

# Lesson 13

## CRIME AND PUNISHMENT

### Lesson Objectives

When you complete Lesson 13, you will be able to:

- Explain the protection of the writ of habeas corpus and when the writ of habeas corpus may be suspended.
- Describe the difference between criminal trials and civil trials and summarize the history of criminal trials in the English tradition and in the early United States.
- Understand the role of the jury in the Constitution and its importance in the criminal process and describe how the role of the jury has changed.
- Understand the types of treason and how the Constitution defines it.
- Understand the punishment for treason under current law.
- Explain the punishments for treason under common law and under current federal law.
- Explain the purpose of the Interstate Rendition Clause.

Unit 4

### Habeas Corpus – Article I, Section 9, Clause 2

*Essay by Jonathan Turley (pp. 152–154)*

Protecting the writ of habeas corpus means that no person may be held without a legal cause.

The writ of habeas corpus was an English legal procedure. Sir William Blackstone praised it as “the glory of the English law” and noted that the right of citizens to demand review of their incarceration guarded against government abuse and incompetence. The colonial governments agreed. Writs of habeas corpus (literally, “you shall have the body”) were issued before the Revolution, and by 1787, several state constitutions already guaranteed habeas corpus. In *The Federalist* No. 84, Alexander Hamilton invoked the writ of habeas corpus as proof that the Constitution protected individual liberty.

The scope and meaning of the Habeas Corpus Clause have been controversial ever since its ratification. While the clause states the conditions under which the writ may be suspended (during rebellion or invasion), it does not specifically state either that it should be suspended during such crises or who should suspend it. Convention

delegates agreed that Congress could suspend the writ, but it is not clear that only Congress could do so. During the Civil War, Lincoln suspended the writ of habeas corpus, and Congress retroactively supported the suspension.

In *Ex parte Bollman* (1807), Chief Justice John Marshall argued that Congress could suspend the writ. Congress has suspended the writ three times since the Civil War: in South Carolina in 1871 to deal with the Ku Klux Klan, in the Philippines in 1905 in connection with a local revolt, and in Hawaii during World War II.

A related question was the courts' authority to issue writs of habeas corpus, a power not expressly granted in the Constitution. Justice Marshall argued that Congress had a duty to authorize writs of habeas corpus. Beginning in 1789, Congress passed many statutes providing habeas corpus rights for a variety of prisoners. Congress also statutorily granted courts the authority to issue writs.



### Before You Read

Explain to students that a writ is a legal document, or an order, issued by the court. Tell them that habeas corpus is Latin for "you shall have the body." **Ask: What do you think the writ of habeas corpus is?** (It is a legal action by which a prisoner can be released from unlawful detention.)



### Make an Inference

Point out that on page 152 (middle of the second full paragraph in the right-hand column), Turley says that the writ of habeas corpus may be suspended during times of rebellion or invasion. **Ask: Why may it be necessary to suspend habeas corpus during these times?** (The suspension of habeas corpus was a contentious issue at the Constitutional Convention, although there was consensus that the writ could be suspended in extreme circumstances. During such unusual times as invasion or rebellion, it would be important to be able to hold prisoners to maintain order. Once the invasion or rebellion was quelled, the writ of habeas corpus would be restored.)



### Make a Real-Life Connection

What might happen if a government was allowed to take prisoners without a reason? (Answers will vary. A government might imprison anyone it did not like, such as people of an opposing political party.) **Think of an instance today in which the writ of habeas corpus might be suspended.** (Answers will vary. Accept all reasonable responses. Students may say that persons might be arrested without a legal cause if they were suspected of terrorism.)

## **Criminal Trials** – Article III, Section 2, Clause 3

*Essay by Rachel E. Barkow (pp. 261–264)*

Article III cements the role of the jury in the structure of government. The right to a trial by jury traces back to the Magna Carta in 1297. Since the 16th century, a jury has consisted of 12 citizens who sit in sworn judgment of the criminal allegations against a peer. In America, the Charter of the Virginia Company in 1606 guaranteed the colonists all the traditional rights of Englishmen, including the right to trial by jury.

Before the American Revolution, the colonists used the right to trial by jury to resist English authority; for instance, John Peter Zenger was acquitted of charges of seditious libel for publishing materials that opposed the king. In response, George III expanded the jurisdiction of non-jury courts, like Admiralty courts, and threatened to transport colonists overseas to be tried in England, where the jury would not be sympathetic to the idea of American independence.

The Declaration of Independence condemned the king for depriving the colonists of their right to a trial by jury. Article III of the Constitution states that all criminal trials must be tried by a jury in the state and district in which the alleged crime was committed. Thus, the jury has become part of the structure of government.

In the early history of the United States, juries decided questions of fact and questions of law. Judges would not tell jury members what the law meant; instead, lawyers argued questions of law before the jury, and the jury decided how the law should be interpreted and applied. In 1895, however, the Supreme Court ruled that juries could not decide legal questions. Today, judges tell the jury what the law means, and jurors are obliged to follow that definition. Although their power to determine questions of law has been eroded, juries still retain the raw power to check general laws, because a verdict of not guilty is not reviewable.

In 1930, the jury's power was eroded again when the Supreme Court ruled that a defendant could waive his right to a jury trial in favor of a bench trial (a trial where the judge decides everything and there is no jury). However, the Court did maintain that the prosecutor could demand a jury trial even if the accused wished to waive his right.

Two other major changes in the American criminal justice system have further sidelined the role of the jury. First, few defendants ever see a jury, because an increasing number of cases are resolved through plea bargains. Second, Congress and many state legislatures have crafted sentencing laws: Rather than allowing the judge to exercise his broad discretion in sentencing a convicted criminal, legislatures pass laws specifying how particular findings of fact must affect sentencing. In 2000, the Supreme Court ruled that state legislatures did not have complete power to define punishments because it would undercut the jury's constitutional role.

*Unit 4*



## Active Reading

How are juries part of the original structure of government? (Some Framers were concerned that judges, because they were part of the government, would not be an adequate check on government abuse of the criminal process. The jury would ensure that individuals did not lose their liberty under a criminal law until the people themselves concurred.)



## Discussion Question

How has the power of the jury trial changed in modern times? (Juries used to make decisions based on both fact and law. Now juries decide questions of fact, not law. Traditionally, criminal cases were almost always tried by a jury. Now, however, defendants may waive jury trials in favor of bench trials, or they may simply settle out of court or through plea bargains.)

## Unit 4

### Treason — Article III, Section 3, Clause 1

*Essay by Bradley C. S. Watson (pp. 264–266)*

Under common law, treason was a form of treachery or breach of faith committed between two parties who enjoyed an established relationship of mutual trust. There were two forms of treason: *petit treason* and *high treason*. *Petit treason* refers to a wife killing her husband or a servant killing his lord. *High treason* involves a subject betraying a sovereign.

The American colonies' understanding of treason originates in the common law. By the 18th century, treason laws in America consistently reflected the law in England, but more precise definitions and standards of proof, as well as more lenient punishment, were gradually adopted.

The Framers' definition of treason in the Constitution reflected their concern with individual rights and wariness of arbitrary government. It was not designed to enable factions to target mere political opponents. Under the Constitution, treason consists of levying war against the United States or giving aid and comfort to its enemies. Either a confession in open court or the testimony of at least two witnesses to the same overt act would serve as proof. Hamilton defended the clause as one of the guarantors of rights within the Constitution.

The Supreme Court has discussed the treason clauses on a few occasions. In *Ex parte Bollman* (1807) and *United States v. Burr* (1807), Chief Justice John Marshall rejected the notion of "constructive treason." Conspiracy short of actually levying war is not treason. Short of manifest participation in a treasonable act, conviction for treason was nearly impossible. During several World War II treason cases, the Supreme Court held that specific intent was necessary rather than simply offering aid.

Because of the Constitution’s definition of treason and standards of proof associated with it, Congress has passed laws to prosecute certain hostile acts (espionage and terrorism) that are short of treason but nonetheless harmful to the United States.



### Before You Read

Ask students what they know about the crime of treason. What does it mean? (Treason is a breach of faith between subject and sovereign—in other words, between a citizen and his country.)



### Research It

The article by Bradley C. S. Watson mentions several instances of treason cases throughout history. Assign each student (or small groups of students) a case of treason from a different era (for instance, trials from early America, from the Civil War era, from the World War I and World War II eras, and from the “War on Terrorism” era). Have students research these trials and share their findings with the class.



### Discussion Question

How did the Framers define treason? (The Framers defined treason as the act of “levying War” against the United States or giving aid and comfort to its enemies.) Why did they define it so narrowly? (The Framers’ definition of treason in the Constitution reflected their concern with individual rights and wariness of arbitrary government. It was not designed to enable factions to target mere political opponents.)

Unit 4

## Punishment of Treason – Article III, Section 3, Clause 2

*Essay by Bradley C. S. Watson (p. 266)*

Under common law, treason was punishable by death. Those convicted of treason were considered to be *attaint*—meaning stained or dead in the eyes of the law—prior to execution. Consequently, two additional punishments accompanied execution: The convicted forfeited their property to the Crown and were unable to pass down any title or inheritance, a punishment known as “corruption of the blood.”

Under the Constitution, Congress would set the punishment for treason, but it could not include forfeiture of property or corruption of the blood. The First Congress established the penalty of death for treason and seven years imprisonment for concealing knowledge of a treasonous act. In practice, the punishments for treason have been more lenient: Sentences of death have been commuted, and many convicted of treason have been pardoned. Of the two state convictions for treason, only one resulted in the death penalty.



## Active Reading

Ask: What does the word “misprision” mean? (Misprision means failing to report a crime, in this case treason.) How might a person be accused of misprision of treason? (Sample answer: A person who hears about a treasonable conspiracy but fails to report it to authorities may be found guilty of misprision of treason.)



## Discussion Question

Though treason is a severe offense, some forms of punishment are not permissible. What kinds of punishments are restricted and why? (Article III restricts the punishments for treason otherwise found in English common law. Under common law, those who were convicted of treason were considered to be at-taint (stained or dead in the eyes of the law) prior to execution. Consequently, two additional punishments accompanied execution: Those who were convicted forfeited their property to the Crown and were unable to pass down any title or inheritance, a punishment known as “corruption of the blood.” The Constitution, however, forbids these punishments. In fact, there are separate provisions forbidding the state and federal governments from passing bills of attainder.)

## Unit 4

### Interstate Rendition Clause — Article IV, Section 2, Clause 2

*Essay by Richard Peltz (pp. 273–275)*

The Interstate Rendition Clause, or Extradition Clause, ensures that criminals may not evade prosecution in one state by escaping to another state. For the clause to be enforceable, there must be a valid criminal charge, a flight to evade prosecution, and an executive request for return.

The Framers included the words “treason,” “felony,” and “other Crimes” in the clause to specify that all crimes—including political ones—were grounds for extradition. The Interstate Rendition Clause does not apply to flight to evade civil liabilities or private debts. Moreover, it is irrelevant whether the charged individual intended to flee to avoid the law.

Controversy arose during the antebellum period about application of the Interstate Rendition Clause to the issue of slavery. Before the Civil War, for example, Northern governors refused to send fugitive slaves back to the Southern states. Since the Civil War, the Supreme Court has ruled that executives may determine whether another state has charged an individual with a crime and whether that individual is a fugitive (meaning present in that other state when the crime occurred).

Currently, every state has adopted some form of the Uniform Extradition and Rendition Act for extradition matters. Some states go further than the requirements of the Interstate Rendition Clause and agree to extradite subpoenaed witnesses or individuals. It is unclear whether such arrangements offend the clause.



## Before You Read

Activate students' prior knowledge from the previous lessons. **Ask:** *How are the legal systems of different states related?* (Courts have to make judgments on cases related to the laws of other states; courts recognize other states' judgments; sometimes there is a conflict about which state's laws apply in the dispute.) *What do you think would happen if somebody committed a crime and then tried to avoid being charged by going to another state?* (The state that charged the person might demand his return.)



## Active Reading

Have students review the Fugitive Slave Clause. Have them compare that clause to the Interstate Rendition Clause. **Why is the language different even though the two clauses seem to cover similar subjects?** (Students should note that the language of the Interstate Rendition Clause is much harsher: It speaks of criminals fleeing justice and returning these criminals to the state that has jurisdiction over the crime. The Fugitive Slave Clause does not mention the words "slave," "justice," or "criminals." It speaks of persons held in service according to state law and parties who claim that such labor is due. The text of the Fugitive Slave Clause does not give moral sanction to slavery.)



## Discussion Question

Give an example of extradition, which is part of the Interstate Rendition Clause. It can be a true example from the news or a fictional one. (Answers will vary. Sample answer: If Joe Smith robs a store and kills the clerk in Pennsylvania and then flees to New York, the governor of Pennsylvania may ask New York to return Smith to his home state. Upon Smith's return to Pennsylvania, he will be tried for his crimes.)



## Check Understanding

Have students complete the following assessment to check their understanding of Lesson 13. Review any material for questions they have missed.

### Multiple Choice: Circle the correct response.

1. Who was pardoned by the general amnesty of December 25, 1868?
  - a. Suffragettes
  - b. Confederates**
  - c. Slaves
  - d. Abraham Lincoln

*Unit 4*

2. The only crime defined in the Constitution is
  - a. tax evasion.
  - b. murder.
  - c. corruption of blood.
  - d. **treason.**
3. In the two successful prosecutions for treason at the state level, which defendant was executed?
  - a. Thomas Dorr in Rhode Island in 1844
  - b. **John Brown in Virginia in 1859**

**Fill in the Blank: Write the correct word or words in each blank.**

1. The Writ of Habeas Corpus is one of the many imports from \_\_\_\_\_.  
**(England)**
2. Participants in the Whiskey Rebellion were pardoned by President \_\_\_\_\_.  
**(George Washington)**

**Short Answer: Write out your answer to each question.**

1. List a few of the ambiguities of the Habeas Corpus Clause.
  - **One of the most obvious ambiguities is the absence of an affirmative grant of the right to suspend habeas corpus.**
  - **Another ambiguity is the fact that the clause does not affirmatively state who can suspend the writ.**
2. In what three instances since the Civil War has Congress suspended the writ of habeas corpus?
  - **In South Carolina in 1871 to deal with the Ku Klux Klan**
  - **In the Philippines in 1905 in connection with a local revolt**
  - **In Hawaii during World War II**
3. What types of crimes are covered in the Interstate Rendition Clause?  
**(treason, felony, and "other Crimes")**
4. What is exempted from the scope of the Interstate Rendition Clause?  
**(civil liabilities and private debts)**
5. How many citizens serve on a jury of one's peers? **(12)**
6. What was "petit treason"? **(a wife killing her husband or a servant or ecclesiastic killing his lord or master)**
7. What was "high treason"? **(a breach between a subject and a sovereign, such as betrayal, neglect of duty, or renunciation of allegiance to a sovereign to whom a subject owes allegiance)**

**True / False: Indicate whether each statement is true or false.**

1. Federal courts may not compel state executives to extradite fugitives who have been properly demanded. **(False)**
2. Under the Constitution the punishment for treason may not include the corruption of blood. **(True)**
3. The need for a trial by jury in criminal cases was one of the few subjects of agreement between Federalists and Anti-Federalists. **(True)**
4. In the nation's early history, the jury not only applied the law to the facts it found, but also decided questions of law. **(True)**
5. If the prosecutor insists upon a jury trial, the court must grant it. **(True)**
6. Under common law, punishments for treason generally included drawing, hanging, beheading, and quartering. **(True)**

*Unit 4*

*Unit 4*