

## The Defects of the Articles of Confederation, Part 16

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21 Nov 2011

**Synopsis:** This essay contrasts the powers of the states as they existed under the Articles of Confederation with their powers under the U. S. Constitution. It is the 16th and last in the series.

The last issue surveyed the alteration of power at the federal level from the Articles of Confederation gave way to the Constitution. But there were also significant alterations to the powers held by the states. These alterations fall into three categories: a) those powers held by the states under the Articles, but were prohibited in the Constitution; b) those that were retained in the Constitution, but in a modified form; and c) those that were not addressed in the Articles and prohibited by the Constitution. The essay closes with a list of powers that were prohibited to the states in the Articles and carried over into the Constitution.

The powers falling under the first category may be summarized as follows:

- a. The states were allowed to coin money under the Articles, but are prohibited from doing so under the Constitution. This was to correct the paper-money problem so rampant in the states after the war, as detailed in part 10 of this series.
- b. The states were allowed to issue bills of credit on their account under the Articles, but are prohibited from doing so under the Constitution. It is worth observing that the federal government likewise falls under the same prohibition. This had been an enormous problem during the war, more so on the part of Congress, as it had issued the Continental bills of credit, which became worthless in a few years. This is also discussed in part 10 of this series.
- c. Under the Articles, the states could independently issue letters of marque (privateering) with the approval of Congress (which required a declaration of war); under the Constitution, only the federal government can issue them.

The power falling under the second category is the power to levy import duties. Under the Articles, the states retained the power to levy their own import and export duties, unless they conflicted with provisions of treaties that were in negotiation with France and Spain at the time. This power caused several problems after the war. First, the states proceeded to respond to Britain's navigation Acts by imposing tonnage duties and other duties; this was partly a consequence of Congress' inability to negotiate commercial treaties, as detailed in part 5 of this series. The second problem was that the states began to prey on each other in order to gain commercial advantages. The Constitution prohibits the states from these levies, except for any necessary to cover inspection costs. Any revenue collected that is in excess of the inspection costs are to be transferred to the federal treasury.

The powers falling under the third category (not addressed in the Articles, prohibited to the states under the Constitution) include: a) prohibited from passing bills of attainder; b) prohibited from passing ex-post facto laws; c) prohibited from passing laws that inhibit the execution of contracts; d) prohibited from passing a legal tender law, except for gold and silver; and d) prohibited from laying a tonnage duty.

Last, there are powers which were prohibited to the states under the Articles, and were likewise carried over to the Constitution. These prohibitions include: a) creation of titles of nobility; b) establishing treaties with foreign nations; c) forming alliances with foreign nations; d) forming alliances or confederations among any number of states; e) keeping a military navy in peacetime; f) maintaining an army in peacetime except as allowed by Congress; and g) engaging in war without concurrence of Congress, except for emergency situations.