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Treason as a State Crime, Thomas Wilson Dorr, Ex Parte Dorr

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Introduction.

It is understood by most people that Treason within the United States Constitution is a crime against the national authority, the United States, the Union. Notwithstanding that common understanding, Treason within the United States Constitution is also a State crime, and this is made clear by the plain language of the United States Constitution, as well as many cases of Treason against a State that may be found in the American case reporters. The fundamental textual authority within the Constitution that empowers the United States federal government with legitimate authority to address criminal behavior and activities against the federal authorities are found in the powers granted to Congress within the United States Constitution to punish.¹ Herein, this paper shall provide historical cases, illuminate the definition of Treason, and highlight the Constitutional power to punish so as to demonstrate that Treason within the United States Constitution is also a crime against one’s State.²

In Article III, section 3, clause 2 of the United States Constitution one finds the words, “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.” An Attainder of Treason was generally a legislative act or legislative judgment against a person or people for adhering to the enemy or enemies. The United States Constitution prohibits the “Corruption of Blood or Forfeiture except during the Life of the Person attainted.” It is in this clause that one discovers the key to discovering and researching the abundance of cases that relate directly to Treason against a State. A major problem that developed from Treason cases was the resulting ejectment actions against the survivors of those convicted, and subsequently punished by forfeiture and death. In the event a male, who was married with children, was convicted of Treason, the punishment of forfeiture and death meant the simultaneous creation of widows and orphans, who no longer had rights to live where they resided prior to the imposition of the punishment of forfeiture and death. The State governments were creating a population of homeless widows and orphans, and the property ejectment actions and related actions from attempts at repossession of property resulting from the enforcement of the punishment of forfeiture may be readily found throughout America’s historical case reporters. At this time the paper will briefly introduce and highlight a few illuminating cases that resulted from such State Acts of Attainder and the corresponding Treason convictions.

American Cases related to Treason

First, we expose a portion of the Syllabus from the New York case, JACKSON v. MUNSON, 1 Johns. 277 (1806), which provides, “The premises were sold by the commissioners

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3 U.S. CONST. art. III, § 3, cl. 2.  
5 U.S. CONST. art. III, § 3, cl. 2.
of forfeiture, under the Act for the forfeiture of all the estates of persons who adhered to the enemies of this State passed 22d October, 1779 (Greeleaf’s edit. of the Laws of New York, Vol. I., p. 127), to the defendants, or to those under whom they derived title, prior to the conveyance from the devisee of Sir William Johnson. The record of the conviction of Margaret Johnson was of the term of January, 1783, and judgment of attainder was signed the 15th July, 1783.”

In JACKSON v. MUNSON, (at 280) Justice Thompson, of the Supreme Court of Judicature of New York stated, “The premises in question were sold by the commissioners of forfeitures as part of the estate of Margaret Johnson, who had been convicted under the aforesaid act for adhering to the enemy. The conviction, however, was not until January 1783, and subsequent to the provisional articles of peace between the United States and Great Britain which were signed on the 30th of November, 1782.”

In JACKSON v. MUNSON, (at 280) Justice Thompson further added, “The Act of Attainder, passed the 22d October, 1779, is explicit on that subject. It declares that the forfeiture shall be deemed to have accrued at the time of conviction. No right or title to the land could be vested in the people of this State until conviction, and if such conviction was absolutely void, the people never acquired any title, nor in any manner whatever succeeded to the rights of Margaret Johnson.”

In JACKSON v. MUNSON, (at 282) Justice Livingston stated, “The only and obvious meaning of this provision [the sixth article] is, that no more property shall be confiscated, and that all prosecutions for political offenses shall cease.”

In this particular case, it becomes clear that the punishment of forfeiture, for Treason against a
State, which in this case is the State of New York, was a complex problem for the courts. Moreover, the punishments and remedies available were impacted by the aforementioned federal treaty, and later the United States Constitution.\footnote{JACKSON v. MUNSON, 1 Johns. 277, 280, 282 (1806), 1806 N.Y. LEXIS 58, 6-7, 10 (1806). Another directly related “Margaret Johnson case is: JACKSON v. MUNSON, 3 Cai. R. 137 (1805).}

In Pennsylvania, the Syllabus from \textit{RESPUBLICA v. WEIDLE}, 2 U.S. 88 (1781), provides, “The indictment was founded on the 4th Sect. of the Act of Assembly (1 Vol. Dall. Edit. p. 728) and charged all the misprisons of treason three enumerated. The words are ‘That if any person or persons within this State shall attempt to convey intelligence to the enemies of this State, or the United States of America, or by publicly and deliberately speaking or writing against our public defence; [sic] or shall maliciously and advisedly endeavor to excite the people to resist the Government of this Commonwealth, or persuade them to return to a dependence upon the Crown of Great Britain; or shall maliciously and advisedly terrify, or discourage, the people from enlisting into service of the Commonwealth; … every such person, being thereof legally convicted by the evidence of two or more credible witnesses, shall be adjudged guilty of misprision of treason, &c.’”\footnote{Syllabus from, \textit{RESPUBLICA v. WEIDLE}, 2 U.S. (2 Dall.) 88 (1781).} In \textit{RESPUBLICA v. WEIDLE}, 2 U.S. 88 (1781), Chief Justice M’Kean concluded with the following, “A mere loose and idle conversation, without any wickedness of heart, may be indiscreet and reprehensible, but ought not to be construed into misprision of treason. \textit{On the other hand, drunkenness is no justification, or excuse, for committing the offence; to allow it as such, would open a door for the practice of the greatest enormities with impunity.} Verdict, GUILTY.”\footnote{\textit{RESPUBLICA v. WEIDLE}, 2 U.S. (2 Dall.) 88, 91 (1781). (emphasis added.)} The record of \textit{RESPUBLICA v. WEIDLE}, clearly demonstrates that Treason against the Commonwealth, here Pennsylvania, was broadly
defined and taken very seriously by the Commonwealth of Pennsylvania, its Assembly, and its Courts.\textsuperscript{14}

In another instance in Pennsylvania, there is the case of \textit{EMERICK against HARRIS}, Judge Yeates stated, “The 10th section of the 1st article of the \textit{constitution of the United States} provides, among other things, that ‘no state shall pass any bill of attainder, \textit{ex post facto} law, or law impairing the obligation of contracts;’ and the 17th section of the 9th article of the \textit{state constitution} expressly directs, that ‘no \textit{ex post facto} law, nor any law impairing contracts shall be made;’ and the 18th section asserts that ‘no person shall be attainted of \textit{treason} or felony by the \textit{legislature}.’ Put a strong case, which for the honor of human nature we can scarcely suppose the possibility of: that the \textit{legislature} should, under very peculiar circumstances, (as in the case of sir John Fenwicke in England) pass an \textit{act of attainder} against an obnoxious citizen for \textit{treason}, and the attorney general should demand of the \textit{court} to award \textit{execution}.”\textsuperscript{15} Judge Yeates continued, “Will it be said that we are compellable to pass such sentence, \textit{against the express words, and plain meaning of both constitutions}, and the tenor of our \textit{oaths of office}? Would it not be our \textit{bounden duty to refuse to pass the sentence}, and \textit{to put the party on his trial according to the ordinary course of law}, as was done by the judges of the \textit{general court} in \textit{Virginia}, on an Act passed to attain Josiah Phillips in May 1778; unless he should render himself to justice within a limited time? 1 Tuck. Black. App. 293.”\textsuperscript{16}

In a case before the Supreme Court of the United States, related to a New York State ejectment action connected to \textit{Treason}, the Syllabus in \textit{CARVER v. JACKSON}, 29 US 1 (1830), provides as follows, “[at 1] On the 22d of October 1779, the \textit{legislature of the state} of New York, by ‘an act for the forfeiture and sale of the estate of persons who have \textit{adhered to the

\textsuperscript{14} \textit{RESPUBLICA v. WEIDLE}, 2 U.S. (2 Dall.) 88 (1781).
\textsuperscript{15} \textit{EMERICK} against \textit{HARRIS}, 1 Binn. 416, 420 (1808). (\textit{emphasis added.}) (\textit{emphasis retained.})
\textsuperscript{16} \textit{EMERICK} against \textit{HARRIS}, 1 Binn. 416, 420 (1808). (\textit{emphasis added.})
enemies of the state, &c.’ declared Roger Morris and his wife to be convicted and attained of adhering to the enemy; and all their estate, real and personal, severally and respectively, in possession, reversion, or remainder, was forfeited and vested in the people of the state.”¹⁷ In his opinion, United States Supreme Court Justice STORY states, “[at 80] The action is ejectment, brought upon several demises; and among others, upon the demise of John Jacob Astor. … “[at 90] consequently, the remainder to the children was a contingent remainder during the life of their parents; and as such it was destroyed by the proceedings and sale under the act of attainder and banishment of 1779. The circuit court was of a different opinion; and held, that the remainder to the children was contingent until the birth of a child, and then vested in such child, and opened to let in after born children; and that there being a vested remainder in the children at the time of the act of 1779, it stands unaffected by that act.”¹⁸ The “act of attainder and banishment of 1779”, which is an act concerned with Treason against the State of New York, is explicitly referred to in this case, which is a case before the Supreme Court of the United States in the year 1830.¹⁹

As reported by Dan King in 1859, “Soon after this [October 31, 1843], Mr. Dorr was arrested by an officer upon the charge of treason against the State of Rhode Island and Providence Plantations, and thrust into jail in Providence, where he was kept in close confinement until Thursday, the 29th of February, 1844, when he was removed to the jail at Newport, in which county it had been decided that his trial should take place. Contrary to the common law of England and the United States, and in violation of every principle of justice and humanity, the Supreme Court of the State of Rhode Island decreed that the prisoner should be tried in a county in which he was a stranger, where it was known that almost every man was his

¹⁷ CARVER v. JACKSON, 29 US 1 (1830). (emphasis added.)
¹⁸ CARVER v. JACKSON, 29 US 1, 80, 90 (1830). (emphasis added.)
¹⁹ CARVER v. JACKSON, 29 US 1, 90 (1830). (emphasis added.)
avowed enemy, away from all his friends and his witnesses, and contrary to the earnest solicitation of the prisoner and his counsel.” Later in a chapter entitled Reflections, Dan King continues, “The *history of treason shows that it has been chiefly confined to arbitrary and unjust governments*, and that far the largest number of those who have suffered for that crime have been good men, who sought to relieve their own people from the oppressive measures of their rulers.” In the case of Thomas Wilson Dorr, it is worth noting the appropriate recognition that he later received and the following Act passed in the January session of 1854, by the Rhode Island General Assembly, in the State of Rhode Island: *An Act to reverse and annul the Judgment of the Supreme Court of Rhode Island for Treason, rendered against Thomas W. Dorr, June 25, A. D. 1844.*

The Power to Punish and Treason.

One should keep in mind Dan King’s statement summarizing the history of Treason above, when considering the underlying principles behind the explicit provisions that grant the power to *punish* within the United States Constitution. The principles are found in the distribution and the separation of the enumerated powers granted. The Founders created a Constitution that provided separation of the power to punish *from* the national government to the greatest extent possible, and such punishment powers are Constitutionally designed to be as

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20 Dan King, *The Life and Times of Thomas Wilson Dorr, with Outlines of the Political History of Rhode Island* 190 (1859).
21 Dan King, *The Life and Times of Thomas Wilson Dorr, with Outlines of the Political History of Rhode Island* 215 (1859). (emphasis added.) From the Supreme Court of the United States, and the opinion of Justice McLEAN, “Thomas W. Dorr was convicted before the Supreme Court of Rhode Island, at March term, 1844, of treason against the state of Rhode Island, and sentenced to the state’s prison for life.” *EX PARTE DORR*, 44 U.S. (3 How.) 103, 104 (1844). (emphasis added.)
22 Dan King, *The Life and Times of Thomas Wilson Dorr, with Outlines of the Political History of Rhode Island* 280 (1859).
local, and as distant from the national government as possible. The Framers retained the sovereign status of each State within the judicial and structural framework of the United States Constitution, as shown here below as Treason is a crime against one’s State, Treason is a State crime.

Power to Punish.

Directly related to crime, is punishment, and it is critical to examine the usage of “punish” and “punishment” within the Constitution. The Congress are the only body of power created by the Constitution that is expressly granted powers related to punishment. The Constitution provides, “Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and with the Concurrence of two thirds, expel a Member.” In this clause, it is clear that expulsion is more severe than this particular use of “punish,” as expulsion requires a “two thirds” majority. Powers granted to Congress that have an impact outside of their own body are limited to: Power “To provide for the Punishment of counterfeiting the Securities and current Coin of the United States”; “To define and punish Piracies and Felonies committed on the High Seas, and Offenses against the Law of Nations”; and “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.” This is a rather short and specific list, which provides for the power to punish in areas clearly associated with international

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25 U.S. CONST. amend. VIII.
27 U.S. CONST. art. I, § 5, cl. 2.
29 U.S. CONST. art. I, § 8, cl. 10.
30 U.S. CONST. art. III, § 3, cl. 2.
dealing and encounters between sovereigns. Usage of the term “punish” was specifically discussed at the debates of the Federal Convention, and it indicates a rather narrow grant of power. Counterfeiting of currency is a power that should be controlled by the body of power operating under authority to coin and print the currency, and acts upon the “High Seas” as well as Offenses to the “Law of Nations” are clearly within the sovereign realm of international relations. And, lastly, Treason, as addressed above, is a crime against a sovereign, and indicates sovereign dealings by definition. The Constitution clearly respects the independence and sovereignty of the several States with respect to issues surrounding jurisdiction, crime and punishment.

32 U.S. CONST. art. I, § 8. Mr. Govr. Morris moved to strike out 'punish' before the words 'offences agst. the law of nations.' So as to let these be definable as well as punishable, by virtue of the preceding member of the sentence. Mr. Wilson hoped the alteration would by no means be made. To pretend to define the law of nations which depended on the authority of all the Civilized Nations of the World, would have a look of arrogance. That would make us ridiculous. Mr. Govr. The word define is proper when applied to offences in this case; the law of {nations} being often too vague and deficient to be a rule. On the question to strike out the word 'punish' [it passed in the affirmative]” 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 614-15 (Max Farrand ed., 1937). (emphasis retained.) With respect to agreement on appropriate terminology, the debates were highly selective: “The clause referring to the Senate, the trial of impeachments agst. the President, for Treason & bribery was taken up. Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach any great and dangerous offences. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined- As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He movd. To add after ‘bribery’ ‘or maladministration’. Mr. Gerry seconded him- Mr. Madison So vague a term will be equivalent to a tenure during pleasure of the Senate. Mr. Govr Morris, it will not be put in force & can do no harm - An election of every four years will prevent maladministration. Col. Mason withdrew ‘maladministration’ & substitutes ‘other high crimes & misdemeanors’ [agst. the State] On the question thus altered. … [Ayes – 8; noes – 3.]” 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 550 (Max Farrand ed., 1937).
35 U.S. CONST. arts. I, III, IV. The Court has respected State powers even in the most unbalanced of circumstances. Justice ROBERTS for the Majority, “[I]n the great majority of the states, it has been the considered judgment of the people, their representatives and their courts that appointment of counsel is not a fundamental right, essential to a fair trial. On the contrary, the matter has generally been deemed one of legislative policy. In the light of this evidence we are unable to say that the concept of due process incorporated in the Fourteenth Amendment obligates the state, whatever may be their own views, to furnish counsel in every such case. Every court has power, if it deems proper, to appoint counsel where that course seems to be required in the interest of fairness.” … “[W]hile want of counsel in a particular case may result in a conviction lacking [in] such fundamental fairness, we cannot say that the [Fourteenth Amendment] embodies an inexorable command that no trial for any offense, or in any court, can be
The discussion below will return to Treason and Treason against a State.

fairly conducted and justice accorded a defendant who is not represented by counsel.” BETTS v. BRADY, 316 U.S. 455, 471-73 (1942). (emphasis added.) Eventually, the Court overruled itself and recognized individual rights over State powers in the area of right to appointed counsel. The 1942 decision was overruled in 1963. “Twenty-two States, as friends of the Court, argue that Betts was ‘an anachronism when handed down’ and that it should now be overruled. We agree.” GIDEON v. WAINWRIGHT, 372 U.S. 335, 345 (1963). (emphasis added.) Comment: The Death penalty was provided for by the Punishment for Crimes Act of 1790 enacted by the First Congress, yet maiming was prohibited, here Congress provides explicit statements as to the constraints placed upon government action upon the individual, which helps further articulate the Eighth Amendment. U.S. CONST. amend. VIII. The Punishment for Crimes Act of 1790 was principally for crimes in locations upon the high seas and in areas under the sole and exclusive jurisdiction of the United States. Select excepts from the Statute: “An Act for the Punishment of certain Crimes against the United States. SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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.” … “Sec. 3. And be it [further] enacted, That if any person or persons shall, within any fort, arsenal, dock-yard, magazine, or in any other place or district of country, under the sole and exclusive jurisdiction of the United States, commit the crime of wilful murder, such person or persons on being thereof convicted shall suffer death.” … “SEC. 6. And be it [further] enacted, That if any person or persons having knowledge of the actual commission of the crime of wilful murder or other felony, upon the high seas, or within any fort, arsenal, dock-yard, magazine, or other place or district of country, under the sole and exclusive jurisdiction of the United States, shall conceal, and not as soon as may be disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, on conviction thereof, such person or persons shall be adjudged guilty of misprision of felony, and shall be imprisoned not exceeding three years, and fined not exceeding five hundred dollars.” … “SEC. 13. And be it [further] enacted, That if any person or persons, within any of the places upon the land under the sole and exclusive jurisdiction of the United States, or upon the high seas, in any vessel belonging to the United States, or to any citizen or citizens thereof, on purpose and of malice aforesaid, shall unlawfully cut off the ear or ears, or cut out or disable the tongue, put out an eye, slit the nose, cut off the nose or a lip, or cut off or disable any limb or member of any person, with intention in so doing to maim or disfigure such person in any the manners before mentioned, then and in every such case the person or persons so offending, their counselors, aids and abettors (knowing of and privy to the offence aforesaid) shall on conviction, be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.” … “SEC. 33. And be it further enacted, That the manner of inflicting the punishment of death, shall be by hanging the person convicted by the neck until dead. APPROVED, April 30, 1790.” An Act for the Punishment of certain Crimes against the United States. Act of April 30, 1790, 2 Stat., ch. 9, (1790). (italics retained.) (emphasis added.)

37 MAYOR OF NEW YORK v. MILN, 36 U.S. (11 Pet.) 102 (1837).
Treason.

An example of the type of punishment that was feared most in Colonial times was that given for Treason. In New York in 1691, even after the 1689 English Bill of Rights, Jacob Leisler and his son-in-law were charged with treason and convicted. The punishment imposed upon them was recorded as, "They were hanged, cut down when still alive, their sex organs were cut off, they were disemboweled, the excised body parts were burned before their eyes, they were beheaded and cut into quarters, and their heads displayed upon spikes." From the documentation of these punishments, we may infer the Colonists had good reason to be concerned about the punishments for treason and punishments in general. For the Colonists, who were exposed to this type of punishment, it is quite plausible, if not logical, that they had every reason to set limits on punishment powers granted within the United States Constitution, so as to prohibit this type behavior by any level of government.

Article III, section 3, clause 1 explicitly addresses Treason by defining what it is, and providing strict limiting requirements for a conviction of the charge of Treason. Additional punishment limitations restricting Congress are spelled out in clause 2. Fortunately, the Colonists documented their extensive experience with the charge of Treason. The Colonial Bill of Rights of 1774 provides, "colonists may be transported to England, and tried there upon

are unconstitutional and simply a result of broad overreaching. U.S. CONST. Crimes and Criminal Procedure. 18 U.S.C. “We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation.; where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem conducive to these ends;… That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a state is complete, unqualified and exclusive.” … “It is the duty of the state to protect its citizens…” MAYOR OF NEW YORK v. MILN, 36 U.S. (11 Pet.) 102, 139, 141 (1837). (emphasis added.)

41 U.S. CONST. art. III, § 3, cl. 1.
42 U.S. CONST. art. III, § 3, cl. 2.
accusations for treason and misprisions…"\(^4\) The Declaration of Arms of 1775, denounced the "12th of June" proclamation with hostility, which proceeds to "declare them all, either by name or description, to be rebels and traitors, to supercede the course of the common law, and instead thereof to publish and order the use and exercise of the law martial."\(^4\) The Declaration of Independence of July 4, 1776, charges the English with false prosecutions, "For transporting us beyond Seas to be tried for pretended offences."\(^4\)

Prosecution for Treason by the States was actually contemplated by the writers of the Constitution. Treason is primarily associated with "the offense of attempting by overt acts to overthrow the government of the state to which the offender owes allegiance; or of betraying the state into the hands of a foreign power."\(^4\) However, from Black's Law Dictionary, "in England, treason is an offense particularly directed against the person of the sovereign, and consists (1) in compassing or imagining the death of the king or queen, or their eldest son and heir; (2) in violating the king's companion, or the king's eldest daughter unmarried, or the wife of the king's eldest son and heir; (3) in levying war against the king in his realm; (4) in adhering to the king's enemies in his realm, giving to them aid and comfort in the realm or elsewhere, and (5) slaying the chancellor, treasurer, or the king's justices of the one bench or the other, justices in eyre, or justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices. 4 WILLIAM BLACKSTONE, COMMENTARIES 76-84 (1795)."\(^4\) The Colonial Bill of Rights mentions "treasons and misprisions" among its charges, which includes both misprision and misprision of treason.\(^4\) Black's defined Misprision as, "more particularly and

\(^4\) DECLARATION AND RESOLVES OF THE FIRST CONTINENTAL CONGRESS para. 2 (U.S. 1774).
\(^4\) DECLARATION OF THE CAUSES AND NECESSITY OF TAKING UP ARMS para. 9 (U.S. 1775). (emphasis added.)
\(^4\) THE DECLARATION OF INDEPENDENCE para. 21 (U.S. 1776).
\(^4\) BLACK'S LAW DICTIONARY 1672 (4th ed. 1951).
\(^4\) BLACK'S LAW DICTIONARY 1672 (4th ed. 1951). (emphasis added.)
\(^4\) DECLARATION AND RESOLVES OF THE FIRST CONTINENTAL CONGRESS para. 2 (U.S. 1774).
properly, the term denotes (1) a contempt against the sovereign, the government, or the courts of justice, including not only contempts of court, properly so called, but also all forms of seditious or disloyal conduct and leze-majesty;...” and misprision of treason is defined as, “The bare knowledge and concealment of an act of treason or treasonable plot, that is, without any assent or participation therein, for if the latter elements be present the party becomes a principal. 4

WILLIAM BLACKSTONE, COMMENTARIES 120 (1795).” 49 The English experience of the Colonists indicates that Judges are highlighted in both treason and misprision of treason, and in Colonial times the punishment was of the highest order for Treason.

In order to prevent any abuse of the term Treason within the United States, the Constitution specifically addresses Treason in several areas. So, “Treason against the United States” is Constitutionally defined, and the requirements for conviction are stated. 50 “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.” 51

49 BLACK'S LAW DICTIONARY 1151-52 (4th ed. 1951). (emphasis added.)
50 U.S. CONST. art. III, § 3, cl. 1. (emphasis added.)
51 U.S. CONST. art. III, § 3, cl. 1. It is important to note the direct relationships articulated by explicit textual connections and functional protections among the Constitutional provisions (in Article III and Amendment V) and in the Punishment for Crimes Act of 1790. “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.” U.S. CONST. art. III, § 3, cl. 1. “nor [No person] shall be compelled in any criminal case to be a witness against himself.” U.S. CONST. amend. V. When placed side by side the Constitutional requirement of a “Confession in open Court” becomes a great restraint upon the government to protect the individual from being a witness against himself, and demonstrates the Powers yielding to Rights, as with Taxation and Arms bearing discussed above (see 47 n.267). The language is repeated in the Punishment for Crimes Act of 1790: “SECTION 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, 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. SEC. 2. And be it [further] enacted, 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.” An Act for the Punishment of certain Crimes against the United States. Act of April 30, 1790, 2 Stat., ch. 9, (1790). (*italics retained.* (emphasis added.) Again, Rights of Individuals supersede Powers of the Sovereign.
The States' involvement in allegations of Treason is explicitly spelled out and in fact provides for the “demand of the executive Authority of the State.” By this plain text of Article IV, prosecution of Treason by the States is addressed explicitly in the Constitution. "A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime." Here, the Constitution describes being charged in a State, and being delivered up on demand of the

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52 Treason, Treason against the United States, and Treason against a State: An Act for the Punishment of certain Crimes against the United States. Act of April 30, 1790, 2 Stat., ch. 9, (1790). From a case involving the charge of High Treason in the Commonwealth of Pennsylvania, heard in the Supreme Court of Pennsylvania, and where the defendant was exonerated since the laws of the commonwealth were suspended for a period of time. "Locke says, that when the Executive is totally dissolved, there can be no treason; for laws are a mere nullity, unless there is a power to execute them." RESPUBLICA v. CHAPMAN, 1 U.S. (1 Dall.) 53, 57 (1781). An indictment of treason against the State of New York. THE PEOPLE v LYNCH, 11 Johns. 549 (1814). Of special importance are the cases ("the Dorr cases") that rule on or refer to the conviction of Thomas Wilson Dorr for Treason against the state of Rhode Island. Thomas Wilson Dorr served as the Governor of Rhode Island. Justice McLEAN for the Court: “Thomas W. Dorr was convicted before the Supreme Court of Rhode Island, at March term, 1844, of treason against the state of Rhode Island, and sentenced to the state's prison for life.”… “Neither this nor any other court of the United States, or judge thereof, can issue a habeas corpus to bring up a prisoner, who is in custody under a sentence or execution of a state court, for any other purpose than to be used as a witness.” EX PARTE DORR, 44 U.S. (3 How.) 103, 104, 105 (1844). (emphasis added.) In the case of Thomas Wilson Dorr, it is worth noting the following Act by the State of Rhode Island in 1854: An Act to reverse and annul the Judgment of the Supreme Court of Rhode Island for Treason, rendered against Thomas W. Dorr, June 25, A. D. 1844. The Act was passed in the January session of 1854 by the Rhode Island General Assembly. For a contemporaneous history of the political life of Thomas W. Dorr, see the following book, DAN KING, THE LIFE AND TIMES OF THOMAS WILSON DORR, WITH OUTLINES OF THE POLITICAL HISTORY OF RHODE ISLAND (1859). The cases which rule on or refer to “Dorr” include EX PARTE DORR, 44 U.S. (3 How.) 103 (1844). LUTHER v. BORDEN, 48 U.S. (7 How.) 1 (1849). ATTORNEY GENERAL ex rel. BASHFORD v. BARSTOW, 4 Wis. 567 (1855). TAYLOR v. PLACE, 4 R.I. 324 (1856). A New York State Treason ejectment action related to John Jacob Astor of New York. From the syllabus of CARVER v. Jackson, “On the 22d of October 1779, the legislature of the state of New York, by ‘an act for the forfeiture and sale of the estate of persons who have adhered to the enemies of the state, &c.’ declared Roger Morris and his wife to be convicted and attainted of adhering to the enemy; and all their estate, real and personal, severally and respectively, in possession, reversion, or remainder, was forfeited and vested in the people of the state.” From the opinion of Justice STORY, [80] “The action is ejectment, brought upon several demises; and among others, upon the demise of John Jacob Astor. … [90] “consequently, the remainder to the children was a contingent remainder during the life of their parents; and as such it was destroyed by the proceedings and sale under the act of attainer and banishment of 1779. The circuit court was of a different opinion; and held, that the remainder to the children was contingent until the birth of a child, and then vested in such child, and opened to let in after born children; and that there being a vested remainder in the children at the time of the act of 1779, it stands unaffected by that act.” CARVER v. JACKSON, 29 US 1, 80, 90 (1830).

53 U.S. CONST. art. IV, § 2, cl. 2.

54 U.S. CONST. art. IV, § 2, cl. 2.

55 U.S. CONST. art. IV, § 2, cl. 2. (emphasis added.)
executive Authority of the State, not on demand of any federal authority. And “Treason” is named by itself, so as to include any charges brought on by the States, and note that it is not called “Treason against the United States” as in Article III. Provisions linked to Treason begin with the criminal proceedings in Article III, that are connected with additional explicit provisions regarding Treason in Article I, Article II, Article III, and Article IV. The States (and the federal government) are restricted in their dealings with Treason. Article III continues, “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.” Congress reserves control over the remedy for punishing Treason, and the punishment is explicitly limited by the Constitution. Here, an “Attainder of Treason” is explicitly mentioned, and earlier in the Constitution an explicit prohibition of Bills of Attainder is placed upon the States. All types of Bills of Attainder are prohibited to the States, and this of course would prevent any “Attainder of Treason” from being passed by a State, so that too is forbidden to the States. This prohibition of Article I, section 10 provides, “No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or any Law impairing the Obligation of Contracts, or grant any Title of Nobility.” States were in fact contemplated as forums for Treason proceedings, and State Judges were highlighted within the traditional English elements of Treason (for treason

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56 U.S. CONST. art. IV, § 2, cl. 2.
60 U.S. CONST. art. III, § 3, cl. 2.
61 U.S. CONST. art. III, § 3, cl. 2.
63 U.S. CONST. art. I, § 10, cl. 1.
64 U.S. CONST. art. I, § 10, cl. 1. (emphasis added.)
based upon contempt of court\footnote{BLACK'S LAW DICTIONARY 1151-52 (4th ed. 1951).}, and the punishments for Treason were of the highest order during the Colonial period. Specific cases prosecuting charges of *Treason against the State* actually took place in States\footnote{In Pennsylvania: RESPUBLICA v. CARLISLE, 1 U.S. (1 Dall.) 35 (1778). (Defendant convicted and executed.) RESPUBLICA v. ROBERTS, 1 U.S. (1 Dall.) 39 (1778). (Defendant convicted and executed.) In Virginia: Commonwealth v. Caton, 8 Va. 5 (1782). (Defendant appealed conviction on grounds of pardon, but appeal held pardon invalid as granted by only one house of the legislature and not both, held defendant ought to be executed.) Pennsylvania case citing U.S. Constitution and the State Constitution, Judge YEATES, “The 10th section of the 1st article of the constitution of the United States provides, among other things, that ‘no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts;’ and the 17th section of the 9th article of the state constitution expressly directs, that ‘no *ex post facto* law, nor any law impairing contracts shall be made;’ and the 18th section asserts that ‘no person shall be attainted of treason or felony by the legislature.’ Put a strong case, which for the honor of human nature we can scarcely suppose the possibility of: that the legislature should, under very peculiar circumstances, (as in the case of sir John Fenwicke in England) pass an act of attainder against an obnoxious citizen for treason, and the attorney general should demand of the court to award execution.” EMERICK against HARRIS, 1 Binn. 416, 420 (1808). (emphasis added.) (emphasis retained.)}, and are further documented by actions for *ejection* in real property cases due to the “Corruption of Blood” and “Forfeiture”\footnote{U.S. CONST. art. III, § 3, cl. 2. Forfeiture in Connecticut: Beekman v. Tomlinson, 1 Kirby 291 (1787). Ejectment in Maryland: Griffith’s Lessee v. Ridgely, 2 H. & McH. 418 (1790). Forfeiture and dower in New Jersey: COZENS v. LONG, 3 N.J.L. 331 (1811). Forfeiture in question in New Jersey: DEN v. SPARKS, 1 N.J.L. 67 (1791). Effect of pardon after guilty of high treason in North Carolina: Executors of Cruden v. Neale, 2 N.C. 338 (1796). Several cases based on one New York: Act of Attainder, October 22, 1779. JACKSON v. CAITLIN, 2 Johns. 248 (1807). JACKSON v. STOKES & THOMPSON, 3 Johns. 151 (1808). JACKSON v. MUNSON, 3 Cai. R. 137 (1805). JACKSON v. MUNSON, 1 Johns. 277 (1806). UNITED STATES v. BURR, 25 F. Cas. 201. (1807). (A case against Aaron Burr for treason.) In re BURR, 8 U.S. (4 Cranch) 470 (1807). (Held that no evidence could be admitted.)} that accompanied execution of the convicted under an *Act of Attainder*\footnote{“Thomas W. Dorr was convicted before the Supreme Court of Rhode Island, at March term, 1844, of treason against the state of Rhode Island, and sentenced to the state's prison for life.” EX PARTE DORR, 44 U.S. 103, 104 (1844). For a detailed account of the historical events in Rhode Island during the period from 1840 to 1844, one of the best sources is the following book written and published by DAN KING, *THE LIFE AND TIMES OF THOMAS WILSON DORR, WITH OUTLINES OF THE POLITICAL HISTORY OF RHODE ISLAND* (1859). Treason within the United States Constitution is a crime that is committed against the United States\footnote{UNITED STATES v. BURR, 25 F. Cas. 201. (1807). (A case against Aaron Burr for treason.) In re BURR, 8 U.S. (4 Cranch) 470 (1807). (Held that no evidence could be admitted.)}, however, it is also a crime that may be charged, indicted and
prosecuted for the crime of Treason against a State\textsuperscript{70}, and this demonstrates a substantial element of sovereignty and independence that belongs to the several States within the Constitutional framework. The Constitutional limits placed upon the punishment of Treason\textsuperscript{71} and the testimony required for Treason\textsuperscript{72} proceedings demonstrate adherence to the underlying principles of trial by jury and due process, as well as a desire to preserve and not disrupt property rights, as such state confiscation could be abused and become an arbitrary source of revenue.

Treason in the United States Constitution is a State Crime.

In conclusion, it is now clear, from the wealth of cases directly concerning Treason against a State, and those cases related to Treason against a State, to include cases in both State and Federal courts, that Treason is also a State crime, that is, Treason is a crime against one’s State. This meaning is made even clearer by an understanding of the plain language of the United States Constitution, and supported by the many cases of Treason against a State that may be found within America’s rich historical legal record. Moreover, there are numerous cases in America’s legal reporters related to the results of the enforcement of the particular punishment of

\textsuperscript{70} From the Supreme Court of Pennsylvania: RESPUBLICA v. WEIDLE, 2 U.S. (2 Dall.) 88 (1781). The Act of Assembly is cited within the Syllabus of Weidle as: “The indictment was founded on the 4th Sect. of the Act of Assembly (1 Vol. Dall. Edit. 728) and charged all the misprisons of treason three enumerated. The words are ‘That if any person or persons within this State shall attempt to convey intelligence to the enemies of this State, or the United States of America, or by publicly and deliberately speaking or writing against our public defence; or shall maliciously and advisedly endeavour to excite the people to resist the Government of this Commonwealth, or persuade them to return to a dependence upon the Crown of Great Britain; or shall maliciously and advisedly terrorize, or discourage, the people from enlisting into the service of the Commonwealth; or shall stir up, excite or raise tumults, disorders, or insurrections in the State, or dispose them to favor the enemy; or oppose and endeavour to prevent the measures carrying out in support of the freedom and independence of the said United States; every such person, being thereof legally convicted by the evidence of two or more credible witnesses, shall be adjudged guilty of misprision of treason, &c.’” The Opinion from Chief Justice M’KEAN: “A mere loose and idle conversation, without any wickedness of heart, may be indiscreet and reprehensible, but ought not to be construed into misprision of treason. On the other hand, drunkenness is no justification, or excuse, for committing the offence; to allow it as such would open a door for the practice of the greatest enormities with impunity. Verdict, GUILTY.”

RESPUBLICA v. WEIDLE, 2 U.S. (2 Dall.) 88, 91 (1781). (emphasis added.)

\textsuperscript{71} U.S. CONST. art. III, § 3, cl. 2.

\textsuperscript{72} U.S. CONST. art. III, § 3, cl. 1.
forfeiture for a conviction of Treason. The examination of the express powers granted to Congress within the United States Constitution that are directly related to the power to punish are particularly useful in guiding one’s discovery of such cases related to Treason against a State. This paper has briefly exposed some historical court cases, the historically broad definition of Treason, and the Constitutional power to punish to provide an irrefutable demonstration that ‘Treason’, within the United States Constitution, is also a State crime, that is, Treason is a crime against one’s State.

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