

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

## Cl. 1—Commander-In-Chiefship

## COMMANDER-IN-CHIEF

**Development of the Concept**

Surprisingly little discussion of the Commander-in-Chief Clause is found in the Convention or in the ratifying debates. From the evidence available, it appears that the Framers vested the duty in the President because experience in the Continental Congress had disclosed the inexpediency of vesting command in a group and because the lesson of English history was that danger lurked in vesting command in a person separate from the responsible political leaders.<sup>111</sup> But the principal concern here is the nature of the power granted by the clause.

***The Limited View.***—The purely military aspects of the Commander-in-Chiefship were those that were originally stressed. Hamilton said the office “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.”<sup>112</sup> Story wrote in his Commentaries: “The propriety of admitting the president to be commander in chief, so far as to give orders, and have a general superintendency, was admitted. But it was urged, that it would be dangerous to let him command in person, without any restraint, as he might make a bad use of it. The consent of both houses of Congress ought, therefore, to be required, before he should take the actual command. The answer then given was, that though the president might, there was no necessity that he should, take the command in person; and there was no probability that he would do so, except in extraordinary emergencies, and when he was possessed of superior military talents.”<sup>113</sup> In 1850, Chief Justice Taney, for the Court, wrote: “His duty and his power are purely military. As commander-in-chief, he is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country, and sub-

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<sup>111</sup> May, *The President Shall Be Commander in Chief*, in *THE ULTIMATE DECISION: THE PRESIDENT AS COMMANDER IN CHIEF* (E. May ed., 1960), 1. In the Virginia ratifying convention, Madison, replying to Patrick Henry's objection that danger lurked in giving the President control of the military, said: “Would the honorable member say that the sword ought to be put in the hands of the representatives of the people, or in other hands independent of the government altogether?” 3 J. ELLIOT, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 393 (1836). In the North Carolina convention, Iredell said: “From the nature of the thing, the command of armies ought to be delegated to one person only. The secrecy, dispatch, and decision, which are necessary in military operations can only be expected from one person.” 4 *id.* at 107.

<sup>112</sup> *THE FEDERALIST*, No. 69 (J. Cooke ed. 1961), 465.

<sup>113</sup> 3 J. STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* 1486 (1833).