



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.

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Marque And Reprisal:

Marque and Reprisal Kenneth B. Moss, 2019-04-22 Letters of marque might suggest privateers of the Elizabethan era or the American Revolution But such conventions are duly covered in the US Constitution and the private military instruments they sanction are very much at work today in the form of mercenaries and military contractors A history of such practices up to the present day Marque and Reprisal by Kenneth B Moss offers unique insight into the role of private actors in military conflicts and the reason they are increasingly deployed in our day Along with an overview of mercenaries and privateers Marque and Reprisal provides a comprehensive history of the marque and reprisal clause in the US Constitution reminding us that it is not as arcane as it seems and arguing that it is not a license for all forms of undeclared war Within this historical context Moss explains why governments and states have sought control over warfare and actors and why private actors have reappeared in force in recent conflicts He also looks ahead to the likelihood that cyberwar will become an important venue for private warfare Moss wonders if international law will be up to the challenges of private military actors in the digital realm Is international law in fact equipped to meet the challenges increasingly presented in our day by such extramilitary activity A government makes no more serious decision than whether to resort to military force and war and when doing so Moss suggests it should ensure that such actions are accountable not on the sly and not decided in the marketplace Marque and Reprisal should inform future deliberations and decisions on that count Official Records of the Union and Confederate Navies on the War of the Rebellion United States. Naval War Records Office, 1921 European Treaties Bearing on the History of the United States and Its Dependencies ... Frances Gardiner Davenport, Charles Oscar Paullin, 1917

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