

## Sec. 2—Powers, Duties of the President

## Cl. 1—Commander-In-Chiefship

consent of the Senate another person in his place.<sup>200</sup> The President's power of dismissal in time of war Congress has never attempted to limit.

***The Commander-in-Chief a Civilian Officer.***—Is the Commander-in-Chiefship a military or a civilian office in the contemplation of the Constitution? Unquestionably the latter. An opinion by a New York surrogate deals adequately, though not authoritatively, with the subject: "The President receives his compensation for his services, rendered as Chief Executive of the Nation, not for the individual parts of his duties. No part of his compensation is paid from sums appropriated for the military or naval forces; and it is equally clear under the Constitution that the President's duties as Commander in Chief represent only a part of duties *ex officio* as Chief Executive [Article II, sections 2 and 3 of the Constitution] and that the latter's office is a civil office. [Article II, section 1 of the Constitution . . .] The President does not enlist in, and he is not inducted or drafted into, the armed forces. Nor, is he subject to court-martial or other military discipline. On the contrary, Article II, section 4 of the Constitution provides that 'The President, [Vice President] and All Civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of Treason, Bribery or other high Crimes and Misdemeanors.' . . . The last two War Presidents, President Wilson and President Roosevelt, both clearly recognized the civilian nature of the President's position as Commander in Chief. President Roosevelt, in his Navy Day Campaign speech at Shibe Park, Philadelphia, on October 27, 1944, pronounced this principle as follows:—'It was due to no accident and no oversight that the framers of our Constitution put the command of our armed forces under civilian authority. It is the duty of the Commander in Chief to appoint the Secretaries of War and Navy and the Chiefs of Staff.' It is also to be noted that the Secretary of War, who is the regularly constituted organ of the President for the administration of the military establishment of the Nation, has been held by the Supreme Court of the United States to be merely a civilian officer, not in military service. (*United States v. Burns*, 79 U.S. (12 Wall.) 246 (1871)). On the general principle of civilian supremacy over the military, by virtue of the Constitution, it has re-

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<sup>200</sup> *Mullan v. United States*, 140 U.S. 240 (1891); *Wallace v. United States*, 257 U.S. 541 (1922).