

Letters of Marque and Reprisal (Part 1): Introduction and Historical Context

February 26, 2025

[Article I, Section 8, Clause 11](#) of the Constitution authorizes Congress to “grant letters of Marque and Reprisal[.]” which are [instruments](#) that permit private citizens to seize enemy vessels and their cargos and crew. This Sidebar is part of a two-part series that discusses Congress’s power over these instruments. This installment provides an overview of letters of marque and reprisal and places them in historical context. Part 2 examines the instruments’ role in the drafting of the Constitution, discusses their rise and decline in U.S. practice, and outlines proposals to revive use of the instruments in modern contexts.

Overview of Letters of Marque and Reprisal

Letters of marque and reprisal were once common tools for [countries with small naval forces](#) to augment their militaries by drawing upon the strength of their private merchant vessels. As a young country, the United States [used the instruments with success](#) in several early conflicts, including the Revolutionary War and the War of 1812. Over the course of the 19th century, however, commissioning private parties to use armed force fell out of favor in domestic and international practice, and Congress has not authorized a President to issue the instruments since the [Civil War](#).

During the era when the United States used letters of marque and reprisal, [Congress](#) historically [authorized](#) the [President](#) to [issue](#) the instruments, subject to statutorily defined requirements and conditions, rather than issue instruments directly from the legislative branch. Individual states, by contrast, are prohibited from issuing the instruments under [Article I, Section 10](#) of the Constitution.

The Framers of the Constitution placed the Marque and Reprisal Clause between provisions that authorize Congress to [declare war](#) and to “[make Rules concerning Captures on Land and Water](#).” These three authorities are [interrelated](#) and can function together. For instance, in conjunction with declaring war, Congress might authorize letters of marque and reprisal allowing private ship-owners to assist the war effort by targeting enemy vessels, as it did in the [War of 1812](#). Holders of those letters could then [capture](#) enemy vessels and bring them into port to be condemned and sold as prizes of war. Using its authority to “[make Rules concerning Captures\[.\]](#)” Congress could [define](#) the [legal framework](#) governing how the condemnation proceedings would operate and how the proceeds of the sale would be distributed.

Congressional Research Service

<https://crsreports.congress.gov>

LSB11272

The Supreme Court has mentioned the Marque and Reprisal Clause most frequently when listing Congress's war powers and authorities over foreign affairs. The Court has described the power to issue letters of marque and reprisal as an inherent feature of sovereignty that is national in nature. The Court has further observed that the Constitution expressly grants Congress the power to issue the instruments and that "no restrictions are imposed" upon that authority. Finally, in an opinion for the Court in *Barron v. City of Baltimore*, Chief Justice John Marshall observed that the Constitution grants power over the instruments to the federal government while denying states the ability to issue them because, "[t]o grant letters of marque and reprisal, would lead directly to war; the power of declaring which is expressly given to congress."

Early History of Letters of Marque and Reprisal

During the Middle Ages, European monarchs issued letters of marque and reprisal to private individuals as a form of state-approved self-help to retaliate for wrongs the individual had suffered at the hands of a foreign country or one of its nationals. The instruments functioned as legal permission for the injured party to seek redress in a prescribed manner—often by seizing ships or property owned by the offending state's subjects. The letters also allowed their holders to apprehend the foreign subjects themselves until the offender had remedied the harm.

The letters were originally conceived of as separate instruments: letters of *marque* authorized passing beyond a country's borders and letters of *reprisal* authorized use of force and seizure to redress a past harm. Because claimants usually sought both, the terms became synonymous, and these authorizations were generally combined into a single instrument. The combined instruments—often called *commissions*—distinguished those who held them from pirates who captured vessels for private gain without government authorization. Holders of the instruments became known as *privateers* because they used privately owned vessels to engage in hostilities with foreign-owned ships for private gain.

As centuries passed, governments increasingly commissioned privateers to help achieve national military and foreign policy goals rather than to vindicate private wrongs. Countries that did not maintain large navies, including the 18th and 19th century United States, often relied on privateering as a cost-effective way to supplement their naval forces. Letters of marque and reprisal thus enabled governments to invoke the resources of private maritime enterprise to achieve state military objectives. Privateers typically aimed to disrupt an enemy's commerce rather than engage with and destroy its military vessels, making the instruments tools of economic statecraft.

Recipients of letters of marque and reprisal obtained government authorization to engage in hostilities, but they did not receive government funding to embark on their endeavors, and they were required to outfit vessels at their own expense. Privateers were incentivized to aid the government because they received a large portion of the proceeds of the sale of captured vessels and their cargo as prizes of war. Privateers might also receive direct payments, called bounties, for some accomplishments, such as sinking superior armed vessels or capturing prisoners. Because of these financial awards, privateering became a lucrative industry during some periods, including the American Revolution.

The Power to Issue Letters of Marque and Reprisal in Colonial and Early America

In Great Britain, it was traditionally the Monarch's prerogative to issue letters of marque and reprisal, but Parliament could compel the Crown to issue the instruments through legislation. The Crown sometimes empowered governors of its colonies, including American colonies, to grant letters of marque and reprisal targeting Great Britain's adversaries.

During the American Revolutionary War, privateering was extensive and [contributed significantly](#) to the American victory. Massachusetts [began](#) issuing letters of marque and reprisal in late 1775. By the spring of 1776, the [Second Continental Congress](#) began to grant the instruments, and it [distributed](#) blank commissions to the colonies with instructions to deliver them to Americans who intended to outfit their ships and capture British vessels and their cargo. The Second Continental Congress also set [conditions](#) for granting the instruments, including requirements for applicants to register and post bond and instructions to commanders on how they were permitted to attack and subdue British vessels.

Letters of Marque and Reprisal under the Articles of Confederation

Under the [Articles of Confederation](#), the national Congress, which became known as the [Confederation Congress](#), was [assigned](#) “the sole and exclusive right and power of ... granting letters of marque and reprisal in times of peace.” Approval by a supermajority of [nine out of thirteen states](#) was required for the Confederation Congress to exercise this power. The Articles of Confederation, meanwhile, [prohibited](#) individual states from granting letters of marque unless the United States declared war. In the event of a declared war, [states could issue the instruments](#) only to target vessels of the country against whom war had been declared and only in accordance with regulations the Confederation Congress established.

For more about the decrease in use of such instruments as well as modern efforts to revive their use, see Part 2 of this series.

Author Information

Steve P. Mulligan
Attorney-Adviser

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.