

Great Misconception: Treason Under US Law

By Tim Boothby

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There are whole libraries filled with the laws of this country but only one crime that was of such importance that it was specifically placed into the United States Constitution, the crime is treason and the reason for this prominence wasn't because the founder intended it be used, but rather to constrain its use under the most rigid checks. Treason was a charge that could be levied in other countries for the simple matter of offending a king or potentate. Call the queen fat and your head was on a pole after somebody ripped out your insides while you watched. Not only could a person be called traitor, but their unborn grandchildren would carry the stigma of blood guilt as well.

The founding fathers wanted it to be a complete and unmitigated pain in the backside to make a charge of treason, so they codified it in Article III Section 3:

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Governor Thomas Dorr, convicted of treason against the state of Rhode Island for leading the Dorr Rebellion against the state of Rhode Island in 1844, he was released in 1845, his civil rights were restored in 1851 and the verdict ultimately annulled 1854.

John Brown, convicted of and hung for treason against the Commonwealth of Virginia in 1859 following his raid on Harper's Ferry as an act of armed insurrection, intending to create a slave revolution in the south.

Aaron Dwight Stevens, took part in John Brown's raid and was also convicted of and executed for treason in 1859.

Robert Henry Best, convicted of treason as an American broadcaster of Nazi propaganda during World War II. He was convicted in 1948 of treason and sentenced to life imprisonment.

Iva Toguri D'Aquino, was tried and convicted of treason after WWII as "Tokyo Rose," a famous or infamous propaganda broadcaster, she was pardoned by President Gerald Ford when it came to light that she was convicted after a thoroughly tainted investigation and trial by a kangaroo court.

Mildred Gillars was also tried and convicted of treason after WWII as "Axis Sally" and served 12 years of a 10-30 year sentence.

Martin James Monti, a United States Army Air Force pilot convicted of treason for stealing P-38 fighter and defecting to German and joining the Waffen SS, he served a 25-year sentence.

Tomoya Kawakita, held dual US and Japanese citizenship, he was charged and convicted of torturing American POWs and sentenced to death, President Eisenhower commuted this sentence to life imprisonment and Kennedy ordered hi released to Japan and barred his return.

That's the whole list. The entire list of those convicted of treason, eight in all, six for treason against the United States (one executed), two for treason against a state, Rhode Island and Virginia (one executed), the exact number of trials conducted for treason is harder to pin down, the closes I've been able to find is 40 prosecutions for treason in United States History, with a very few prosecutions covering more than one defendant. The number of convictions would have probably been higher but George Washington pardoned all convicted in the Whiskey Rebellion Trial and Andrew Johnson issued a blanket pardon to all of those indicted (including Jefferson Davis and Robert E. Lee) before they could be brought to trial.

It's a daunting things to attempt to try one of treason in the US, Benedict Arnold was never tried. Julius and Ethel Rosenberg, Jonathon Pollard John Walker and family, all convicted, but of espionage not treason. John Walker Lindh was convicted of conspiracy to murder US nationals, again, not treason. There has only been one person charged for treason since 1952, Adam Yahiyeh Gadhafi, charged in 1996 for his part in making al-Qaeda propaganda, stay tuned, this is still in the legal mill somewhere.

Congress, as directed by the Constitution, passed United States Code at 18 U.S.C. § 2381: "whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States." Notice how tightly that's written?

There is a high bar for charging a person with treason, and higher bar to convict (roughly 80% of prosecutions failed so far), and a really high bar to actually hold a person for their full sentence. This is the way it should be, historically treason charges have been tossed around far too lightly, to the point where people really don't seem to have any idea of what it is under US law. Roughly 40 trials and only 8 convictions since the constitution was ratified and the last trial in 1952, and that's as it should be, lest we fall into the cesspool of the history of the "Old World" where the charge was used with complete negligence, often on royal whim.

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Treason Against the United States.

Published: January 25, 1861

By Section 110 of Article III. of the Constitution of the United States, it is declared that:

"Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open Court. The Congress shall have power to declare the punishment of treason."

In 1790, the Congress of the United States enacted that:

"If any person or persons, owing allegiance to the United States of America, shall levy war against them, or shall adhere to their enemies, giving them aid and comfort within the United States, or elsewhere, and shall be thereof convicted on confession in open Court, or on the testimony of two witnesses to the same overt act of the treason whereof he or they shall stand indicted, such person or persons shall be adjudged guilty of treason against the United States, and SHALL SUFFER DEATH; and that if any person or persons, having knowledge of the commission of any of the treasons aforesaid, shall conceal, and not, as soon as may be, disclose and make known the same to the President of the United States, or some one of the Judges thereof, or to the President or Governor of a particular State, or some one of the Judges or Justices thereof, such person or persons, on conviction, shall be adjudged guilty of misprision of treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars."

JAMES MADISON in the 43d number of the Federalist says:

"As treason may be committed against the United States the authority of the United States ought to be enabled to punish it: but as new tangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free governments, have usually wreaked their alternate malignity on each other, the Convention has with great judgment opposed a barrier to this peculiar danger by inserting a Constitutional definition of the crime."

The Constitution confines the crime of treason to two species; First, the levying of war against the United States; and Secondly, adhering to their

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enemies, giving them aid and comfort. In so doing the very words of the Statute of Treason of EDWARD the THIRD were adopted; and thus the framers of the Constitution recognized the well settled interpretation of these phrases in the administration of criminal law which has prevailed for centuries in England.

Treason, according to Lord COCK, is derived from trahir, signifying to betray; and trahison, by contraction, treason, is the betraying itself.

In England, high treason can only be committed against the KING, for the oath of allegiance is to the KING alone, as the only supreme Governor -- he has no partners in the supremacy.

Hitherto, but few cases have occurred in the United States in which it has been necessary for the Federal Courts to act upon this important subject. In 1807 ERICK BALLMAN and SAMUEL SWARTWONT were committed to prison in the District of Columbia, on a charge of high treason against the United States. The prisoners were brought by a writ of habeas corpus before the Supreme Court of the United States. In delivering the opinion of the Court, Chief-Justice MARSHALL said:

"To constitute that specific crime for which the prisoners now before the Court have been commuted, war must be actually levied against the United States. However flagitious may be the crime of conspiring to subvert by force the Government of our country, such conspiracy is not treason. To conspire to levy war. and actually to levy war, are distinct offences. The first must be brought into operation by an assemblage of men for a purpose, treasonable in itself, or the fact of levying war cannot have been committed." * * * * * "It is not the intention of the Court to say that no individual can be guilty of this crime who has not appeared in arms against his country. On the contrary, if war be actually levied, that is, if a body of men Be actually assembled for the purpose of effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, and who are actually leagued in the general conspiracy, are to be considered as traitors. But there must be an actual assembling of men for a treasonable purpose to constitute levying of war. Crimes, so atrocious as those which have for their object the subversion by violence of those laws and those institutions which have been ordained in order to secure the peace and happiness of society, are not to escape punishment because they have not ripened into treason. The wisdom of the Legislature is competent to provide for the case."

In the case of The United States vs. FRIES, Mr. Justice CHASE said on the trial, and stated the opinion of the Court to be,

"That if a body of people, conspire and meditate an insurrection to resist or oppose the execution of any statute of the United States by force, they are only guilty of a high misdemeanor; but if they proceed to carry such

intention into execution by force, that they are guilty of the treason of levying war; and the quantum of the force employed neither lessens or increases the crime -- whether by one hundred or one thousand persons is wholly immaterial;"

* * * "and that it is altogether immaterial whether the force used is sufficient to effectuate the object; any force connected with the intention will constitute the crime of levying war."

In the case of the United States vs. AARON BURR, Chief-Justice MARSHALL said:

"There is no difficulty in affirming that there must be a war, or the crime of levying it cannot exist; but there would often be considerable difficulty in affirming that a particular act did or did not involve the person committing it in the guilt and in the fact of levying war. If, for example, an army should be actually raised for the avowed purpose of carrying on open war against the United States and subverting their Government, the point must be weighed very deliberately before a Judge would venture to decide that an overt act of levying war had not been committed by a Commissary of purchases who never saw the army, but who, knowing its object, and leaguering himself with the rebels supplied that army with provisions; or by a Recruiting-officer, holding a commission in the rebel service, who, though never in camp, executed the particular duty assigned to him."

This able jurist, in the same case, states that the term "levying war," as used in the Constitution of the United States, was unquestionably employed in the same sense in which it was understood in England and in this country, to have been used in the Statute of EDWARD III., from which it was borrowed, and refers to principles laid down by COKE, HALE, FOSTER, BLACKSTONE and HAWKINS.

FOSTER says:

"Attacking the King's forces, in opposition to his authority, upon a march or in quarters, is levying war."

And also that

"Holding a castle or fort against the King or his forces, if actual force be used in order to keep possession, is levying war." -- Sec. 4 Cranch Reps. 75, 137, Appendix 470-507.

FOSTER further states, in his valuable Treatise on Treason, that all insurrection, to effect certain innovations of a public and general concern, by an armed force, to be, in construction of law, high treason within the clause of levying war. He farther says:

"An assembly armed and arrayed in a warlike manner for a treasonable purpose is bellum, levatum, though not bellum percussum; listing and marching are sufficient overt acts, without coming to a battle or action. So cruising on the King's subjects, under a French Commission, France being then at war with us, was held to be adhering to the King's enemies, though no other act of hostility be proved." -- See 4 Cranch, pp. 478,479:

Lord COKE says: "If many conspire to levy war, and some of them do levy the same, according to the conspiracy this is high treason in all." "Why? Because all were legally present when the war was levied? No. "For in treason," continues Lord COKE, "all be principals and war is levied." This doctrine of Lord COKE has been adopted by all subsequent writers; and it is generally laid down in the English books that whatever will make a man an accessory in felony will make him a principal in treason:

"It is well known," says FOSTER, " that in the language of the law there are no accessories in high treason -- all are principals. Every instance of incitement, aid, or protection, which in case of felony will render a man an accessory before or after the fact, in the case of high treason, whether it be treason at common law or by statute, will make him a principal in treason."

"The propriety of investing the National Government." says Mr. Justice STORY, in his Commentaries on the Constitution, "with authority to punish the crime of treason against the United States, could never become a question with any persons who deemed the National Government worthy of creation or preservation. If the power had not been expressly granted, it must have been implied, unless all the powers of the National Government might be put at defiance and prostrated with impunity. Two motives probably concurred in introducing it as an express power. One was, not to leave it open to implication whether it was to be exclusively punished with death, according to the known rule of the common law, and with the barbarous accompaniments pointed out by it -- but to confide the punishment to the discretion of Congress. The other was, to impose some limitation upon the nature and extent of the punishment, so that it should not work corruption of blood or forfeiture beyond the life of the offender."

Treason has ever been deemed the highest crime which can be committed in civil society; since its aim is an overthrow of the Government and a public resistance by force of its just powers, its tendency is to create universal danger and alarm, and on this account it has often been visited with the deepest public resentment. Hence, by the common law, the the punishment of high treason was accompanied by all the refinements in cruelty which were oftentimes literally and studiously executed. But under the Constitution of the United States the power of punishing the crime of treason against the United States is

exclusive in Congress; and the trial of the offence belongs exclusively to the Federal tribunals. A State cannot take cognizance or punish the offence, whatever it may do in relation to the offence of treason committed exclusively against itself.

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