hitler](#).” Like the declarations against Germany and Austria-Hungary in World War I, the World War II declarations authorized the President to use the United States’ military forces and “all of the resources of the country” to bring the conflict to a successful termination. Similar to World War I litigation, the federal government’s exercise of this “total war” authority during World War II would raise questions about the extent of legislative and executive branch authority during wartime.

Before the United States entered the war, French and British leaders had asked the Roosevelt Administration to declare war against Germany and to provide war material to support their defense, but President Roosevelt responded that “[o]nly the Congress can make such commitments.” Despite that reluctance, the Roosevelt Administration later transferred “over-age ships and obsolescent military material” to Great Britain in exchange for long-term leases of British air and naval bases in what became known as the “Destroyers for Bases” agreement. The executive branch had previously interpreted an [arms export statute](#) to prohibit transfer of vessels that the British government requested. However, President Roosevelt’s Attorney General (and later Supreme Court Justice) Robert Jackson [concluded](#) that the President could complete the destroyer-for-bases exchange based on a mix of statutory authority and the President’s power to conduct “foreign relations which the Constitution vests in the President as a part of the Executive function.”

The United States’ eventual entry into the Second World War generated debate over President Roosevelt’s power to independently manage aspects of the domestic economy. In particular, President Roosevelt sought to modify the [Emergency Price Control Act of 1942](#), which he [believed](#) impeded his ability to control inflation that interfered with the war effort. When Congress initially did not make the requested legislative changes, the President claimed constitutional authority to take measures he viewed as necessary for the war effort, and he [publicly threatened](#) to impose his own inflation stabilization regime. Roosevelt’s suggestion that the President could override economic legislation was never tested in court because Congress enacted legislation giving the President new [price and wage stabilization authority](#) (however, the Supreme Court later rejected a similar view advanced by President Harry Truman during the [Korean War](#)).

Other aspects of the Second World War did reach the Supreme Court in the 1940s. In *Lichter v. United States*, the Court upheld the constitutionality of the [Renegotiation Act](#), which allowed the government to renegotiate war supply contracts and to recoup excessive profits. “In total war[,]” the Court [reasoned](#), “it is necessary that a civilian make sacrifices of his property and profits with at least the same fortitude as that with which a drafted soldier makes his traditional sacrifices of comfort, security and life itself.” The Court [elaborated](#) on the Constitution’s overall war powers scheme, explaining that all war powers are derived from the Constitution, and that the Constitution’s mandates apply equally during war and peace. Despite acknowledging these limits, the *Lichter* Court reasoned that the United States’ war power should be interpreted as “an effective power to wage war successfully” and to fulfill the purposes of the Constitution’s [Preamble](#) to provide for the common defense. (Other elements of the Supreme Court’s World War II-era jurisprudence concerning [presidential power](#) are [discussed](#) in CRS’s [Constitution Annotated essays](#).)

After hostilities ended in World War II, Congress continued the draft and certain wartime economic measures, leading to litigation over whether the measures were lawful when active hostilities had finished. In *Ludecke v. Watkins*, the Court upheld the President’s continued use of statutory authority to remove enemy aliens deemed to be dangerous to public, [reasoning](#) that “[w]ar does not cease with a cease-fire order, and power to be exercised by the President . . . is a process which begins when war is declared but is not exhausted when the shooting stops.” In *Woods v. Cloyd W. Miller Co.*, the Court [held](#) that continued rent controls were a constitutional exercise of Congress’s war powers because construction shortages and U.S. forces returning home after demobilization caused a housing deficit. The *Woods* Court also [cautioned](#), however, that continued use of war powers “in days of peace to treat all the wounds which war inflicts on our society . . . may not only swallow up all other powers of Congress but largely obliterate the [Ninth](#) and [Tenth Amendments](#) as well.”

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