

Sec. 8—Powers of Congress

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

granted in the same Article of the Constitution ‘to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers’, . . . the only question remaining is whether the Renegotiation Act was a law ‘necessary and proper for carrying into Execution’ the war powers of Congress and especially its power to support armies.”¹⁴⁹⁴ In a footnote, it listed the Preamble, the Necessary and Proper Clause, the provisions authorizing Congress to lay taxes and provide for the common defense, to declare war, and to provide and maintain a navy, together with the clause designating the President as Commander in Chief of the Army and Navy, as being “among the many other provisions implementing the Congress and the President with powers to meet the varied demands of war. . . .”¹⁴⁹⁵

Declaration of War

In the early draft of the Constitution presented to the Convention by its Committee of Detail, Congress was empowered “to make war.”¹⁴⁹⁶ Although there were solitary suggestions that the power should better be vested in the President alone,¹⁴⁹⁷ in the Senate alone,¹⁴⁹⁸ or in the President and the Senate,¹⁴⁹⁹ the sentiment of the Convention, as best we can determine from the limited notes of the proceedings, was that the potentially momentous consequences of initiating armed hostilities should be called up only by the concurrence of the President and both Houses of Congress.¹⁵⁰⁰ In contrast to the English system, the Framers did not want the wealth and blood of the Nation committed by the decision of a single indi-

¹⁴⁹⁴ 334 U.S. at 757–58.

¹⁴⁹⁵ 334 U.S. at 755 n.3.

¹⁴⁹⁶ 2 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 313 (rev. ed. 1937).

¹⁴⁹⁷ Mr. Butler favored “vesting the power in the President, who will have all the requisite qualities, and will not make war but when the Nation will support it.” Id. at 318.

¹⁴⁹⁸ Mr. Pinkney thought the House was too numerous for such deliberations but that the Senate would be more capable of a proper resolution and more acquainted with foreign affairs. Additionally, with the states equally represented in the Senate, the interests of all would be safeguarded. Id.

¹⁴⁹⁹ Hamilton’s plan provided that the President was “to make war or peace, with the advice of the senate . . .” 1 id. at 300.

¹⁵⁰⁰ 2 id., 318–319. In THE FEDERALIST, No. 69 (J. Cooke ed. 1961), 465, Hamilton notes: “[T]he President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the confederacy; while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies,—all which, by the Constitution under consideration, would appertain to the legislature.” (Emphasis in original). See also id. at No. 26, 164–171. Cf. C. BERDAHL, WAR POWERS OF THE EXECUTIVE IN THE UNITED STATES ch. V (1921).