

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

## Cl. 1—Commander-In-Chiefship

to a great extent the ensuing peace.<sup>191</sup> He may not, however, effect a permanent acquisition of territory,<sup>192</sup> though he may govern recently acquired territory until Congress sets up a more permanent regime.<sup>193</sup>

The President is the ultimate tribunal for the enforcement of the rules and regulations that Congress adopts for the government of the forces, and that are enforced through courts-martial.<sup>194</sup> Indeed, until 1830, courts-martial were convened solely on the President's authority as Commander in Chief.<sup>195</sup> Such rules and regulations are, moreover, it seems, subject in wartime to his amendment at discretion.<sup>196</sup> Similarly, the power of Congress to "make rules for the government and regulation of the land and naval forces" (Art. I, § 8, cl. 14) did not prevent President Lincoln from promulgating, in April, 1863, a code of rules to govern the conduct in the field of the armies of the United States, which was prepared at his instance by a commission headed by Francis Lieber and which later became the basis of all similar codifications both here and abroad.<sup>197</sup> One important power that the President lacks is that of choosing his subordinates, whose grades and qualifications are determined by Congress and whose appointment is ordinarily made by and with the advice and consent of the Senate, though undoubtedly Congress could if it wished vest their appointment in "the President alone."<sup>198</sup> Also, the President's power to dismiss an officer from the service, once unlimited, is today confined by statute in time of peace to dismissal "in pursuance of the sentence of a general court-martial or in mitigation thereof."<sup>199</sup> But the provision is not regarded by the Court as preventing the President from displacing an officer of the Army or Navy by appointing with the advice and

<sup>191</sup> Cf. the Protocol of August 12, 1898, which largely foreshadowed the Peace of Paris, 30 Stat. 1742 and President Wilson's Fourteen Points, which were incorporated in the Armistice of November 11, 1918.

<sup>192</sup> *Fleming v. Page*, 50 U.S. (9 How.) 603, 615 (1850).

<sup>193</sup> *Santiago v. Noguerras*, 214 U.S. 260 (1909). As to temporarily occupied territory, see *Dooley v. United States*, 182 U.S. 222, 230–31 (1901).

<sup>194</sup> *Swaim v. United States*, 165 U.S. 553 (1897); and cases there reviewed. See also *Givens v. Zerbst*, 255 U.S. 11 (1921).

<sup>195</sup> 15 Ops. Atty. Gen. 297, n; cf. 1 Ops. Atty. Gen. 233, 234, where the contrary view is stated by Attorney General Wirt.

<sup>196</sup> *Ex parte Quirin*, 317 U.S. 1, 28–29 (1942).

<sup>197</sup> General Orders, No. 100, Official Records, War Rebellion, ser. III, vol. III; April 24, 1863.

<sup>198</sup> See, e.g., *Mimmack v. United States*, 97 U.S. 426, 437 (1878); *United States v. Corson*, 114 U.S. 619 (1885).

<sup>199</sup> 10 U.S.C. § 804.