

## The Defects of the Articles of Confederation, Part 15

Edward D. Duvall  
21 Oct 2011

**Synopsis:** This essay summarizes the powers granted to the new federal government in the U. S. Constitution owing to the defects discussed in previous essays in this series. In most cases they represent new powers that were not contemplated under the Articles of Confederation. It also includes an overview of some miscellaneous new powers granted to the federal government.

The first fourteen essays in this series covered in detail some of the most serious problems encountered under the Articles of Confederation. Most of them arose because Congress did not have sufficient power under that agreement to perform necessary duties. It is important to remember that the U. S. Constitution, as a successor to the Articles, represented in some ways, a transfer of power from the several states to a new federal government. There was not much question that a change was necessary -- the nation was beginning to fall apart owing partly to the weakness of Congress and partly to the jealousies of the states.

A formal transfer of power is not to be taken lightly. The people of that era knew full well that if the states agreed to give up powers to the federal government, those powers would never return to the states. It is a testament to the wisdom of those who wrote the Constitution as well as those that urged its ratification on the state level, that the founding generation got the division of power between states and the federal government about right. The system worked well from 1788 to about the time of World War I, when the federal government began in earnest to assert undue powers. That is of course a very big subject for a later time. For now, the following is a summary of the powers that were not granted to Congress under the Articles of Confederation, but were granted to some portion of the federal government in the U. S. Constitution.

1. The creation of an Executive Department per Article 2, to: a) enforce the laws, b) control foreign policy, c) to be Commander-in-Chief of the military, d) make treaties, subject to ratification by the Senate; e) nominate federal officials, including Supreme Court justices, f) is charged with ensuring that the laws are executed faithfully; and g) has power to commission all officers of the U. S. See parts 3, 4, 5, and 14 of this series.
2. The creation of a judicial system per Article 3, to: a) hear all cases, in law and equity, arising under the Constitution, the laws of the United States, and treaties; b) those affecting ambassadors, other public ministers and consuls; c) of admiralty and maritime jurisdiction; d) those in which the United States is a party; e) between two or more states; and f) certain types of cases involving citizens and states. The Supreme Court also has appellate power in both law and fact except as Congress may determine. See part 14 of this series.
3. The power to obtain direct revenue for the federal government through the "power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States." See part 9 of this series.
4. The power to call out the militia to: a) execute the laws; and b) respond to invasions and revolts. Congress also is granted the power to organize, arm, and determine the actions of the militia when called out to service under the United States. See parts 2 and 8 of this series.
5. The power to determine regulations for the regular armed forces, transferring the power to provide for the regular army from levies on the states to a central federal power. See part 2 of this series.

6. The power to guarantee a republican government in every state in order to ensure that the states would be immune from political revolutions. See part 8 of this series.
7. The power to: a) administrate territories; and b) admit new states. These were necessary in order to regularize the large western area that was rapidly being populated until such time as they qualified for statehood. See part 6 of this series.
8. The power to regulate: a) foreign commerce; and b) commerce between the states. These powers were necessary to respond to the acts of foreign nations affecting the economy of the U. S and also to control the predatory activities of some states upon the others. See parts 3 and 5 of this series.
9. The exclusive power to: a) coin money; b) regulate its value; c) regulate the value of foreign money; and d) define and punish counterfeiting of the coin and securities of the U. S. These powers were necessary to end the abuses of paper currency issued by the states and confusion caused by the different values of state issues. See part 10 of this series.
10. The power to impose taxes and duties in order to affect the slave trade; see part 11 of this series.
11. The power to punish offenses against the law of nations.
12. The power to establish uniform rules on bankruptcy.
13. The power to create post-roads.
14. The power to grant patents and copyrights.
15. The power to establish a new class of federal property, such as docks, arsenals, forts, etc.

The next edition will review the powers that were originally granted to Congress under the Articles of Confederation, but were modified or clarified in the Constitution.