

## Sec. 8—Powers of Congress

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

required to accommodate themselves in the controversy to accept from each other less than each has been willing to accept but more than either has been willing to grant.<sup>1518</sup>

### THE POWER TO RAISE AND MAINTAIN ARMED FORCES

#### Purpose of Specific Grants

The clauses of the Constitution, which give Congress authority to raise and support armies, and so forth, were not inserted to endow the national government rather than the States with the power to do these things but to designate the department of the Federal Government, which would exercise the powers. As we have noted above, the English king was endowed with the power not only to initiate war but the power to raise and maintain armies and navies.<sup>1519</sup> Aware historically that these powers had been used to the detriment of the liberties and well-being of Englishmen and aware that in the English Declaration of Rights of 1688 it was insisted that standing armies could not be maintained without the consent of Parliament, the Framers vested these basic powers in Congress.<sup>1520</sup>

#### Time Limit on Appropriations for the Army

Prompted by the fear of standing armies to which Story alluded, the framers inserted the limitation that “no appropriation of money to that use shall be for a longer term than two years.” In 1904, the question arose whether this provision would be violated if the government contracted to pay a royalty for use of a patent in constructing guns and other equipment where the payments are likely to continue for more than two years. Solicitor-General Hoyt ruled that such a contract would be lawful; that the appropriations limited by the Constitution “are those only which are to raise and support armies in the strict sense of the word ‘support,’ and that the inhibition of that clause does not extend to appropriations for the various means which an army may use in military operations, or which are deemed necessary for the common defense. . . .”<sup>1521</sup> Relying on this earlier opinion, Attorney General Clark ruled in 1948 that there was “no legal objection to a request to the Congress to

<sup>1518</sup> For further discussion, see section on President’s commander-in-chief powers.

<sup>1519</sup> W. BLACKSTONE, COMMENTARIES 263 (St. G. Tucker ed., 1803).

<sup>1520</sup> 3 J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 1187 (1833).

<sup>1521</sup> 25 Ops. Atty. Gen. 105, 108 (1904).